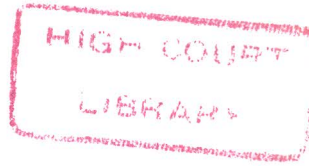


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## **IN THE HIGH COURT OF MALAWI**

### **PRINCIPAL REGISTRY PERSONAL INJURY CAUSE NO. 100 OF 2011**

**BETWEEN**

**HOWARD LEYTON (Minor through his father and next friend  
Leyton Samson)**

**PLAINTIFF**

**AND**

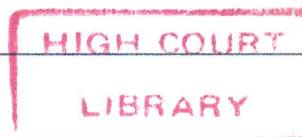
**PRIME INSURANCE COMPANY LIMITED**

**DEFENDANT**

**CORAM : MATAPA KACHECHE Assistant Registrar  
Kalua for the Plaintiffs  
Chikaonda for the defendants  
Ngoma Official Interpreter**

#### **ORDER ON ASSESSMENT OF DAMAGES**

1. By a judgment pronounced in open court on 27<sup>th</sup> August, 2015 the plaintiff was awarded damages in respect of injuries he sustained in an accident in which he was hit by the defendant's insured motor vehicle Registration number BQ 9238 Toyota Hiace Minibus.
2. This is the assessment of damages following this judgment. The plaintiff's father and next friend was the only witness available for the assessment. The defendants did not cross-examine him nor did they parade any witnesses.
3. The witness testified that the plaintiff immediately went into coma and was unconscious for ten days after the accident. After he regained consciousness he remained in hospital for the next five days. After the discharge he continued attending physiotherapy.
4. Two medical reports were tendered which indicated that the plaintiff was unable to maintain his airway at the time he was brought to the hospital and he had to be intubated and ventilated. The reports further stated that he had sustained considerable head injuries with contusions to the frontal part of his brain as shown on MRI scan. He was treated with boluses and a blood transfusion to stabilize blood circulation. The reports further stated that the injuries were life-threatening but that he had made a very good recovery and he would be able to get back to school.



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**OF THE ORIGINAL**

5. Externally he sustained bruises on the left shoulder, soft tissue injuries on the left temple, back of the head and at the back. Several degrees of scars could be visibly seen when the matter came for assessment. The medical report expressly stated that the plaintiff will be able to perform sports. In my view this should extend to other physical activities.
6. I must take note that these reports were made in 2010 and that the statement adopting the same which was also adopted in this court was signed in January 2011.
7. The plaintiff did not bring a more recent medical report although the witness alluded to the fact that the plaintiff has now recovered but his mental state has deteriorated. No expert medical evidence was brought to show if there is any linkage between the accident, or injuries suffered therefrom, to the deterioration of the plaintiff's mental state.
8. I will not explain the law on damages; suffice to say that the plaintiff has to be fully compensated so far as money can. Although the plaintiff pleaded for both pecuniary and non-pecuniary damages, on assessment he ended up concentrating on non pecuniary damages of pain and suffering and loss of amenities whose measure is not exact and we rely on comparable awards made in earlier cases.
9. The plaintiff is under a duty to mitigate his damages.
10. Counsel for the plaintiff has cited two cases to guide this court in reaching a fair verdict. The cases, other than showing the general trend of awards in recent times are not comparable to the present case. All involved fractures. In this case there was no fracture. In effect the present case, although resulted in serious injuries, the same were mostly internal. The external ones are bruises cuts and wounds.
11. As pointed out the plaintiff did not bring a more recent medical report. I am of the impression that, unlike what we see in most cases where medical reports are not detailed enough and I tend to question the professionalism in their preparation, the medical reports in the present case were professionally done and I am convinced that if the plaintiff was taken back the doctor for medical checkups, an examination of his mental progression would have led to a proper diagnosis of the plaintiff's condition. As it is currently, any suggestion that the plaintiff's mental state is due to the effects of the injuries suffered during the accident is mere speculation.
12. I, however, will consider that the injuries that the plaintiff suffered, though cannot be seen physically were very serious and the plaintiff suffered so much pain. The fact that there are other unknown effects also justifies a reasonably higher award than an award for soft tissue injuries.

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OF THE ORIGINAL**

13. Having these considerations in mind I award the plaintiff K1, 500,000.00 for pain and suffering and K300, 000.00 for loss of amenities.

14. I also award costs of the proceedings.

Delivered this 1<sup>st</sup> day of April 2016



CC Matapa Kacheche  
**ASSISTANT REGISTRAR**