



HIGH COURT
LIBRARY

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY**

Personal Injury 567 OF 2018

BETWEEN

**BLESSINGS MDALA (A minor suing through
his father and litigation
guardian Kenneth Mdala)**

CLAIMANT

AND

**PRIME INSURANCE
COMPANY LIMITED
NYUZI KACHEPA**

1ST DEFENDANT

2ND DEFENDANT

CORAM :

MATAPA KACHECHE

Deputy Registrar

Mataka

for the Claimant

Absent

for the Defendant

Mtegha (Mrs)

Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

1. The claimant commenced this action on 5th September, 2018 seeking damages for: pain and suffering, loss of amenities of life, deformity or disfigurement. He also claimed special damages being K3,000.00 cost of police report, and K10,500.00 cost of medical report.
2. An order was made after mediation entering judgment in favour of the claimant. The amount of damages payable was to be agreed upon by the parties. If agreement was not reached the damages were to be assessed by the Registrar.
3. It seems the parties did not agree and the matter came before me for assessment of damages on 24th February, 2022. The defendants were served but were not present for assessment so we proceeded in the absence of the defendant.
4. The litigation guardian testified on behalf of the claimant.
5. He stated that the claimant was hit by a motor vehicle registration number BQ 3699 Scania Lorry on 24th

Blessings Mdala v Prime Insurance Company Limited and Another

October, 2017 at about 11:00 hours as he was on his way from school. The accident took place Maone Junction along the Chilembwe high High in Limbe within Blantyre District.

6. As a result he sustained the following injuries: amputation of the lower left leg, 3 open fractures on the right arm, serious cut wounds on the right hip, serious bruises at the back, serious cut wounds on the face and serious cut wounds on the right hand.
7. He was immediately taken to hospital where he was admitted for 26 days. The fractures were treated by the arm being cast in a plaster of Paris (P.O.P).
8. The child now has an amputated left leg. Since the accident the child has been living a stressed and unhappy life and painful life, he can no longer play with friends as he used to before the accident, he is usually stigmatized by his friends, he is now emotionally unstable as he sometimes just starts crying in the middle of the night for no apparent reason and sometimes he refuses to eat or sleep. At the time of the accident the claimant was six (6) years old.
9. I will not bother outline the general law on damages suffice to say that I need to look at conventional awards to come up with the right quantum of damages.
10. The claimant has cited a number of cases namely:
 - a. *Florence Kainga v Malawi Housing Corporation and another* (2007) CC no. 1339 where the claimant suffered an amputation of a leg due an accident – she was awarded K9,000,000.00;
 - b. *Steve Nansongole v Unitrans Malawi Limited* (2010) CC no. 898 where the claimant sustained a fracture of the right arm and he was awarded K2,000,000.00 For pain and suffering;
 - c. in *Justin Makwangwala v Henderson Van Guilder and others* (2015) Personal Injury no. 213 the claimant was awarded K3,000,000.00 for loss of amenities having lost a leg.

Blessings Mdala v Prime Insurance Company Limited and Another

11. The claimant herein is a very young child. He has been living with the pain, suffering and deformity since 2017 and will live with the same for the rest of his life. They will subject him to many inconveniences meaning that even if the physical pain were to reduce or get eliminated altogether, he will live with the emotional trauma for the rest of life. He deserves to be adequately compensated.

12. Having considered all the relevant facts, the age of the child and the comparable awards I make the following awards:
 - a. Damages for pain and suffering – K7,000, 000.00
 - b. Damages for loss of amenities – K4,000, 000.00
 - c. Damages for deformity and disfigurement – K3, 000, 000.00
 - d. Special damages for the cost of police report – K3, 000.00
 - e. Special damages for the cost of the medical report – K10, 500.00.

13. The total award therefore comes to K14, 013, 500.00.

14. I direct that these sums be paid to the office of the Registrar who shall open a trust account for the child.

15. I also award costs of these proceedings.

Delivered this 20th day of June 2022



Chimbizgani Matapa Kacheche
Deputy Registrar