

The Judiciary  
**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**

**PERSONAL INJURY CAUSE NUMBER 517 OF 2016**

**BETWEEN**

**DANKEN KAFA.....CLAIMANT**

**AND**

**G4S SECURICOR.....1<sup>ST</sup> DEFENDANT**

**NICO GENERAL INSURANCE COMPANY LIMITED..... 2<sup>ND</sup> DEFENDANT**

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**CORAM: A.J. BANDA, ASSISTANT REGISTRAR**

Mr. Chipofya, of counsel, for the Claimant

For the Defendants, none present

Ms. M. Galafa, Clerk/ Official Interpreter

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**BANDA, AR:**

**ASSESSMENT ORDER**

**Background**

On the 15<sup>th</sup> day of June, 2016, the claimant, Danken Kafa caused to be issued a writ (specially endorsed) against the two defendants, G4S Securicor (1<sup>st</sup> defendant) and NICO General Insurance Company Limited (2<sup>nd</sup> defendant). In the statement of claim, the claimant stated that he sustained serious injuries when the motorcycle on which he was a lawful passenger overturned twice when the driver of the motorcycle owned by the first defendant, and insured by the second defendant,



failed to negotiate a corner. Allegedly, this was from driving at excessive speed, among other stated reasons. At first one defence was entered, signed off by the legal practitioners that showed he was acting for both defendants. The defence was later on amended by way of consent order between the plaintiff and the 2<sup>nd</sup> defendant, endorsed by the Assistant Registrar on 24<sup>th</sup> April, 2017. The amendment was in effect indicative that the defence filed was only on behalf of the 2<sup>nd</sup> defendant.

A default judgment as against the first defendant was entered for not having served a defence within the prescribed time. The first defendant was ordered to pay damages for: pain and suffering; loss of amenities; disfigurement; and loss of earning capacity and costs of the action. An assessment hearing to determine the quantum of damages therefore proceeded from there.

On the appointed day of assessment hearing, the first defendant did not appear. There was a sworn statement by counsel for the claimant stating that service was done through the 1<sup>st</sup> defendant's own agents. In the sworn statement, counsel also depones that the first defendant acknowledged receipt of the notice of assessment of damages. The court therefore proceeded to hear the claimant in the absence of the first defendant.

### **Evidence**

Mr. Danken Kafa adopted a prepared witness statement and its attached exhibit, a medical report. In the statement Mr. Kafa states that he sustained a fracture of the left leg, dislocation of the right leg, a deep cut on the lower right leg, an open cut on the upper right leg, cuts on the head and cuts on both hands and general injuries.

The claimant further stated that the injuries that he sustained during the accident had affected his ability to walk properly and that made it difficult for him to run up and down to conduct businesses which he previously used to do to make money for himself. He said that the accident also rendered him incapable of properly performing duties at home such as lifting heavy objects. Finally, the claimant stated that the accident had left him with permanent scars on his body, such as the legs.

### **Issue**

The quantum of damages payable in the circumstances for pain and suffering; loss of amenities; disfigurement; and loss of earning capacity.



### **Analysis and Determination**

The law on torts is that a person who suffers injury from the wrongful act or omission of another, must be compensated by damages from that person. It has been stated that the money awarded as damages must be in the region that would put the victim in the position that he would have been if the wrong was not done to him- Livingstone v. Rawyards Coal Co [1880] 5 App. Case 25. It is also noted that it is not mathematically possible to make an award with such precision as to compensate a wrong that is not a pecuniary loss.

Courts normally use awards made in comparable cases to come up with the right quantum of damages, with caution as not to lose sight of the circumstances available in the case before them. The court also has to factor in maintenance of the value of the money in cases where the award in the comparable cases were made some time back and the value of the currency may have fallen- George Sakonda v. S. R. Nicholas, Civil Appeal Number 67 of 2013 High Court, Principal Registry.

It is uncontroverted that Mr. Danken Kafa suffered multiple injuries such as deep cut wounds on both legs, fracture of the left leg that had to be put in a Plaster of Paris, dislocation of the right leg, cuts in his head and some bodily bruises. The clinical officer that made his medical report stated that the claimant would have difficulties walking and lifting heavy objects.

The claimants counsel submitted that the injuries of the claimant were more serious in this matter than those suffered by the claimant in the case of Friday Mtelera v. Nenani Misolo and Prime Insurance Company Limited Personal Injury Cause Number 530 of 2015 Principal Registry (Unreported). In the compared case, the claimant was awarded a total sum of K 7,000,000 on 16<sup>th</sup> February, 2017 for pain and suffering, loss of amenities of life and disfigurement. In that case the claimant suffered injuries as follows: fracture of the knee joint of the right leg, fracture of the right lower leg, fracture of the ankle of the right leg, a cut on the left leg and a cut and bruises on the right elbow.

From the facts of either case it is difficult to see that the injuries in the instant matter are more serious than those that were suffered by the claimant in the Friday Mtelera case (supra). In fact I find the Mtelera case to be more serious given that the claimant had multiple fractures on the right leg, and fractures was even on the leg joint, the knee, that has to bend to enable movement.

In another comparable case, where the claimant sustained a fracture on the leg, a deep cut wound on the knee, a painful leg, bruises on both arms and at the back, and a cut on the forehead, the court awarded a sum of K6, 500,000.00 as damages for pain and suffering and loss of amenities of life.



This award was made on the 18<sup>th</sup> of April, 2013 in the case of Joseph Danger v. Prime Insurance Company Limited, Civil Cause No. 1760 of 2010.

In a fairly recent case of Christina Mande v. Charter Insurance Company Limited, Personal Injury Cause no. 329 of 2016, the court made an award of K6, 300,000.00 being damages for pain and suffering, loss of amenities of life and disfigurement, on 11<sup>th</sup> January, 2017, to the claimant who had sustained a fracture of the right femur and knee cap, and dislocation of a right hip joint. She also had cuts on the head and had lost consciousness on the spot of the accident.

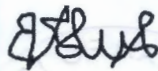
It is my view in the circumstances that **K5, 000,000.00** adequately compensates the claimant for pain and suffering; and that **K1, 000, 000.00** compensates the claimant adequately for loss of amenities of life and that **K800, 000.00** adequately compensates the claimant for disfigurement. Apart from stating that he would have difficulties carrying heavy objects, it is not shown from the evidence what economic activity exactly the claimant earned a living from. It is thus difficult for the court to quantify his loss of earning capacity. Be that as it may I make a nominal award of **K200, 000.00** under this head.

Counsel asked this court to take into account the possibility of future fall of currency. In line with the cited case of Master Kaliati v. Prime Insurance Company Limited, Personal Injury Cause number 9967 of 2013 (unreported) I add 5 % on the assessed damages (5% of K7, 000,000.00) which is **K350, 000.00**.

### **Conclusion**

In conclusion, the claimant should recover a total sum of **K7, 350,000.00** as damages for pain and suffering, loss of amenities of life, disfigurement, and loss of earning capacity. The claimant should also recover costs of the assessment proceedings.

Made this 30<sup>th</sup> day of April, 2018.



Austin Jesse Banda

**ASSISTANT REGISTRAR**