



REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL CAUSE NUMBER 544 OF 2019

BETWEEN

SAIDI MICKSON.....CLAIMANT

AND

LEVI KUMWENDA.....1<sup>ST</sup> DEFENDANT

PRIME INSURANCE COMPANY LIMITED.....2<sup>ND</sup> DEFENDANT

<b>CORAM: KAPASWICHE</b>	<b>: ASSISTANT REGISTRAR (AR)</b>
Kadzakumanja	: Counsel for the Claimant
Kapinda	: Absent/ Unrepresented
Mr. Kumwenda	: Clerk/ Official Interpreter

**ORDER ON ASSESSMENT OF DAMAGES**  
**BACKGROUND**

This is a claim for damages for pain and suffering; loss of amenities of life; disfigurement; special damages for police and medical report and costs of the action. This assesment follows a Consent Order on liability entered by the parties on the 10<sup>th</sup> August 2020. During the hearing of assesment of damages, the Claimant adopted his sworn statement and was cross-examined by Counsel for the Defendant and at the closure of the hearing both parties undertook to file final submissions.

**THE EVIDENCE**

The Claimant was the only witness in the present case. His evidence was that on 30<sup>th</sup> October 2019, he was hit by a motor vehicle registration number NA 7952 Mitsubishi canter 3 tonner driven by the 1<sup>st</sup> Defendant who drove so negligently hence causing the accident. As a result of the accident, the Claimant sustained injuries including facial lacerations, fracture of right femur; pelvic ring injury and fracture of Maxilla. He was taken to Dowa District hospital where he was subsequently transferred to Kamuzu Central Hospital for treatment. He tendered both his medical and police reports. The accident affected his leg hugely and it consequently affected his farming activities. He still experiences pain in the hip area, jaws (when chewing) and he has difficulties in doing manual work. In cross-examination; the Claimant stated that his statement of claim had two injuries which were hip dislocation and head injuries while the sworn statement in support of the assesment has different injuries. He stated that the contents of the tendered medical report should be believed over what he has stated.

### THE LAW ON DAMAGES

The law generally provides that a person who suffers bodily injuries or losses due to the negligence of another is entitled to recover damages. The fundamental principle which underlines the whole law of damages is that the damages to be recovered must, in money terms, be no more and no less than the Plaintiff's actual loss. The principle was laid down in numerous case authorities more particularly by Lord Blackburn in the case of **Livingstone v. Rawyards Coal Company (1880) 4 AC 25** in the following terms:

“where any injury or loss is to be compensated by damages, in settling a sum of money to be given as damages, you should as nearly as possible get at the sum of money which will put the party who has been injured, or who has suffered loss, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.”

Be that as it may, it ought to be borne in mind that it is not possible to quantify damages for pain and suffering, loss of amenities and deformity as claimed in this matter with mathematical precision. As a result, courts use decided cases of comparable nature to arrive at awards. That ensures some degree of consistency and uniformity in cases of a broadly similar nature: See **Wright -vs- British Railways Board [1983] 2 A.C. 773**, and **Kalinda -vs- Attorney General [1992] 15 M.L.R. 170 at p.172**. As such this court will have recourse to comparable cases to arrive at the appropriate quantum of damages for the plaintiff.

## SUBMISSIONS AND ANALYSIS

### DAMAGES FOR PAIN AND SUFFERING

'Pain' is used to suggest physical experience of pain caused by consequent act upon the injury while 'suffering' relates to the mental elements of anxiety, fright, fear of future disability, humiliation, embarrassment, sickness and the like as was held in **City of Blantyre v. Sagawa** [1993] 16 (1) MLR 67 (SCA).

### DAMAGES FOR LOSS OF AMENITIES OF LIFE

The head of loss of amenities of life is awarded to cater for loss of all things that the claimant used to be able to do, see and experience and that these things can no longer be seen or be done or be experienced due to the impact of the injury in question. In the case of **Mtika v Chagomerana t/a Trans Usher** (1997) 2 MLR 123, 126; the court explained loss of amenities of life in the following terms;

“there is loss known as the loss of amenities of life. 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”

### DAMAGES FOR INCAPACITATION AND DISFIGUREMENT

Damages for disfigurement are awarded for some form of permanent scars or deformity left on the body of the victim as was held in the case of **Tabord v. David Whitehead and Sons (Mw) Ltd**, (1995) 1 MLR 297 (SCA).

The Claimant filled skeleton arguments and the prayer made was that the Claimant should be awarded a sum of MK4,250,000.00. Counsel for the Claimant cited a number of cases for the court to consider as comparable awards under the different heads of the claims in question. The first case was the case of **Adam v. W.O Bap pvt, Civil Cause No. 2063 of 2001** (High Court) (Principal Registry) (Unreported) where a sum of MK450,000.00 was awarded for pain, suffering and loss of amenities. This award was made on 23 September 2004. The second case was **Simika v. Prime Insurance, Personal Injury Cause No. 4087 of 2002** where the court awarded a sum of MK600, 000.00 for a fracture of the right leg on femur as damages for pain and suffering. The award was made on 20<sup>th</sup> February 2004.

The claimant also cited the case of **Nyozani v. Prime Insurance Company Limited, Civil Cause No. 3022 of 2006**. The claimant was awarded the sum of MK5,600,000.00 for a big cut on the back of her

head, closed fracture of the right leg near the ankle and a closed fracture of the pelvis. The award was made on 16<sup>th</sup> October 2009.

The fourth case is **Shadreck Mateyu vs Anderson Matache and Prime insurance company limited personal injury cause number 324 of 2017**, the court awarded the Claimant the sum of MK4,500,000.00 for a fractured pelvis, bruises over the face and hips and bladder contusions as damages for pain and suffering, loss of amenities and disfigurement. In **Wyson vs Attorney General and Another Civil Cause No. 843 of 2009**, the Claimant was awarded the sum of MK5,000,000.00 for a fracture on proximal right femur; left mid-shaft tibia; lost three front teeth and had several facial lacerations as damages for pain and suffering and loss of amenities of life. The last case is that of **Jimmy Makungwa and 6 Others vs Transibeiro Limited and prime insurance company limited personal injury cause Number 119 of 2017**. The second claimant sustained multiple open fractures of 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> toes on the right foot, a deep cut on the face, fracture of the Maxilla, basal skull fracture and lost 6 teeth. He was awarded the sum of MK5,000,000.00 as damages for pain and suffering, loss of amenities and disfigurement.

The Defendant proposed a sum of MK2,000,000.00 as total damages on all heads of claims in the present case. This proposal was made in the skeleton arguments filed by the Defendant on 19<sup>th</sup> August 2020. On the date of assessment; Counsel for the Defence prayed that this Court should make a nominal award of damages on the basis that the Claimant has failed to substantiate his claim on the injuries suffered. The statement of Claim filled by the Claimant had only two injuries being fractured hip dislocation and head injuries while the witness statement on assessment had a different list of injuries as already highlighted in the evidence. The Claimant failed to give a satisfactory account of the differences in the nature of injuries but it was clear during cross examination that the Claimant did not have a clear understanding of his own witness statement. Again, it should be noted that the Consent Order on liability stated that damages should be assessed on the basis of contributory negligence of 15% for the Claimant and 85% for the Defendants subject to the Policy limit of MK5,000,000.00 and where there is an excess the first Defendant will take responsibility.

Having assessed the Claimant and having considered the discrepancies in the nature of the injuries from the documentation and oral evidence and also having considered the contributory negligence; I proceed to award a sum of MK2,600,000.00 as damages for pain and suffering, disfigurement and loss of amenities. I also award MK10,000.00 as special damages for obtaining the police and medical reports making the total award to be at MK2,610,000.00. The claimant is further awarded costs of this action.

7th  
MADE IN CHAMBERS THIS..... DAY OF JULY 2022



ANTHONY PITILIZANI KAPASWICHE

ASSISTANT REGISTRAR