



THE REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL CAUSE NO.800 OF 2018  
BETWEEN

Anafi Justine.....Claimant

Idrissa Anusa.....1<sup>st</sup> Defendant

Prime Insurance Company.....2nd Defendant

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CORAM:      *Madalitso Khoswe Chimwaza,    Assistant Registrar*

*D. Silungwe,  
C.Makoko*

*Counsel for the Claimant  
Counsel for Defendants*

*Zude*

*Court Clerk*

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**ORDER ON ASSESSMENT OF DAMAGES**

**INTRODUCTION**

This matter was set down for assessment of damages following a default judgment dated 18<sup>th</sup> October, 2018 thereby settling the issue of liability.

Briefly the facts are that on or about the 26<sup>th</sup> March, 2018 the 1<sup>st</sup> defendant was driving motor vehicle Toyota Hiace registration number BU 8524 from the direction of Machinga going towards Zomba with fee paying passengers on board including the claimant. Upon arrival at Atuweni Farm near Domasi Quarry mine he negligently drove the motor vehicle thereby over-speeding such that he lost control of the vehicle and swerved to the extreme nearside where it overturned. As a result the claimant sustained fracture of the thigh bone on the left leg. He was hospitalized from 26<sup>th</sup> March to 24<sup>th</sup> May at Liwonde District hospital. He underwent skin traction which resulted in his leg being deformed and it has been shortened by 2.5cm. The claimant currently walks with a serious limp. He cannot run. In his witness statement the claimant said

he used to do business of selling plastic shoes and he used to make around K40,000 per month. According to his medical report he has 33% permanent incapacity.

The claimant is now seeking damages for pain and suffering, disfigurement, loss of amenities of life loss of earning capacity and special damages of K17,000 for obtaining medical report.

### ISSUE FOR DETERMINATION

How much damages should the claimant be awarded.

### GENERAL PRINCIPLES ON DAMAGES

A person who suffers injury as a result of another's negligence is entitled to be compensated for the injury suffered by the negligent party. Such damages are awarded to compensate the plaintiff in so far as money can do (see *Nakununkhe v Paulo Chakhumbira and Attorney General* Civil cause no.357 of 1997 (Unreported). As was held in the case of *Namwiyo v Semu et al* [1993] 16 (1) MLR 369, in awarding compensation, the court attempts to put the plaintiff in the position he would have been but for the injury arising from the tort. Such damages however cannot be quantified by any mathematical calculation as such the court relies on decided cases of a comparable nature for guidance. Sight must not be lost however, of peculiar facts of each case in order to avoid occasioning injustice by inflexible maintenance of consistency and uniformity (*D. Kwataine Malombe & Another vs. G.H. Chikho t/a Bec Line Minibus* Civil Cause No. 3687 of 2001 (HC Unreported).

#### Pain and Suffering and Loss of Amenities of Life

Pain is used to suggest physical experience of pain caused by and consequent upon the injury while suffering relates to the mental elements anxiety, fear, embarrassment and the like. On the other hand, loss of amenities of life embraces all that which reduces the plaintiff's enjoyment of life, his deprivation of amenity whether he is aware of it or not (See *City of Blantyre v Sagawa* [1993] 16 (1) MLR 67). In *Kanyoni v Attorney General* [1990] 13 MLR 169, 171 the court held that loss of amenities of life must include the loss of all the things the claimant used to be or to do, see, and experience-they need not be of leisurely nature at all. In the case of *Manley v Rugby Portland Cement and Company* [1950] No 286 (reported in Kemp and Kemp, "Quantum of Damages," Volume 1 2<sup>nd</sup> edition 1961 at p.2640) Birkett, LJ had this to say:

*"There is a head of damages which is sometimes called loss of amenities; the man-made blind by accident will no longer be able to see familiar things he has seen all his life, the man has both legs removed will never again go upon his walking excursions, things of that kind-loss of amenities."*

Although pain and suffering and loss of amenities for life are distinct however for purposes of quantum the court does consider them together and make a single award under those heads. (see *Henry Manyowa v. Phiri and Prime Insurance Co. Ltd* Personal Injury Cause No. 139/2012; *Andrew Katola v. Prime Insurance Co Ltd* Civil Cause No. 2807/2009).

In the present matter Counsel made submissions on separate heads to be awarded. Having considered comparable case awards like the case of *Banda and Ellen Banda vs Tutlas Fast save*, Civil cause No. 229 of 2016 in which the plaintiff suffered fractures of the thigh, traumatic amputation of the forearm an award of K7,000,000.00 was made for pain and suffering and loss of amenities of life.

The injuries in the present case are not of the same magnitude as the above case. The claimant sustained a fracture of the right leg and he endured five months of pain and discomfort with POP. He still experiences the swelling of the leg anytime he has put on shoes which is an indication that his quality of life has been impaired.

In this case for pain and suffering and loss of amenities of life the plaintiff is awarded a sum of K 3,800,000.00.

### **Damages for Disfigurement**

Damages for disfigurement are awarded for permanent scars or deformity on the body of the plaintiff. Looking at some comparable cases like *Mbalame v. Prime Insurance Co Ltd* Personal Injury Cause No. 244/2014 and *Chipala v. Prime Insurance Co Ltd* Personal Injury Cause No. 472/2013 where in 2015 the court awarded the sum of K950, 000 for disfigurement. In both cases there was limb shortening. Counsel cited the case of *Triza Lunduka vs Zenengeya and United General Insurance Company Ltd*, Civil Cause No. 1144 of 2016, a plaintiff who was left with a shortened leg and scars, was awarded the sum of K1,500,000.00. The award was made recently in 2017. This court finds the injury suffered by claimant not to have left visible disfigurement where a leg is short by 2.5cm and he walks with a limp as such a sum of K1,000,000.00 would be reasonable. The plaintiff is awarded **K1,000,000.00** for disfigurement.

### **Loss of Earnings and Earning Capacity**

Damages for loss of earning capacity, are awarded where the injuries suffered by the plaintiff results in the prospective loss of earnings or employability of the plaintiff. see case of *Tembo v City of Blantyre et al*, Civil Cause No. 1355/1994 (Unrep) Principle Registry.

Loss of earnings is the total loss or actual reduction in the income of the claimant as a result of the injury suffered. See *Kambwiri vs AG [1991] 14 MLR 151 (HC)*. In making submission for loss of earning capacity, plaintiff's counsel has asked the court to use the minimum wage in addition to the K40,000 and periodical adjustments after three years since the actual earnings of the claimant were bound to be changing with time. There is no evidence to support this claim of K40,000 per month from selling plastic shoes, no records of his business were tendered and this court is of the view that it is unsafe to base its decision on such evidence.

This court will adopt the minimum wage in order to find the loss suffered by the claimant. This court has noted that the claimant is someone who can still do business despite the injury provided he has capital for the same. The claimant was 24years at the time of the accident. He is still youthful and is likely to get better as time goes by. Considering that he may not have to live up to retirement age due to the vicissitudes of life this court adopts the multiplier of 25years in this case.

The claimant is awarded loss of earnings at the rate of minimum wage of K25,012.00 per month representing actual loss of earnings.

$K25012 \times 12 \text{ months} \times 25 \text{ years} = K7,503,600.00$

The claimant is also awarded K6,000 special damages for obtaining police and medical reports

### **Order**

The total award made is **K12,309,600.00**. as damages for pain and suffering and loss of amenities of life, disfigurement and loss of earnings. The claimant is also awarded costs of this action to be taxed if parties do not agree.

### **Right of Appeal**

Any party aggrieved by this order of assessment has the right to appeal.

Made in Chambers this 28<sup>th</sup> December, 2018



Madalitso Khoswe Chimwaza (Mrs)

**ASSISTANT REGISTRAR- LILONGWE REGISTRY**