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**REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY**

PERSONAL INJURY CAUSE NUMBER 407 OF 2017

BETWEEN:

**HANNA CHINGAKULE (Through her next
of kin ALICE CHINGAKULE) ----- CLAIMANT**

AND

AYUB KARIM ----- 1ST DEFENDANT

AND

H. CHIROMBO ----- 2ND DEFENDANT

AND

PRIME INSURANCE COMPANY LIMITED ----- 3RD DEFENDANT

CORAM: C. H. Msokera, Assistant Registrar

Chayekha, Of Counsel for the Claimant

Chitsulo, Official Court Interpreter

ASSESSMENT ORDER

1. The defendants were found liable, through a default judgement dated 23rd July 2018, to a road accident based personal injury claim by the claimant concerning alleged bruises and lacerations on her face, lacerations on the left side of her body, eye injury, swollen face, unconsciousness for two hours and admission in hospital for four days. Following the default judgment, my role is to assess the quantum of damages payable for pain and suffering, loss of amenities of life and deformity.
2. Let me make clear what the categories of damages being sought after herein refer to. I will do so by borrowing from the words of the High Court, in

Mtika v US Chagomerana t/a Trans Usher (Zebra Transport) [1997] 2 MLR 123, when it observed as follows:

'There are also losses, not monetary, recognised by the courts. These attend any personal injury. These are pain and suffering. Then there is what is known as the loss of amenities. This covers the loss caused by the injury in that the plaintiff will be unable to pursue the leisure and pleasures of life that he used to enjoy but for the injury.'

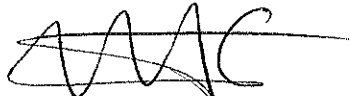
3. In addition, the position at law is that disfigurement (deformity) is normally dealt with under the head of pain and suffering unless there is special need to handle it separately - see *Mwasinga v Stagecoach (Mal) Ltd* [1993] 16(1) MLR 363).
4. In civil proceedings, of which this is one, the burden of proof rests upon a party who asserts the affirmative of an issue – see *Isaac Chiwale (suing as administrator of the estate of Lazalo Chiwale) v Real Insurance Company Limited* [2012] MLR 195 (HC). The claimant submits that she should be awarded MK3 500 000.00 (being MK 1 500 000.00 as damages for pain and suffering, MK1 000 000.00 for loss of amenities of life, and MK1 000 000.00 for disfigurement). As such, it is necessary that I should look at the evidence to see whether there is basis to make such an award.
5. To prove the purported injuries, the claimant paraded two witnesses. Her first witness, Gloria Chingakule, testified that upon being hit by the accident vehicle, the claimant fell into a drainage. She said that when well-wishers pulled her out of the ditch, she observed that the claimant's face was swollen. There is no piece of evidence which challenges this claim. Therefore, I accept Gloria Chingakule's testimony wholesale.
6. The claimant's second witness is her mother, Falece Alice Chingakule. She first saw the claimant, after the accident, at the hospital. I am somehow troubled with some of her statements in that she tries to wear the medical personnel's white coat. Evidently, she is a lay person and cannot in any way be in a position to stand in for the medical practitioner who treated her

daughter. This is why I will completely ignore her statements which cite and attach the contents of a medical report, a document which she did not author. The law is now settled that such documents, unless tendered by the author, cannot be relied upon as proof of what they say but rather only as proof that they were obtained – see *Anita Nanchinga v Reunion Insurance Company Limited* (MSCA Civil Appeal Number 5 of 2016). This is the essence of the rule against hearsay evidence.

7. Nevertheless, her evidence still confirms that the claimant sustained injuries observable to the naked eye such as bruises on her face and left side of her body, a red eye, and a swollen face. Obviously, these injuries demonstrate pain and suffering. However, there is no further proof showing that the plaintiff is failing to enjoy life as she used to before the accident. Therefore, I shall not award her any compensation for loss of amenities of life. Similarly, I will award nothing under the head of disfigurement or deformity because the claimant has neither covered that issue in her evidence nor proved that it is of such nature requiring separate attention from the general head of pain and suffering.
8. I am fully aware of the basic principle of fairness that comparable injuries should be compensated with comparable awards – see *Malamulo Hospital (The Registered Trustees) v Mangani* [1996] MLR 486 (SCA). Yet, comparability of cases must be both in time and injuries involved. Apart from one case dealing with disfigurement (which is no longer of relevance in the present matter) which was decided in 2018, the rest of the cases counsel claims to be comparable with the circumstances herein were decided between 2009 and 2013. I wonder why counsel decided to bring to my attention these cases when more recent ones were just a mouse click away. Courts, whenever possible, should be spared the headache of unnecessary mathematical calculations needed for scaling upwards monetary awards made in the distant past to reflect current economic factors affecting our local currency.

9. Unlike the decisions cited by counsel, I find the case of *Maganga v Prime Insurance Co. Ltd* (Personal Injury Cause Number 580 of 2011)¹, decided on 3rd July 2019, a good guide. In that matter, the court awarded aggregate damages for pain and suffering, loss of amenities of life, and special damages to the sum of MK4 700 000.00. The injuries in *Maganga* were just a bit more severe than the ones herein as they were as follows - severe head injury, cut wound on the scalp, bruises on the right hand, severe bruises on the chest and soft tissue injuries to the right hand and on the hip.
10. Given the nature of the injuries in the present action and for the reason that I am making this award only under the head of pain and suffering, I proceed to award the claimant damages amounting to the total sum of MK1 500 000.00.
11. The defendants will bear the costs of these proceedings
12. I so order.

Made this 5th day of May 2020 at Blantyre.



C.H. Msokera

Assistant Registrar

¹ <https://malawilii.org/mw/judgment/high-court-general-division/2019/119>, accessed on 4th April 2020.