



THE JUDICIARY  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 792 OF 2014

BETWEEN:

FLORENCE NANSONGOLE.....1<sup>ST</sup> CLAIMANT

-and-

GRACE MWIWA .....2<sup>ND</sup> CLAIMANT

AND

REUNION INSURANCE COMPANY LIMITED.....1<sup>ST</sup> DEFENDANT

-and-

THOM LEMANI .....2<sup>ND</sup> DEFENDANT

-and-

ATTORNEY GENERAL (MINISTRY OF HEALTH).....3<sup>RD</sup> DEFENDANT

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**CORAM: Masoamphambe, Deputy Registrar**

Mr. Chayekha, for the Claimant

Miss Nyambi, for the 1<sup>st</sup> Defendant

Mr. O. Chitatu, Clerk/ Official Interpreter

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## ORDER ON ASSESSMENT OF DAMAGES

### 1.0. Background

This is the court's order on assessment of damages brought by the plaintiff through counsel Chayekha. The assessment is pursuant to a judgement that was passed by the High Court. The claimants brought a claim for damages against the defendants before the Honourable Judge, Justice Mbvundula, who ruled in favour of the claimants on 9<sup>th</sup> October 2018.

The claim was brought following an accident caused by the negligence of the 2<sup>nd</sup> defendant, an ambulance driver of the motor vehicle registration number **031 MG 1326**, belonging to Malawi Government. The first defendant is the insurance company which insured the vehicle in question.

Justice Mbvundula upon ruling in favour of the claimants therein ordered that damages be assessed if the parties failed to agree on the amount of damages payable to the claimants. The matter was thus brought before the Registrar to determine the quantum of damages that would adequately compensate the claimants under the different heads of claims.

### 2.0. Evidence

The claimants paraded two witnesses. These were the claimants themselves. Upon oath, the claimants adopted their witness statements that they had duly signed and medical reports to be in evidence in this case. However, the witness statements and oral statements of both claimants were contrary to what is in the medical reports.

The first witness, the first claimant, Florence Nansongole told the court that she lost consciousness and sustained bruises on the left leg, general body pains and dislocation of the left leg as a result of the accident. However, the medical report does not indicate that she lost consciousness nor that she sustained a dislocation of the left leg.

The same was as with the second claimant. The medical report of the second claimant indicates that she had suffered bruises on the left leg, general body pains and loss of consciousness. However, the 2<sup>nd</sup> claimant told the court that she did not lose consciousness and that it was the 1<sup>st</sup> claimant who lost consciousness.

During cross examination, the 1<sup>st</sup> claimant was asked whether she had sustained a fracture or a sprain which was difficult for her to differentiate. However, the claimant went on to say that she had sustained a sprain. Upon re-examination, she restated that she had sustained a sprain and not a fracture.



### 3.0. Issue

The issue at hand is the determination of the quantum of damages for the personal injury suffered by the claimants.

### 4.0. Analysis of Fact, Law and Determination

Counsel for the claimant filed his supplementary skeletal arguments as his final submissions in this matter in which he reiterated the injuries suffered by the claimant. He further invited the court to have recourse to the following case authorities in support of the discrepancy between the witness statement and the medical report.

Counsel for the claimants dwelled on the statement that a police report was held not to convey the truth of its contents if tendered by a person who did not prepare it, as was stated in the case of **Ireen Chasweka (a minor suing through her mother and next of friend Flora Chasweka) v Prime Insurance Company Limited (Civil Cause 471 of 2013)**, and that the same applies to a medical report.

Counsel went on by citing the case of **Estate of Olive Mtaila v National Bus Company Limited, Personal Injury Cause No. 595 of 2011**, where Justice Mwaungulu stated that,

*“the purpose of a medical report or evidence is to confirm the medical condition of victim. It must always be understood that injuries just like death can be proved without medical evidence. It must therefore be possible for the court to accept other evidences normally from the victim, which apart from medical evidence, proves rather than confirms injuries sustained by the victim.”*

It was therefore Counsel for the claimant's submission that in this case the witnesses' statement be adopted over the medical reports.

On the other hand, Counsel for the defendant did not file their supplementary submission after being served by the claimants.

In the case of **Ishmael Gowelo v Abdul Stephen Kanyoza & Prime Insurance Company Limited Personal Injury Case No. 9 of 2018**, where there was also such a discrepancy between the medical report of the claimant and the witness statement, it was decided that the witness' statement be adopted over the medical report, taking into consideration the credibility

of the witness to define the truthfulness of the medical report. In this case, it was stated as follows:

*"The medical report was meant to substantiate the claim by the claimant. On his own, the claimant testified as to the injuries he suffered. The question is whether the court should not believe his evidence assuming there was no other evidence to buttress what he said. I believe this depends on the credibility of the claimant's witness. The claimant did not give the court any reason to doubt his testimony. He did not try to evade the truth in any way even where it proved adverse to his case. He told the court that he did not undergo any medical surgery and that he did not bring the x-rays. I believe this witness and I find that he suffered the injury he claims."*

Police reports are public documents and when tendered in evidence, they should be admitted not as to the fact that they were made, but the truthfulness of its contents also. This was propounded in the case of **Sadik Jimu v NICO General Insurance Company Limited CC No. 984 of 2007**.

In this matter, the truthfulness of the medical reports of both claimants is questionable. The medical report of the 1<sup>st</sup> claimant does not indicate that she lost consciousness nor that she sustained a dislocation of the left leg and on the side of the 2<sup>nd</sup> claimant, her medical report states that she lost consciousness, and yet she did not and that it was the 1<sup>st</sup> claimant who lost consciousness. I am, in this case, inclined to believe that there was a mix up in recording the injuries on the medical reports and that what the claimants told the court is the true reflection of their respective injuries.

Damages are pecuniary compensation obtainable by success in an action for a wrong, for example, a tort. The compensation is in the form of a lump sum which is awarded unconditionally and generally, but now not necessarily, expressed in English currency. You may look at **McGregor on damages, 14<sup>th</sup> edition**.

The compensation is in the form of a lump sum of money which will put the party who has been injured or who has suffered in the same position as he would have been in if he had not sustained the wrong. In the case of **Livingstone v Rawyards Coal Co. (1880) 5 App Cas 25** at 39, Lord Blackburn stated as follows:



*“Courts award general damages not to punish the defendant or tortfeasor, but to fully compensate the claimant for all the losses that he/she has suffered as a direct or consequential result of the wrongful act or omission by the defendant.”*

In the case of **George Kankhuni v. Shire Buslines Ltd, Civil Case Number 1905 of 2002**, Katsala, J stated as follows:

*“The law demands that the plaintiff, as far as money can do it, be put in the same position as if he has not suffered the loss. This is what is referred to as **restitution in intergrum**.”*

It is not easy to quantify damages for losses that are not monetary in nature such as personal injuries. Courts as such use comparable cases as a guide to the quantification of applicable damages, without losing sight of particularities in the individual case that the court is dealing with. See **Chipeta v. Dwangwa Sugar Corporation, Civil Cause No. 345 of 1998, High Court, Principal Registry (unreported)**.

The court will also consider factors such as passage of time since a particular comparable award was made, as well as currency fluctuations within the period between the case at hand and the comparable one- **Hon. Kennedy Kuntenga v. Attorney General, Civil Cause No. 2002 of 2002, High Court, Principal Registry, (unreported)**.

Damages to be considered should be as at the date of hearing and not when the accident actually occurred, as stated in the case of **Jobling v Associated Diaries (1982) AC 794**.

#### **4.1 Personal injury**

A personal injury is any disease or impairment of physical or mental condition including death. (*Kemp and Kemp, Quantum of Damages*).

As per the case in question, the claimants claim for personal injury includes; pain and suffering and loss of amenities of life.

#### **4.2 Pain and Suffering**

Pain is the immediately felt effect on the nerves and brain of some lesion or injury to a part of the body, while, suffering is distress which is not felt as being connected with any bodily condition. It seems to include fright at the time of the injury and fright reaction.

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- *Ian Goldrein et al, Personal Injury Litigation, Practice and Precedents (Butterworths, 1985) p8.*

The award of damages for pain and suffering depends upon the claimant's personal awareness of pain, and his capacity for suffering- see **Limpoh Choo v. Camden and Islington Area Health Authority [1980] AC 174.**

#### **4.3 Loss of Amenities of Life**

This head of damages concentrates on the curtailment of the plaintiff's enjoyment of life not by the positive unpleasantness of pain and suffering but by his inability to pursue the activities he pursued beforehand. These amount to substantial loss, whether the claimant is aware or not of that loss. See **City of Blantyre v. Sagawa [1993] 16(1) MLR 67 (SCA)**; *Lord Bricket L.J IN Manley v Rugby Portland Cement Co.*

In this case, the claimants state that even though the bruises have healed, they feel pain when they do manual work and thus are not able to work fully as before.

#### **4.4 Comparable Cases**

In **Patricia Demesani Bannet v. Isaac Lizimba and Another, Civil Cause Number 811 of 2011 High Court Principal Registry (unreported)**, the court awarded the sum of **K2,000,000.00** as damages for pain and suffering and loss of amenities of life for a claimant who suffered a sprained ankle, multiple bruises over the body and face. The award was made on 20<sup>th</sup> July, 2012.

In **Wisted Chaleka v. Dalitso Subaila and Prime Insurance Company Limited, Personal Injury Cause Number 247 of 2014 (unreported)**, the court on 26<sup>th</sup> June 2014 awarded a sum



of **K3, 800, 000.00** as damages for pain and suffering and loss of amenities of life. In that case, the claimant had sustained soft tissue injuries, a painful neck, multiple bruises on the neck and had excessive body pain.

In the case of **Albert Kambova v. Shadreck Shombe & Prime Insurance Company Limited, Personal Injury 99 of 2016**, the claimant was awarded **K1, 900,000.00** for pain and suffering and **K450,000.00** for loss of amenities. The claimant was bruised and wounded and also suffered anxiety of apprehension of pain and suffering at the time of the accident, which is quite similar to the injuries sustained by the plaintiff in the present case. The ruling was made on 23<sup>rd</sup> July 2018.


#### **4.5 Determination**

In light of the above cases and facts of this instant case, I award the 1<sup>st</sup> claimant the sum of **K2,000,000.00** as damages for pain and suffering; **K500,000.00** as damages for loss of amenities of life. The court further awards the 2<sup>nd</sup> claimant **K1,500,000.00** as damages for pain and suffering and **K 500,000.00** as damages for loss of amenities of loss.

#### **5 Conclusion**

In summary, the court awards the 1<sup>st</sup> claimant the total sum of **K 2,500,000.00** and the 2<sup>nd</sup> claimant the total sum of **K2,000,000.00**. The defendants are condemned in costs.

Made in chambers this Thursday, the 24<sup>th</sup> day of October, 2019 in Blantyre.

  
Texious S Masoamphambe  
DEPUTY REGISTRAR