

REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CASE NO. 626 OF 2013

**BETWEEN**

WILLARD NANGWALE.....PLAINTIFF

**AND**

THE ATTORNEY GENERAL.....DEFENDANT

Coram: **TEXIOUS MASOAMPHAMBE (DEPUTY REGISTRAR)**

Mr. Kalaya- of Counsel for the plaintiff

Mr. Chitsulo- Court Clerk and Official Interpreter

**ORDER ON ASSESSMENT OF DAMAGES**

The plaintiff in this matter took out a writ of summons dated 19<sup>th</sup> of June 2013 against the defendant claiming damages for pain and suffering, loss of amenities of life, disfigurement and costs of the action. The defendant sued under Section 3(1) of the Civil Procedure (Suits by or against Government or Public Officers) Act Cap 6:01 of the Laws of Malawi. The tortfeasor is said to have been Malawi Defence Force who, at all material times, were the owners of motor vehicle registration number MDF 2242. Through a ruling issued on the 27<sup>th</sup> of October 2017, the plaintiff was granted a summary judgment against the defendant. Subsequently, the plaintiff filed a notice for assessment of damages. This is the court's order on the said assessment of damages.

The application on assessment of damages came before this court on the 22<sup>nd</sup> of February 2018. There is a witness statement for the plaintiff that was filed with the court. In part, the plaintiff averred in his witness statement that on or about the 8<sup>th</sup> of October 2012, Mr. Rabson Chatepa in the employment of the defendant negligently drove a motor vehicle registration number MDF 2242 TATA lorry from the direction of Zomba City towards Cobbe Barracks Camp along M3 road. On arrival at Cobbe Barracks Secondary School, he collided with the claimant, a pedal cyclist who was also cycling towards the same direction. The collision happened when the driver was overtaking him. As a result he suffered a cut on the occiput and another on the left cheek, bruises on the nose, left hand and right lower leg. He lost consciousness on the spot and he cannot straighten his small finger. His degree of incapacity is pegged 15%. He was taken to Zomba Police from where he was referred to Zomba Central Hospital for treatment. He exhibits the Police and the Medical Report which are marked "WN1" and "WN2" respectively. He further stated that he paid K3,000.00 for the Police Report and exhibits the receipt as "WN3". It is against this background that the Plaintiff now claims damages for pain, suffering and loss of amenities of life, damages for disfigurement and costs of this action.

I must state that 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.*

In order to provide a comparative basis, Counsel for the plaintiff cited the case of **Thokozani Josamu and Luka Mandevu v Prime Insurance Company Ltd Civil Cause No. 1534 of 2010** in which the 1<sup>st</sup> plaintiff sustained a big cut wound on the inside part of the knee, bruises on both hands, back injury, bruises all over the body, cut wounds on the head, swollen hand and he lost consciousness on the spot. The 2<sup>nd</sup> plaintiff sustained cut wounds on the fourth finger and on his right hand, removal of the whole finger and some soft tissue injury to right shoulder. They were awarded the sum of K2,000,000.00 and K1,500,000.00 as compensation.

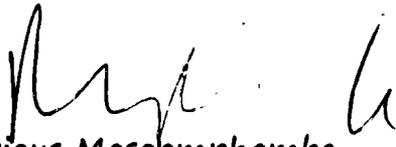
In the instant case, Counsel for the plaintiff recommends K3,000,000.00 as reasonable damages for pain and suffering, loss of amenities and disfigurement.

I have diligently perused the medical evidence as to the injuries and the prognosis given by the medical expert. I gave meticulous thought to the written submissions filed by the counsel for the plaintiff. Without unduly downplaying the injuries, I form the view that the injuries sustained by the plaintiff were not that serious. They were basically a cut wound at the back of the head and bruises here and there. That notwithstanding, I believe the same must have occasioned excruciating pain and suffering. Apart from that, the injuries have brought an alteration to the plaintiff's wellbeing. It is indicated that he cannot straighten his small left finger as a result of the said injuries. The doctor's prognosis further indicates that the plaintiff is no longer fit for manual work as he previously used to do. It is not clear from the record what the plaintiff does in order to earn a living but that cannot prevent the court from making a substantial award in view of other domestic chores he will now have problems to do.

I had recourse to the **Thokozani Josamu and Luka Mandevu** case (supra). The injuries sustained by the plaintiffs in that are not far removed from the injuries suffered by the plaintiff herein if not worse. I could make a slightly lower award this case but I take note that the case was decided in the year 2010. The Kwacha underwent some devaluation since then. It is only fair and proper for the court to take this under consideration. It is therefore upon a thorough consideration of facts and circumstances of this case, and upon an exhaustive consideration of the submission by the plaintiff's Counsel in the light of the relevant and applicable law regarding damages for the claimed heads herein I award the plaintiff K1,800,000.00 each under all heads claimed and proved. The plaintiff also claims K10,000.00 and K3,000.00 being costs of medical and police reports respectively. In total he is awarded K1,813,000.00.

Costs to be taxed if not agreed by the parties.

Delivered in chambers this 30<sup>th</sup> day of May 2018.

  
**Texious Masobamphambe**  
**DEPUTY REGISTRAR**