



**REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL DIVISION**

Civil Cause Number 199 of 2019

**BETWEEN:**

**MANASE KHOFIYA.....CLAIMANT  
AND  
PETER GEORGE.....1<sup>ST</sup> DEFENDANT  
UNITED GENERAL INSURANCE COMPANY LIMITED.....2<sup>ND</sup> DEFENDANT**

<b>CORAM:</b>	<b>C MANDALA:</b>	<b>ASSISTANT REGISTRAR</b>
	Mkandawire :	Counsel for Claimant of Chidothe, Chidothe, & Company
	1 <sup>st</sup> Defendant:	Unrepresented (Absent)
	2 <sup>nd</sup> Defendant:	Unrepresented (Absent)
	C Zude:	Court Clerk

**ASSESSMENT OF DAMAGES**

**CM MANDALA, AR:**

**INTRODUCTION AND BACKGROUND**

This is an order for assessment of damages pursuant to a Judgment in Default issued on 23<sup>rd</sup> October 2019. The Defendants are liable for: damages for pain and suffering, damages for loss of amenities of life, damages for disfigurement, special damages of MK 15,000.00, and costs of the action. The hearing on Assessment of Damages was conducted on 13<sup>th</sup> April 2021

This matter arose from a road accident that occurred on 13<sup>th</sup> August 2018 when the 1<sup>st</sup> Defendant was riding a motorcycle towards Ngwagwa-Area 25 earth road when he lost control of the motorcycle and hit the Claimant who was pulling a bicycle along the sidewalk.

**EVIDENCE**

The Claimant adopted their witness statement as their evidence in chief. It states:

*I, MANASE KHOFIYA, of c/o Kamuzu Central Hospital, PO Box 149 Private Bag 55, make this statement and say as follows:*

- 1. I am the Claimant in this matter. A copy of my National Identity Cards is attached hereto marked as "MK 1."*
- 2. I come from Kalima 2 Village in the area of Traditional Authority Masasa in Ntcheu District.*
- 3. The 1<sup>st</sup> Defendant was, at all materials, rider/owner of the motorcycle bearing registration number KA 6934 Maxmile.*
- 4. The 2<sup>nd</sup> Defendant was, at all material times, the insurer of the said motorcycle under insurance certificate number 131157084.*

5. *On or about 13<sup>th</sup> August, 2019, the 1<sup>st</sup> Defendant was riding the motor cycle aforementioned from the direction of Ngwangwa Trading Centre heading towards Area 25 along Ngwangwa – Area 25 earth road.*
6. *Upon arrival at Kudooka village, the 1<sup>st</sup> Defendant lost control of his motorcycle with the result that it veered off the road where it hit me when I was coming from the opposite direction pulling a bicycle.*
7. *As a result of the impact, I sustained a fracture on the left tibia where a metal was inserted to unite the bones, deep cut on the lower lip, lost four teeth, right optical veins were cut as a result, the eye produces tears regularly which causes grave pain and blurred vision. I was admitted for a period of two months and during this period, I went through three operations. The degree of permanent incapacity is assessed at 50%. Copies of the medical report, and x-ray report are attached hereto and exhibited as “MK 2” & “MK 3.”*
8. *The injuries herein have and continue to inflict pain and suffering on my body. For instance, from the date of the accident until now, I feel pain in the jaw which makes it hard for me to eat or chew hard foods. Besides, the removal of the teeth means that I cannot effectively chew or articulate words properly. I also feel excruciating pain when it is cold or when hot water or foods get in contact with the membrane where the teeth were removed.*
9. *The fracture and deep cut on my lower lip exposed and continue to expose me to untold pain and suffering. The insertion of a metal rod further added to my suffering because to its reaction to weather, I feel pain when the weather is cold.*

**Loss of amenities of life**

10. *The injuries above have and continue to deprive me of enjoyment of pleasures of life which include but are not limited to:*
  - a. *Failing to eat hard foods like raw maize, guavas, among others, which are essential to my healthy living.*
  - b. *Failing to do sporting activities like jogging every morning and playing football which were, before the injuries, part of my hobbies.*
  - c. *Failing to walk long distances due to the limited movement of my left leg.*
  - d. *Failing to ride a bicycle*
  - e. *Failing to do domestic work such as gardening or farming*
  - f. *Not able to articulate words when speaking as I used to do before due to the removal of the teeth.*
  - g. *Not able to sing properly which has forced me to stop attending choir activities at my church*
  - h. *Failing to read or see things from afar due to blurred vision when my eyes become dry due to uncontrollable flow of tears.*

**Disfigurement**

11. *The broken bones on my leg and loss of four teeth is something which I will live with for the rest of my life. At my age, the bones and teeth cannot be replaced. Furthermore, the damage to the optic nerve which culminate into recurrent blurred vision will be there for the rest of my life. Lastly, the deep cut on the lower lip has left behind a visible scar which has the effect of diminishing my body make up or outlook.*
12. *I verily believe that the statements herein are true to the best of my knowledge.*

**ASSESSMENT GUIDELINES**

Damages for personal injuries are awarded for a Claimant’s pecuniary and non-pecuniary losses. The pecuniary losses include the loss of earnings and other gains, which the Claimant would have made had they not been injured, and the medical and other expenses which accrue from care and after-care of the injury. The non-pecuniary losses

include pain and suffering, loss of amenities of life and loss of expectation of life. The principle underlining the award of damages is to compensate the injured party as nearly as possible as money can do it.<sup>1</sup>

Perfect compensation for a Claimant is unlikely. The Claimant, however, is entitled to fair and adequate compensation.<sup>2</sup> Since it is difficult to assess damages involving monetary loss, courts resort to awarding conventional figures guided by awards made in similar cases and also taking into account the money value. Lord Morris buttresses this contention in *West v Shepherd*<sup>3</sup> by stating: ‘*money cannot renew a physical frame that has been battered and shattered. All judges and courts can do is to award a sum which must be regarded as giving reasonable compensation.*’

The mode of assessment of damages requires the court to consider comparative awards of a similar nature. In doing so, regard must be had for fluctuations in the value of the currency. The court should make an award that is commensurate with the value of the currency at the time the award is made. In *Malamulo Hospital (The Registered Trustees) v Mangani*<sup>4</sup>, the Supreme Court states: “*It is, therefore, recognised by the courts that awards of comparable injuries should be comparable. This is done by looking at previous awards of similar cases and adjusting the award according to the fall of the value of the money.*” In *Tionge Zuze (a minor, through A.S. Zuze) v Mrs Hilda Chingwalu*,<sup>5</sup> the Court states: “*Where a claim relates to non-monetary loss in respect of which general damages are recoverable it is not possible to quantify the loss in monetary terms with mathematical precision. In such cases courts use decided cases of a comparable nature to arrive at an award.*” In *Steve Kasambwe v SRK Consulting (BT) Limited* Personal Injury Cause Number 322 of 2014 (unreported), the High Court states thus: ‘*At times the court is faced with situations where the comparative cases have been rendered obsolete because of the devaluation of currency and inflation. It would not achieve justice if the court insisted on the same level of award as was obtaining in the previous cases. In such situation, when deciding the new cases, the court must take into account the life index, i.e. cost of living and the rate of inflation and the drop-in value of the currency. The court must therefore not necessarily follow the previous awards but award a higher sum than the previous cases.*’

## COMPENSATION

The Claimant sustained a fracture on the left tibia, deep cut on the lower lip, lost four teeth, and sliced right optical veins.

### *Pain and Suffering*

The word ‘pain’ connotes that which is immediately felt upon the nerves and brain, be it directly related to the accident or resulting from medical treatment necessitated by the accident while ‘suffering’ includes fright, fear of future disability, humiliation, embarrassment and sickness. See: *Ian Goldrein et al, Personal Injury Litigation, Practice and Precedents* (Butterworths, 1985) 8 and *City of Blantyre v Sagawa* [1993] 16(1) MLR 67 (SCA).

The Claimant herein sustained a ‘*fracture T/F, .... Fracture, dental problem – lost four teeth, cut lower lip (sutured), painful and reddened right eye, cut within the head (sutured)*’ as per the medical report. The Claimant underwent ‘*x-rays, FBC, and IV Line*’ and had the following surgical operations performed ‘*open reduction and internal fixation (ORIF), insertion of a metal – sign nail in the left tibia.*’ The Claimant was admitted to the hospital between 13/08/2018 and 5/10/2018, almost two months.

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<sup>1</sup> See *Cassel and Co v Broom* [1972] AC 1027. See also *Tembo v City of Blantyre and The National Insurance Co Ltd* – Civil Cause No. 1355 of 1994 (unreported).

<sup>2</sup> *British Commission v Gourley* (1956) AC 185.

<sup>3</sup> *West v Shepherd* (1964) AC 326 at 346.

<sup>4</sup> [1996] MLR 486.

<sup>5</sup> Quoting from *HQ Chidule v Medi* MSA 12 of 1993.

The court made recourse to comparable awards of K5,600,000.00, K4,000,000.00, K4,000,000.00, K6,150,000.00 and K6,005,500.00 – these were awards under all heads of damages made in 2014, 2011, 2012, and 2012 respectively. See: *Felista Kachaso v Peter Khondowe and others, Aaron Amosi and another v Lanjesi Lile and Prime Insurance, Veronica Kavamba v Prime Insurance Company Limited, Louise Chakwantha v Prime Insurance Company Limited, and Swahili Lumbe v James Waluya and Prime Insurance Company Limited* (cited above).

Based on this, this court awards the sum of K4,000,000.00 as damages for pain and suffering.

#### *Loss of Amenities of Life*

The expression ‘loss of amenities of life’ simply means loss of faculties of pleasures of life resulting from one’s injuries. Damages for loss of amenities of life are awarded for the fact that the plaintiff is simply deprived of the pleasures of life, which amounts to a substantial loss, whether the plaintiff is aware of the loss or not. See: *Poh Choo v Camden and Islington Area Health Authority* [1979] 2 All ER 910 and *City of Blantyre v Sagawa* [1993] 16(1) MLR 67 (SCA) at 72.

As a result of the accident, the Claimant cited the following hardships as a result of the injuries sustained:

- a. *Failing to eat hard foods like raw maize, guavas, among others, which are essential to my healthy living.*
- b. *Failing to do sporting activities like jogging every morning and playing football which were, before the injuries, part of my hobbies.*
- c. *Failing to walk long distances due to the limited movement of my left leg.*
- d. *Failing to ride a bicycle*
- e. *Failing to do domestic work such as gardening or farming*
- f. *Not able to articulate words when speaking as I used to do before due to the removal of the teeth.*
- g. *Not able to sing properly which has forced me to stop attending choir activities at my church*
- h. *Failing to read or see things from afar due to blurred vision when my eyes become dry due to uncontrollable flow of tears.*

The Court had recourse to the following comparable awards of K5,600,000.00, K2,000,000.00, K4,000,000.00, K6,150,000.00 and K6,005,500.00 – these were awards under all heads of damages made in 2014, 2011, 2012, and 2012 respectively. See: *Felista Kachaso v Peter Khondowe and others, Aaron Amosi and another v Lanjesi Lile and Prime Insurance, Veronica Kavamba v Prime Insurance Company Limited, Louise Chakwantha v Prime Insurance Company Limited, and Swahili Lumbe v James Waluya and Prime Insurance Company Limited* (cited above).

Based on the foregoing discussion, this court awards the sum of K2,000,000.00 as damages for loss of amenities of life.

#### *Disfigurement*

In the matter of *James Chaika v NICO General Insurance Co Ltd* the High Court stated that ‘Disfigurement is not a matter to be taken lightly and casually as it is something that one has to permanently live with.’ In *Nyirenda v Moyo and other*, the claimant was awarded the sum of K500,000.00 as damages for disfigurement in 2018.

The Claimant told the Court that the broken bones and lost teeth cannot be replaced. The claimant further pointed out the damaged optic nerve which causes blurred vision, and the permanent scarring on the lower lip which has

diminished their aesthetic appeal. The medical report points out the scars on all sutured areas, the metal rod permanently in the Claimant's leg and shortening of that leg, and the tearing of the right eye

Following the sentiments made in the *James Chaika Case* and considering the devaluation of the Kwacha since 2018, the Claimant is hereby awarded K750,000.00 as damages for disfigurement.

#### *Special Damages*

The law distinguishes general damages and special damages as follows – general damages are such as the law will presume to be the direct natural or probable consequence of the action complained of. Special damages, on the other hand, are such as the law will not infer from the nature of the course - *Stros Bucks Aktie Bolag v Hutchinson* (1905) AC 515. In determining the natural consequences, the court considers if the loss is one which any other claimant in a like situation will suffer – **McGregor on Damages** p23 para 1-036.

A Claimant who claims special damages must therefore adduce evidence or facts which give satisfactory proof of the actual loss he or she alleges to have incurred. Where documents filed by the Claimant do not meet this strict proof then special damages are not awarded – *Wood Industries Corporation Ltd v Malawi Railways Ltd* [1991] 14 MLR 516 and *Govati v Manica Freight Services (Mal) Limited* [1993] 16(2) MLR 521 (HC).

The Claimant herein was awarded special damages for costs of obtaining medical and police reports. Though the Claimant specifically claimed special damages, they were not proved during trial and/or submissions. For these reasons, no award will be made under this head.

#### DISPOSAL

The Claimant is therefore awarded K4,000,000.00 for pain and suffering; K2,000,000.00 for loss of amenities of life; K750,000.00 for disfigurement and K0 as special damages and costs of the action (to be taxed by the court). **The Claimant's total award is therefore K6,750,000.00 (six million seven hundred and fifty thousand kwacha).**

Each party is at liberty to appeal to the Supreme Court of Appeal within the requisite time frames. Leave to appeal is hereby granted.

Ordered in Chambers on the 7<sup>th</sup> day of May 2021 at the High Court, Lilongwe.



C Mandala

**ASSISTANT REGISTRAR**