



REPUBLIC OF MALAWI  
**IN THE HIGH COURT OF MALAWI**  
 PRINCIPAL REGISTRY  
**PERSONAL INJURY CAUSE NO. 1005 OF 2019**

**BETWEEN**

AMIGU JOSE (a minor, suing through his

next kin, Sidrick Sauke).....CLAIMANT

**AND**

JAMES MASAMBA.....1<sup>st</sup> DEFENDANT

PRIME INSURANCE COMPANY LIMITED.....2<sup>nd</sup> DEFENDANT

Coram: **WYSON CHAMDIMBA NKHATA (AR)**

Mickeous - of Counsel for the Claimant

Chimtengo- Court Clerk and Official Interpreter

**ORDER ON ASSESSMENT OF DAMAGES**

On or about the 15<sup>th</sup> of September 2019, the claimant was hit by a motor vehicle registration number CZ6678 Mazda Bongo mini-bus near ETG offices along the Mulanje-Muloza Road heading towards Mimoso. On the 3<sup>rd</sup> of December 2019, he took out a writ of summons through a next of kin against the defendants claiming damages for pain and suffering, deformity and incapacitation and costs of the action. The issue of liability was disposed of in favour of the claimant through a default judgment entered on the 13<sup>th</sup> of March 2020 by Honourable Justice Chigona. The matter was then transferred to this court for assessment of damages. This is the court’s ruling on assessment of damages.

The uncontroverted evidence indicates that the claimant who is a minor suffered injury upon being hit by a vehicle which was negligently being driven by the 1<sup>st</sup> defendant. As a result of the accident, he sustained a fracture of the right leg. He was subjected to painful medical and surgical procedure. He was discharged from the hospital after 5 days for recuperation and subsequently treated as an outpatient. It appears the claimant no longer enjoys robust health and sometimes misses school due to the effects of the injuries he sustained. His performance at school has declined because he arrives late due to limited walking capabilities. Apart from that, the claimant no longer helps his family with household chores as he used to do. He still feels pain on his right leg and has difficulties in walking long distances. On the day of assessment of damages, the next of kin failed to bring the claimant because he now uses a wheelchair and they could not afford to bring him to the court.

Such was the evidence proffered for the assessment hearing. Counsel for the claimant adopted his Skeleton Arguments filed for the assessment proceedings as his final written submissions for the assessment proceedings. As earlier alluded to, the duty placed upon this court was to determine a reasonable quantum of damages that would adequately compensate the claimant for the losses and damages herein.

It is trite that a person who suffers bodily injuries or losses due to the negligence of another is entitled to recover damages. The fundamental principle which underlines the whole law of damages is that the damages to be recovered must, in money terms, be no more and no less than the Plaintiff's actual loss. The principle was laid down in numerous case authorities more particularly by **Lord Blackburn** in the case of *Livingstone v. Rawyards Coal Company* (1880) 4 AC 25 in the following terms:

where any injury or loss is to be compensated by damages, in settling a sum of money to be given as damages, you should as nearly as possible get at the sum of money which will put the party who has been injured, or who has suffered loss, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.

However, it ought to be borne in mind that it is not possible to quantify damages for pain and suffering, loss of amenities and deformity as claimed in this matter with mathematical precision. As a result, courts use decided cases of comparable nature to arrive at awards. That ensures some degree of consistency and uniformity in cases of a broadly similar nature: See **Wright -vs- British Railways Board** [1983] 2 A.C. 773, and **Kalinda -vs- Attorney General** [1992] 15 M.L.R. 170 at p.172. As such this court will have recourse to comparable cases to arrive at the appropriate quantum of damages for the plaintiff.

In this case, it is not controverted that the claimant sustained a fracture of the right leg which caused him excruciating pain and also led to deformity. Counsel for the claimant called upon the court to consider the following heads of damages:

### *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: **City of Blantyre v Sagawa** [1993] 16(1) MLR 67 (SCA). In this case, the claimant initially suffered severe pain resulting from the injury itself. The evidence suggests that the claimant continues to suffer from symptomatology related to his injuries. In particular, the claimant suffers from and severe restriction of mobility. It is anticipated that when the claimant undergoes the future medical treatment, he will experience attendant pain and discomfort, disablement, and risk associated therewith. The claimant was subsequently discharged to convalesce at home due to Covid 19 precautions albeit not being fully recovered.

The only comparable case I have been referred to by Counsel regarding an award in respect of general damages for pain and suffering is that of **Wonderson Mbete v Steven Adam and Prime Insurance Company Limited** Civil Cause no. 178 of 2011 in which the claimant sustained a deep cut wound on the thigh and head, bruises on the right foot and cut on the eye. The court awarded him the sum of K2,000,000.00 as damages for pain and suffering, and loss of amenities. The award was made on 20<sup>th</sup> of January 2013. Counsel submits that in the circumstances of this case, the reasonable compensation would be K6,000,000.00 for the injuries suffered by the claimant taking into consideration the depreciation of the Malawi Kwacha. This court is of the view that the proposal by the claimant is on the higher side notwithstanding all the pain and suffering that the claimant encountered and continues to endure. In view of the cited case and the devaluation of the kwacha, I am of the opinion that K4,000,000.00 would adequately compensate the claimant for pain and suffering.

### *Deformity/disfigurement*

Under this head, damages are awarded for the change in physical form of a person injured either as a result of the impact of the injury or its treatment, such as scar coming in as a result of surgical operation necessitated by the injury and it is this change of appearance as it has a potential of limiting a person from doing certain things. Counsel for the claimant cites the case of **Charles Kambendera v Daniso Qongwani and Prime Insurance Company Limited** Personal Injury Cause No. 178 of 2018 where the claimant was awarded K1,200,000.00 as damages for disfigurement having suffered a fracture on his hand wrist joint. The award was made on the 6<sup>th</sup> of March 2019.

Counsel representing the claimant is of the view that K2,500,000.00 is sufficient to compensate the claimant for disfigurement. He submits that the claimant sustained a fracture of the right leg and the injuries and the deformity are equally serious to those in the cited cases. This court was deprived the opportunity of physical assessing the claimant since he was not brought to court. All the same, I have reason to believe that injuries that lead to deformity have to be substantially compensated. In the case of **James Chaika v NICO General Insurance Co. Ltd Civil Cause 909 of 2007** Honourable Justice Potani warned that disfigurement is not a matter to be taken lightly and casually as it is something that one has to permanently live with. In this case, I am of the view that K2,000,000.00 would adequately compensate the claimant for deformity.

***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**. The claimant sustained injury to his right leg which has led to his confinement to a wheel chair. Clearly, he can no longer engage in basic social amenities like playing football. However, damages under this head were not pleaded. Neither the Statement of Case nor the default judgment indicate a claim for loss of amenities. I am compelled not to make an award under this head.

Thus, this court is of the view that the appropriate and reasonable damages should be as follows:

Pain and suffering                      K3,500,000.00

Deformity/incapacity                      K2,000,000.00

In total, the claimant is awarded K5,500,000.00 as damages for the injuries. The claimant is further awarded costs for the assessment proceedings to be taxed if not agreed by the parties.

DELIVERED IN CHAMBERS THIS 8<sup>th</sup> DAY OF JULY 2019

  
WYSON CHAMDIMBA NKHATA

ASSISTANT REGISTRAR