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**REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
PERSONAL INJURY CASE NUMBER 985 OF 2019**

**BETWEEN**

**MARY SAKALA.....CLAIMANT**

**-AND-**

**JAMES SOMANJE .....1<sup>ST</sup> DEFENDANT**

**PRIME INSURANCE COMPANY LIMITED .....2<sup>ND</sup> DEFENDANT**

Coram

E. Chapita-Banda, Assistant Registrar

Aufi, Counsel for the Claimant

Chida, Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

On 26<sup>th</sup> August 2017, the claimant sustained injuries when she was hit by motor vehicle registration number BM 7835 Toyota Hiace Minibus and she sued the 1<sup>st</sup> defendant and the 2<sup>nd</sup> defendant in their respective capacities as the driver and insurer of motor vehicle at the time of the accident.

The defendants never filed any defence to the claim and judgment by default was entered against the defendants on 30<sup>th</sup> March 2020. On the day of hearing for the assessment of damages, the claimant who had only served the 2<sup>nd</sup> defendant with the notice of the hearing, opted to proceed against the 2<sup>nd</sup> defendant only. The 2<sup>nd</sup> defendant never came for the assessment hearing although they had been served with the notice and hearing proceeded in their absence. This is the court order on assessment of damages.

**THE EVIDENCE**

The claimant adopted her witness statement as her evidence. Her evidence is that on the day of the accident, she was aboard motor vehicle registration number BM 7835 Toyota Hiace Minibus when it veered off the road into the bush as the driver tried to overtake another car. The motor

vehicle stopped by a tree. The claimant sustained injuries namely: open book pelvis fracture; traumatic amputation of the right leg; fracture of the left femur; various scars; and a malunion of the femur shaft fracture.

She added that she was hospitalized at the hospital for eighty-four days and still visits as an outpatient. At the time of the accident, she was studying nursing and midwifery at Kamuzu College of Nursing and she had to reserve her place due to the accident and only went back in 2018 and upon recommendation by the college, she changed her course of study to community health nursing.

According to the evidence, when her leg was amputated, the claimant went to Canada for further treatment at Shriners Hospital for Children where she was admitted for two weeks and later visited as an outpatient between February and May 2017.

She added that a total sum of K1,000,000.00 was spent on fuel from Nchalo to Lilongwe for her review and she tendered receipts for the travels.

She further stated that as a result of the accident, she no longer participates in any sporting activities, walk long distances, carry heavy objects, drive or walk on elevated ground. She added that she will have challenges to get a job as employers may prefer someone who is not disabled.

She added that she has an artificial leg now which never bends and makes it difficult for her to board minibuses and further, the leg has to be changed every year.

### **COMPARABLE CASE**

In **Charles Mauzu (a minor, suing through next of kin JANE MAUZU) v Wild Batson and Prime Insurance Company Limited**, Personal Injury Cause Number 77 of 2014 (unreported), the claimant sustained fractures on both legs, multiple wounds on the face and shoulder and deep cut wounds on the legs. His leg was bent outwards as a result of the injuries. The court, in 2017, awarded him K1,500,000.00 as damages for pain and suffering; K1,000,000.00 as damages for loss of amenities of life and K800,000.00 as damages for disfigurement.

The award in this case will form a basis for comparison when determining the amount of damages to award in this case.

## **DAMAGES FOR PAIN AND SUFFERING AND LOSS OF AMENITIES OF LIFE**

A claimant who has suffered loss as a result of a defendant's negligence is entitled to compensation. The damages awarded to the claimant are meant to compensate for both pecuniary and non-pecuniary losses. For non-pecuniary losses courts have made awards for pain, suffering and loss of amenities. See **Lindani v Mlenga and Another** (1992) 15 MLR 199.

In **Sumana v Hara and another** [1993] 16(2) MLR 843 at page 847, the High Court elucidated 'pain and suffering'. The Honourable Judge stated:

*"Pain and suffering are ordinary words. Pain refers to that which is felt by the senses, the discomfort, the ache, etcetera. Suffering refers to the mental injuries and the actual pain and the overall effect of the injury now and for the future."*

On amenities the judge had this to say:

*"Amenities are really the things that the injury will deprive enjoyment of. In one case it would be loss of leisurely pursuit, in other cases it would just be the enjoyment of work, all these come under the epithet, "amenities".*

The claimant experienced pain and suffering at the time of the accident and even throughout the treatment process. Now she can no longer do things she used to do or enjoy before. She can no longer participate in any sporting activities, walk long distances, carry heavy objects, drive or walk on elevated ground.

The injuries sustained by the claimant in this case were serious than those in the **Charles Mauza** case cited above. I consider the sum of K3,000,000.00 as reasonable in the instant case and it is awarded to the claimant as damages for pain and suffering. K2,000,000.00 is awarded as damages for loss of amenities of life.

## **DAMAGES FOR DISFIGUREMENT**

Damages for disfigurement were initially awarded as part of damages for pain and suffering owing to the suffering a claimant went through as a result of being disfigured. See **Mwasinga v Stagecoach (Mal) Ltd** 1993 16 (1) MLR 363. Later they began to be awarded separately. In

**Matenje v Beams** (1992) 15 MLR 253, the court awarded damages for disfigurement as a separate head of damages when the claimant got scarred as a result of a dog bite.

Damages for disfigurement are awarded to compensate for a change in a claimant's physical form or appearance as a result of injury. See **Francis Chikoti v United General Insurance Company Limited**, Personal Injury Cause No.1958 of 2016.

The claimant lost a limb and she has scars. Her deformity is noticeable to all who come in contact with her.

The claimant is awarded the sum of K4,000,000.00 as damages for deformity.

### **DAMAGES FOR LOSS OF EARNING CAPACITY**

Loss of earning capacity is a reduction in a person's ability to earn an income. Where injury is severe and causes the victim to lose work or to go into a different line of work often with reduced earnings, he is entitled to recover damages for loss of earning capacity.

The High Court through Mwaungulu J as he then was, stated: "Awards for loss of earning capacity evaluate the chance of an employee, who is actually working, losing a job or earning less on account of the injuries sustained..." (**Sakonda v S.R. Nicholas Limited** Civil Appeal Cause Number 67 of 2013).

The claimant stated in her witness statement that she will have challenges to get a job as employers may prefer those who are not disabled. There is a chance of this happening. The evidence shows that the claimant had to drop out of her preferred course, nursing and midwifery and had to pursue another course of community health nursing. Certainly, the accident has affected her ability to earn as a nurse and a midwife.

**In Manjolo v Attorney General and Another** 15 MLR 247 the Court stated at 252:

*"Where there has been a loss of earning and that loss is ascertainable, the courts have used the multiplicand approach. Where that is not the case, the awards are in the words of Lord Justice Megaw, 'nothing more than a guess to be made' (Eaton v Concrete Northern Ltd [1979] CA No. 30)."*

The claimant is still in school and has not yet started earning any money as such the multiplicand formula cannot be used. I consider the sum of K4,000,000.00 as adequate compensation under this head and it is awarded to the claimant as damages for loss of earning capacity.

### **SPECIAL DAMAGES**

Special damages have to be specifically pleaded and strictly proved. See **Sophie Kazima t/a Ujeni Taxis v SGS Malawi** (2012) MLR 358. A claimant must adduce evidence or facts which give satisfactory proof of what he claims as special damages. see **Govati v Manica Freight Services (Mal) Limited** 16(2) MLR 521.

The claimant claimed K1,000,000.00 as special damages being transport expenses between Nchalo and Lilongwe and back. She tendered receipts indicating diverse amounts of money spent on fuel and these add up to K742,000 and this is awarded to the claimant.

The claimant lost phone, purse and clothes during the accident. These were never pleaded for and no award is made.

The rest of the special damages claimed were never strictly proven and are not awarded. The claimant had to go to Canada and tendered letters of invitation to the hospital. She had claimed K1,000,000.00 as her expenses there. The evidence does not prove this expense. The evidence does not prove the amount of K600,000.00 that was used for accommodation while she was in hospital. It is not even made known which people used this amount considering the claimant herself was accommodated at the hospital during that time.

### **TOTAL AWARD**

The claimant has been awarded a total of K13,742,000.00 in damages.

Dated 20 Day of May 2022

**E. CHAPITA-BANDA**  
**ASSISTANT REGISTRAR**

