



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

Civil Cause Number 610 of 2017

BETWEEN:

**EDISON ISAAC.....CLAIMANT
AND
VINCENT MANDULUFU.....1ST DEFENDANT
PRIME INSURANCE COMPANY LIMITED.....2ND DEFENDANT**

CORAM:	C MANDALA:	ASSISTANT REGISTRAR
	B Semphani:	Counsel for Claimant of Kainja and Dzonzi, Attorneys at Law
	L Chikapa:	Counsel for Defendants of Wilkinson & Associates
	C Zude:	Court Clerk

ASSESSMENT OF DAMAGES

CM MANDALA, AR:

INTRODUCTION AND BACKGROUND

This is an order for assessment of damages pursuant to a Summary Judgment entered on 28th June 2019. The Defendants are liable for: damages for pain and suffering, damages for loss of amenities of life, damages for disfigurement, damages for loss of earning capacity, the costs of police and medical report at K3,000.00 and K15,000.00, and costs of the action. The hearing on Assessment of Damages was conducted on 7th April 2021.

This matter arose from a road accident that occurred on 4th May 2017 when the 1st Defendant was driving along the Kasiya/Lilongwe Old Airport Road when he swerved at Nakuwawa Trading Centre and the car overturned and injured the Claimant in the process.

EVIDENCE

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

6. I, EDISON ISAAC, of Cheluka Village, Traditional Authority Kabudula in Lilongwe district MAKE the following statement:
 - 6.1 I am the Claimant in this action, and I make this statement in relation to an accident in which I was involved and the information that I give in this statement is from my personal knowledge unless stated otherwise.
 - 6.2 I used to buy fish in Lilongwe at the market to resell at various markets in our area namely Nsanama, Nsalu, Malembo, and Kabudula and on the date of the accident on 4th May, 2017 I boarded the Defendant's motor vehicle from Nsalu enroute to Lilongwe to buy fish.

- 6.3 *When we reached a place known as Nakuwawa Trading Centre the 1st Defendant was driving at an excessive speed and in the process, he lost control such that the minibus overturned. Please refer to a copy of the police report attached hereto and marked as exhibit "EI 1."*
- 6.4 *When the accident took place, I sustained serious injuries and some well-wishers took me to Kamuzu Central Hospital to receive treatment.*
- 6.5 *I sustained a deep cut wound on my head which was sutured, and I had some lacerations on my right forearm which resulted into amputation of the 3rd, 4th and 5th fingers and I also had deep cuts on my right arm from the shoulder up to the elbow which necessitated grafting. Please refer to a copy of the medical report now shown to me and marked as exhibit "EI 2."*
- 6.6 *The injuries that I sustained have left me with deformities especially on my right hand where three fingers were amputated. As a result of the amputation, I can no longer use my right to grab things and I now find it extremely difficult to fend for myself as I used to do before the accident.*
- 6.7 *Before the accident I used to engage in fish selling business and I was making approximately MK160,000.00 per month. I was ordering fish at the market in Lilongwe twice every week amounting to MK60,000.00 and I was reselling at the markets mentioned in paragraph 6.2 above at MK80,000.00. I was making a profit of MK20,000.00 per round trip and I was making two trips per week. I therefore pray that I be awarded damages for loss of earning capacity and loss of amenities.*
- 6.8 *I experienced a lot of pain at the time of the accident, during treatment period and throughout the healing process. I particularly felt more pain when my fingers were amputated and also when they cut flesh from my thigh to graft it on my arm. I therefore pray that I should be awarded damages for pain and suffering.*
- 6.9 *I was admitted to Kamuzu Central Hospital on 4th May, 2017 and I was discharged on 5th June, 2017. During the period I was in hospital I was not able to do things on my own. I was not able to visit friends. I was not able to continue with my business of selling fish. I therefore pray that I should be awarded damages for loss of amenities.*
- 6.10 *As a result of the injuries I sustained on my body especially my right hand has been disfigured due to the amputation of my fingers and also on the upper arm. I therefore pray to be awarded damages for disfigurement.*

I verily believe that this statement is true to the best of my knowledge, information, and belief.

In cross examination, the Claimant confirmed that he was injured on the right hand. He confirmed that he was involved in the fish business, he used to buy fish in Lilongwe for re-sale at various markets. It is now difficult for him to continue this trade as the capital he had was disturbed during the time of his injury. The Claimant confirmed that he could continue with his business if he had capital, but it would be with difficulty. The Claimant has difficulties carrying things with his injured hand. Before the injury, the Claimant invested K60,000.00 and would make profits of K20,000.00 on this capital. After his injury, the capital and profit were used for physiotherapy and travel from Nsalu to Kamuzu Central Hospital. He made this trip twice a month. The Claimant used his bicycle to carry his fish to the market.

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.¹

Perfect compensation for a Claimant is unlikely. The Claimant, however, is entitled to fair and adequate compensation.² 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*³ 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*⁴, 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*,⁵ 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.*’

SUBMISSIONS BY COUNSEL FOR THE CLAIMANT

Counsel for the Claimant filed written submissions in support of the application. Counsel avers that the extremity of the Claimant’s loss and the devaluation of the Kwacha would attract awards totalling K8,0000.00 for pain and suffering, loss of amenities of life and disfigurement, and K32,400,000.00 or K4,752,000.00 – whichever is just and reasonable as damages for loss of earnings and loss of earning capacity. Counsel cited the following comparable awards to support their argument:

- *Clement Masache v Raiply Malawi Limited* Civil Cause Number 406 of 2012 where the Claimant was awarded K5,320,567.00 as 70% for pain and suffering, loss of amenities of life, and disfigurement for amputation of all five fingers on the right palm following an industrial accident. The award was made on 28th January 2013.
- *Christopher Mathews v Polypack Limited* Personal Injury Cause Number 514 of 2012 where the Claimant was awarded K8,000,000.00 as damages for sliced palm. The award was made on 13th June 2013.
- *Dineo Semphani v Hestings Chisale, Felix Kampaundi, and Prime Insurance Company Limited* Personal Injury Cause Number 45 of 2018 where the Claimant was awarded K8,000,000.00 as damages

¹ 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).

² *British Commission v Gourley* (1956) AC 185.

³ *West v Shepherd* (1964) AC 326 at 346.

⁴ [1996] MLR 486.

⁵ Quoting from *HQ Chidule v Medi* MSCA 12 of 1993.

for a fracture of the left leg above the knee, degloving wounds in both legs, right arm, right hand, right hip, and right shoulder. The award was made on 19th September 2018.

SUBMISSIONS BY COUNSEL FOR THE DEFENDANT

Counsel for the Defendant filed written submissions in support of the application. Counsel avers that the extremity of the Claimant's loss attracts awards totalling K1,500.00 for pain and suffering, loss of amenities of life and disfigurement. Counsel cited the following comparable awards to support their argument:

- ***Thomas Panjiwa v Prime Insurance Company Limited*** Personal Injury Cause Number 1165 of 2010 where the Claimant was awarded K700,000.00 for pain and suffering, loss of amenities of life and disfigurement for multiple deep cut wounds and lacerations on the head, knee joint and right hand, and pain on the knee. The award was made on 29th May 2015.
- ***Kelvin Brown v Oil and Protection Company Limited*** Personal Injury Cause Number 131 of 2015 where the Claimant was awarded K1,200,000.00 for pain and suffering, loss of amenities of life, and disfigurement for head injuries resulting in loss of consciousness, severe trauma to the left side of his body, a deep cut on the scalp, and cerebral stroke leading to left side weakness. The award was made on 11th August 2016.
- ***Wyson Divala v Eastern Produce Malawi Limited*** Personal Injury Cause Number 613 of 2013 where the Claimant was awarded K1,200,000.00 for pain and suffering, loss of amenities of life, and disfigurement for amputation of the right ring finger. The award was made on 24th February 2014.

COMPENSATION

The Claimant sustained a deep cut wound on my head which was sutured, lacerations on the right forearm which resulted in amputation of the 3rd, 4th and 5th fingers, and deep cuts on the right arm from the shoulder to the elbow which necessitated grafting.

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 '*deep cut wound on the head, and some laceration on the right forearm which resulted in amputation of the 3rd, 4th and 5th fingers*' as per the medical report. The medical report further states that the Claimant '*was admitted on the same day of the injury. ... He was discharged on 5th June 2017*' – a period of one month. The Claimant underwent the following treatment '*He was given normal saline 2li given and was transfused 1 adult pint of blood, ceflaxon 1g ad x10/7, diclofenac 100mg bd x5/7. He was done formalization amputation and suturing of the deep cut wound on the head. He was also done skin graft of the declivity wound of the right forearm.*'

The Claimant underwent several procedures, the amputation, suturing, and grafting, in addition to the pain and anxiety adduced by the injuries. The Claimant spent a month in hospital and even more time in recovery. The Claimant is said to have endured much pain and suffering. In their own words, the Claimant stated as follows: '*I experienced a lot of pain at the time of the accident, during treatment period and throughout the healing process. I particularly felt more pain when my fingers were amputated and also when they cut flesh from my thigh to graft it on my arm.*'

The court had recourse to comparable awards cited by both Counsel of K5,320,567.00 and K8,000,000.00, K8,000,000.00, K700,000.00, K1,200,000.00, and K1,200,000.00– these were awards made in 2013, 2013, 2013, 2015, 2016, and 2014 respectively. See: *Clement Masache v Raiply Malawi Limited*, *Christopher Mathews v Polypack Limited*, *Dineo Semphani v Hastings Chisale*, *Felix Kampaundi*, and *Prime Insurance Company Limited*, *Thomas Panjiwa v Prime Insurance Company Limited*, *Kelvin Brown v Oil and Protection Company Limited*, and *Wyson Divala v Eastern Produce Malawi 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 stated: ‘I can no longer use my right to grab things and I now find it extremely difficult to fend for myself as I used to do before the accident.’ The Claimant further stated: ‘During the period I was in hospital I was not able to do things on my own. I was not able to visit friends. I was not able to continue with my business of selling fish’. still feels pain on the right shoulder when working, still feel pain on the left hip, can no longer lift any heavy object using the right arm, and can no longer pluck the strings of a bass guitar.

The court had recourse to comparable awards cited by both Counsel of K5,320,567.00 and K8,000,000.00, K8,000,000.00, K700,000.00, K1,200,000.00, and K1,200,000.00– these were awards made in 2013, 2013, 2013, 2015, 2016, and 2014 respectively. See: *Clement Masache v Raiply Malawi Limited*, *Christopher Mathews v Polypack Limited*, *Dineo Semphani v Hastings Chisale*, *Felix Kampaundi*, and *Prime Insurance Company Limited*, *Thomas Panjiwa v Prime Insurance Company Limited*, *Kelvin Brown v Oil and Protection Company Limited*, and *Wyson Divala v Eastern Produce Malawi Limited* (cited above).

Based on the foregoing discussion, this court awards the sum of K2,500,000.00 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.

Both the Claimant and the medical report state that the Claimant has visible scarring where he sustained injuries. Further, the Claimant lost four fingers and will have to live with this disfigurement for the rest of his life. 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.

Loss of Earning Capacity

Loss of earnings is the total loss or actual reduction in the income of the claimant as a result of the injury suffered, while loss of earning capacity is the likely or prospective loss or reduction in the income of the Claimant as a result of the injury suffered – *Kambwiri v Attorney General* [1991] 14 MLR 151 (HC).

In assessment of damages for loss of earning capacity, the courts have developed a method for assessing the amount of pecuniary benefit that a plaintiff could reasonably expect to have earned. A claim for loss of earning capacity is grouped in the category of heads of pecuniary loss and includes future earning capacity. A Claimant can recover full compensation for the pecuniary loss that they anticipate suffering. **Pickett v British Rail Engineering** [1980] A. C. 136 at 168B-D states: “[b]ut, when a judge is assessing damages for pecuniary loss, the principle of full compensation can properly be applied.” See also **Ulemu Simoko v Attorney General** Civil Cause Number 755 of 2011.

The difficulty arises in quantifying the loss, to wit, the Supreme Court observed in **Nangwiya**: “Although it is difficult to come up with a mathematical formula, courts have regard to the Plaintiff’s earnings. Courts evaluate the chance. They then come with an award... Whatever the award, it must take into account that the award is global, and it will earn income for the period in which the plaintiff could have worked.”

In **Manda v Malawi Social Action Fund** Civil Cause Number 756 of 2003 (unreported), the Assistant Registrar gave guidance on calculating loss of earnings. It states: “The amount of loss of earning is calculated by taking the figure of the Plaintiff’s present annual earnings less the amount, if any, which he can now earn annually, and multiplying this figure by a figure which, while based upon the number of years during which the loss of earning power will last, is discounted so as to allow for the fact that a lump sum will be given now instead of periodic payments over years. The latter figure has come to be known as the multiplier and the former figure, the multiplicand... Further adjustment however has to be made to the multiplicand and multiplier on account of other factors like inflation, the so-called contingencies of life, and taxation.”

The Claimant herein did not prove the amount that he made at the time of the accident. Through his own explanation, he told the court that he was a businessperson which means he didn’t have a fixed income. Based on this, this court is guided by **Henry Kausiwa v Stansand (CA) Limited** Personal Injury Cause Number 211 of 2017 before the High Court’s Principal Registry; where the court awarded the sum of K250,000.00 on 21 November 2017 as damages for loss of earning capacity. The basis of the court’s award was described thus: ‘The plaintiff in the present case did not present evidence of his earnings before the accident that would assist the Court to compute what amounts he would have made if he had continued uninjured. I am faced, as it is, with real difficulty that I have little or indeed no material upon which to assess the loss of earning capacity.’

The Claimant is entitled to sum for loss of earning capacity, but it cannot be quantified with mathematical precision. This court will therefore award the nominal sum of K500,000.00 as damages for loss of earnings and loss of earning capacity.

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).

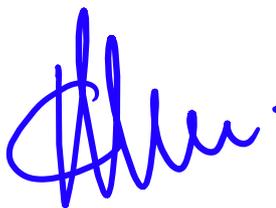
The Claimant herein was awarded special damages for replacement of a damaged bicycle, and costs of obtaining medical and police reports. Though the Claimant specifically claimed special damages, they were not proved during trial and/or submissions. For these reasons, no award will be made under this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

DISPOSAL

The Claimant is therefore awarded K4,000,000.00 for pain and suffering; K2,500,000.00 for loss of amenities of life; K750,000.00 for disfigurement, K500,000.00 as loss of earnings and loss of earning capacity, and K0 as special damages and costs of the action (to be taxed by the court). **The Claimant's total award is therefore K7,750,000.00 (seven million seven hundred 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 7th day of May 2021 at the High Court, Civil Division, Lilongwe.

A handwritten signature in blue ink, appearing to be 'C Mandala', is centered on the page.

C Mandala

ASSISTANT REGISTRAR