



REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 694 OF 2019

BETWEEN:

**STONARD ZKEYU** ----- **CLAIMANT**

AND

**EPHRAIM YAMBANI**----- **1<sup>ST</sup> DEFENDANT**

AND

**PRIME INSURANCE COMPANY LIMITED** ----- **2<sup>ND</sup> DEFENDANT**

CORAM: **C. H. Msokera, Assistant Registrar**

Maele, of Counsel for the Claimant

Chisale, of Counsel for the Defendant

Chitsulo, Official Court Interpreter

**ASSESSMENT ORDER**

1. The parties in this matter, through mediation, agreed that the defendants are liable to this personal injury claim by the claimant. The claim is based on a motor vehicle road accident caused by the 1<sup>st</sup> defendant.
2. Following the settlement on liability, my role is to assess the quantum of damages payable for pain and suffering, loss of amenities of life and disfigurement.
3. 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.'

4. 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).
5. 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 the aggregate sum of MK7 500 000.00 as damages.
6. On the other hand, the defendants would like this court to award the claimant only MK3 000.00 as special damages for obtaining a police report. They argue that apart from that there is no basis to make further awards due to lack of evidence to substantiate the injuries the claimant claims to have suffered. However, they have further submitted that if the court disagrees with their initial argument, it should, in the alternative, award the claimant MK3 000 000.00 under all heads of damages herein.
7. The claimant testified on his own behalf. His witness statement cites that he sustained the following injuries:
  - 7.1 fractures on both legs;
  - 7.2 cut wound on the left leg;
  - 7.3 cut wound on the left shoulder;
  - 7.4 bruised left hip;
  - 7.5 cut wound on the left elbow.

8. Partly, the claimant aimed to prove the extent of his injuries through the tendering of a medical report. I am surprised, however, that being a lay person and not the author of the report he attempted to prove his injuries in that way. Clearly, this offends the rule against hearsay evidence – see *Anita Nanchinga v Reunion Insurance Company Limited* (MSCA Civil Appeal Number 5 of 2016).
9. However, despite lack of medical evidence on the injuries, I find that the claimant has given the court enough ground, through his oral testimony, to believe that he was severely injured. He stated that he has gone through not just one but several surgeries to fix his broken bones. He informed the court that the operations and their aftermath results were painful experiences. He added that due to the injuries, he had to use clutches for one whole year. Even though he now does not need the clutches, his testimony is that he walks with a limp and is not able to cover long distances without experiencing pain. Therefore, my award will be based on this evidence and not the medical report.
10. I am alive to the basic principle of fairness that comparable injuries should be compensated with comparable awards - *Malamulo Hospital (The Registered Trustees) v Mangani* [1996] MLR 486 (SCA). The comparability of cases must be both in time and injuries involved. I have, for purposes of comparison, decided to summarise as follows cases Counsel from either side has submitted as similar to the one at hand:

Case	Injuries	Award	Date of Award
<i>Malekano v Prime Insurance Co. Ltd.</i> Civil Cause 3711 of 2016	<ul style="list-style-type: none"> <li>2 fractures on the left upper leg</li> <li>Metal rods inserted in the leg</li> </ul>	MK1 800 000.00	2 <sup>nd</sup> October 2017
<i>Juwawo and Others v Prime</i>	<ul style="list-style-type: none"> <li>5<sup>th</sup> Plaintiff sustained a</li> </ul>	MK2 000 000.00	27 <sup>th</sup> October 2017

Insurance Co. Ltd. Civil Cause 15 of 2013	bilateral fracture of malleora <ul style="list-style-type: none"> <li>• Underwent surgical operation</li> <li>• Metals inserted inside his leg</li> </ul>		
Chiyendawamba v Mwangonde Civil Cause 394 of 2017 (unreported)	<ul style="list-style-type: none"> <li>• 2 fractures of left tibia and right fibula</li> <li>• Cut wound at the left elbow exposing joint</li> </ul> Head injuries	MK6 000 000.00	10 <sup>th</sup> May 2018
Owen v Chikoya and Others Personal Injury Cause No. 380 of 2015 (Unreported)	<ul style="list-style-type: none"> <li>• Fractures of the femur, right tibia and fibula</li> <li>• External fixator applied to right tibia and fibula</li> <li>• Cross K wires applied to distal femur</li> </ul>	MK4 500 000.00	25 <sup>th</sup> May 2018

11. I am of the view that an award of the total sum of MK6 500 000.00 (inclusive of special damages) suffices in this matter. **I proceed to award the claimant the aggregate sum of MK6 500 000.00 as damages under all heads.**

12. Further, the defendants will bear the costs of the proceedings herein.

13. I so order.

**Made** this 16<sup>th</sup> day of October 2020 at Blantyre.



C.H. Msokera

**Assistant Registrar**

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