



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO 241 of 2013**

Between

**FATSANI STARCH (ON HIS OWN BEHALF
AND ON BEHALF OF THE BENEFICIARIES
OF THE ESTATE AND
DAVID STARCH, DECEASED)..... PLAINTIFF
and
PRIME INSURANCE COMPANY LIMITED..... DEFENDANT**

Coram: H/W Patemba

Kaluwa, Counsel for the Plaintiff

Tandwe, Counsel for the Defendants

Chitsulo Court Clerk

Ruling

1.0 Introduction

The plaintiff is claiming damages for pain and suffering and loss of amenities of life, special damages and costs of this action following a court judgment entered on the 8th March 2015 where the court found the defendant liable of negligence and was ordered to pay damages to be assessed by the Registrar.

2.0 Evidence

The plaintiff adopted his witness statement and testified that he was injured on the cheek, chin and knee. He also claimed damages for loss of dependency of life which was not in his statement of claim.



3.0 Assessment of Damages

The general principle on which damages are assessed is stated by Viscount Dunedin in **Admiralty Commissioners vs. S.S. Susquehanna** [1926] AC 655 at 611 as follows:

“... the Common law says that the damages due either for breach of contract or tort are damages which, so far as money can compensate, will give injured party reparation for the wrongful act”

When applying this principle it is important to bear in mind that damages in personal injury cases cannot give a perfect compensation in money terms of physical and bodily injury. This is because 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 a reasonable compensation. See **Zain Chipala vs Dwangwa Sugar Corporation** Civil cause number 345 of 1998, per Chimasula J and **West vs Shepherd** [1964] AC 326.

When assessing damages payable for personal injuries the courts are guided by awards for comparable injuries. However, the court must consider the pain which the particular Plaintiff suffered because the circumstances of the particular Plaintiff are bound to have a decisive effect in the assessment of damages. See the decision of the Malawi Supreme Court of Appeal in **HQ Chidule vs Medi** MSCA Civil Appeal Number 3633 of 2005.

3.1 Damages for pain and suffering and loss of amenities of life

These are general damages which are awarded to the plaintiff for suffering the injury due to the tort committed by the defendant. The plaintiff testified that he was injured on the cheek, chin and knee. The plaintiff Counsel cited the case of ***Thokozani Josamu & Luka Mandevu V. Prime Insurance Company Limited*** Civil Cause No 1534 of 2010, where the 1st Plaintiff sustained a cut wound the knee, bruises on both hands, cut on the head and soft tissue injuries, the court awarded him MK2,500,000.00 on 4th April 2015. In the case of ***Patricai Bannets v. Alfred Lizimba & Another*** Civil Cause No 811 of 2011, the Plaintiff was awarded K 2, 000,000 for sustaining soft tissue injuries.

In the present case the plaintiff suffered injuries on the cheek, chin and knee. Having considered the current trend in awarding damages, and considering the extent of the injuries suffered by the plaintiff, and the effect of the accident on his life, the court is of the considered view that an award of **MK 2, 000,000.00** is reasonable amount for pain and suffering and loss of amenities of life.

3.2 Special Damages

The plaintiff also claimed special damages for police report and medical report. 'The rule governing special damages is well settled. They must be specifically pleaded and must also be strictly proved.' *Phiri v Daud* [1992] 15 MLR 404 (HC). In the present case, the plaintiff has failed to prove that he indeed suffered economic loss by obtaining medical report. There is no receipt to that effect. This claim must, therefore, fail. As regards the police report, it was indorsed on the report that MK 3000.00 was paid through GR No 671285. Though the court would have preferred that the receipt to be exhibited in court. Therefore I award the plaintiff **MK 3000.00** on this head.

The court will not award damages for loss of expectation of life and loss of dependency as the same was not pleaded for and the judgment of 8th March 2015 did not make reference to such claim

The plaintiff is therefore awarded a total of **MK 2,003,000.00** plus costs of this action.

Made in Chamber this19th day of June.....2017


A.T. PATEMBA
DEPUTY REGISTRAR