



REPUBLIC OF MALAWI  
**IN THE HIGH COURT OF MALAWI**  
 PRINCIPAL REGISTRY  
**PERSONAL INJURY CAUSE NUMBER 899 OF 2020**

**BETWEEN:**

- CHIMWEMWE SAITI.....1<sup>ST</sup> CLAIMANT
- INNOCENT NAPHIYO.....2<sup>ND</sup> CLAIMANT
- SMART MAKINA.....3<sup>RD</sup> CLAIMANT
- GRACE NKHATA.....4<sup>TH</sup> CLAIMANT
- MATRIDA MATONGA.....5<sup>TH</sup> CLAIMANT
- LORDSON LIPENGA.....6<sup>TH</sup> CLAIMANT
- LUCKIA MAILOSI.....7<sup>TH</sup> CLAIMANT
- HANNAH MWALANDA.....8<sup>TH</sup> CLAIMANT
- VANESSA CHAPAMBANA.....9<sup>TH</sup> CLAIMANT
- JIMMY KULEMEKA.....10<sup>TH</sup> CLAIMANT

**AND**

- DANFORD KHUMUNYE.....1<sup>ST</sup> DEFENDANT
- COUNCIL OF THE UNIVERSITY OF MALAWI  
 (COLLEGE OF MEDICINE).....2<sup>ND</sup> DEFENDANT

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

Mr. Mwantisi- of Counsel for the Claimant

Mr. Mbendera- of Counsel for the Defendant

Ms. Chida- Court Clerk and Official Interpreter

## ORDER ON ASSESSMENT OF DAMAGES

### *INTRODUCTION*

On or about 25<sup>th</sup> August, 2019, the claimants were passengers in the 2<sup>nd</sup> defendant's Toyota Hiace Minibus travelling from the direction of Dwangwa heading towards Nkhotakota along the Dwangwa – Nkhotakota M5 road when at or near Kambuzi Village in Pendwe area the motor vehicle was involved in an accident injuring the claimants in the process. On 2<sup>nd</sup> December, 2020, the claimants commenced this action claiming damages for pain and suffering, loss of amenities of life, disfigurement and costs of the action. The 1<sup>st</sup> defendant was sued as the driver of the said motor vehicle and the 2<sup>nd</sup> defendant was sued as the owner of the same. The issue of liability was settled in favour of the claimants during mediation upon the defendants admitting liability. Subsequently, the matter was referred to this court for assessment of damages which I must now consider.

### *THE EVIDENCE*

The claimants were paraded and they testified as to the extent of their injuries. Their testimony during cross-examination was more or less the same. For the sake of brevity, I shall not re-produce the same for each and every claimant save where there are departures from the rest. Suffice to say that, the claimants indicated that they obtained the Medical Report from Queen Elizabeth Central Hospital one year after the accident had happened. They also stated that they were treated as outpatients. Further, they indicated that they attended physiotherapy but did not complete and most of them indicated that they did not have money to pay for the physiotherapy. Otherwise, the rest of the evidence was as follows:

#### *PW1: Chimwemwe Saiti*

He adopted his witness statement in which he averred that as a result of the accident he sustained a mild head injury with scalp lacerations, blunt chest trauma, multiple abrasions and bruises on the body, and dislocation of the toe of the right leg. He was taken to Nkhotakota District Hospital and he was later referred to Queen Elizabeth Central Hospital where he was treated. He tendered a Medical Report marked "CS2". He went on to testify that since the accident he has intermittent headache and chest pains. He is failing to lift heavy objects as he used to do before the accident. He also has permanent multiple scars. He further stated that he paid MK3,000.00 for the Police Report and MK30,000.00 for the Medical Report. During cross examination, he stated that although some of his injuries were not recorded in his Medical Report, he did suffer such injuries and he duly informed the Doctor preparing the Medical Report. There was nothing in re-examination.

***PW2: Innocent Naphiyo***

He adopted his witness statement in which he stated that as a result of the accident he sustained mild head injury and multiple abrasions and bruises on the body. He was taken to Nkhotakota District Hospital and he was later referred to Queen Elizabeth Central Hospital where he was treated. He tendered a Medical Report marked "IN 2". He further testified that since the accident he has intermittent headache, dizziness and have multiple scars on the body. He also has a partial loss of memory. He stated that he paid MK30,000.00 for the Medical Report. During cross examination, he had been going to Queen Elizabeth Central Hospital as regards the issue of memory loss on several occasions. During re-examination, he stated that his memory is not as sharp as it used to be.

***PW3: Smart Makina***

He adopted his witness statement in which he stated that as a result of the accident he sustained mild head injury with skull fracture on parietal region, blunt chest trauma, and sprained back. He was taken to Nkhotakota District Hospital and he was later referred to Mlambe Mission Hospital and Queen Elizabeth Central Hospital where he was treated. He tendered a Medical Report marked "SM 2". He further testified that since the accident he has intermittent headache, backache, chest pains and dizziness. He is also failing to lift heavy objects and stand for a long time as he used to do before the accident. He stated that he has further developed eye sight problems due to the accident. He stated that he paid MK30,000.00 for the Medical Report. During cross examination, he stated that he lost consciousness on the spot and he on regained consciousness at Nkhotakota District Hospital. In re-examination, he stated that he lost consciousness at the spot of the accident and he also stated that he could not continue attending physiotherapy because he had no money.

***PW4: Grace Nkhata***

She adopted her witness statement in which she stated that as a result of the accident she sustained mild head injury, blunt chest trauma, and sprained neck. Her uterus was later removed due to the accident. She was taken to Nkhotakota District Hospital and she was later referred to Queen Elizabeth Central Hospital where she was treated. She tendered a medical report marked "GN 2". She further testified that since the accident she has a deformity of the back, intermittent headache, dizziness and chest pains. She is also failing to carry heavy objects on the head. She also has a partial loss of memory. She stated that she paid MK30,000.00 for the Medical Report. During cross examination, she stated she that although the medical report does not state that her uterus was removed her health passport contains all those details and she does not know why the Doctor did not include that part in the medical report. During re-examination, she stated that her uterus was removed and it was due to the accident. She also reiterated that she attended physiotherapy but she did not continue with the same as she had no money to pay for the physiotherapy.

*PW5: Matrida Matoga*

She adopted her witness statement in which she stated that as a result of the accident she stated that she sustained blunt abdominal trauma, blunt chest trauma, dislocation of the right leg and multiple abrasions and bruises on her body. She was taken to Nkhotakota District Hospital and she was later referred to Queen Elizabeth Central Hospital where she was treated. She tendered a Medical Report marked “MM 2”. She further testified since the accident she has post traumatic chest pains and abdominal pains. She is also failing to lift heavy objects as she used to do before the accident. She stated that she paid MK30,000.00 for the Medical Report. During cross examination, she testified that although the medical report does not state or contain some of the injuries she explained them to the Doctor but she does not know why the Doctor did not include them in the medical report. During re-examination, she stated that she sustained the injuries as stated and the injuries are contained in her health passport.

*PW6: Lordson Lipenga*

He adopted his witness statement in which she stated that as a result of the accident he sustained a sprained back, and multiple abrasions and bruises on the body. He was taken to Nkhotakota District Hospital and he was later referred to Queen Elizabeth Central Hospital where he was treated. He tendered a medical report marked “LL 2”. He further testified that since the accident he has intermittent headache and multiple scars. He also cannot walk long distances or stand for a long time as he used to do before the accident. He stated that he paid MK30,000.00 for the Medical Report. During cross examination, he stated that he attended physiotherapy but did not continue with physiotherapy. During re-examination, he stated that he did not continue with physiotherapy because instead of the pain to ease it was increasing and the physiotherapy was costly and he had no money.

*PW7: Luckia Mailosi*

She adopted her witness statement in which she stated that as a result of the accident she sustained mild head injury with scalp lacerations, sprained left shoulder, and sprained back. She was taken to Nkhotakota District Hospital, and she was later referred to Gateway Clinic and Queen Elizabeth Central Hospital where she was treated. She tendered a medical report marked “LM 2”. She further testified since the accident she has intermittent headache, post traumatic shoulder pains and backache. She is also failing to lift heavy objects as she used to do before the accident. She stated that she paid MK30,000.00 for the medical report.

*PW8: Hannah Mwalwanda*

She adopted her witness statement in which she stated that as a result of the accident she stated that she sustained a sprained left shoulder, bruised back, and abrasions on the right arm. She was taken to

Nkhotakota District Hospital and she was later referred to Queen Elizabeth Central Hospital where she was treated. She tendered a medical report marked "HM 2". She further testified since the accident she has intermittent headache, post traumatic shoulder pains and backache. She is failing to lift heavy objects as she used to do before the accident. PW 8 stated that she paid MK30,000.00 for the medical report.

*PW9: Vanessa Chapambana*

She adopted her witness statement in which she stated that as a result of the accident PW 9 stated that she sustained a sprained back, lacerations on the face, dislocation of the nose. She was taken to Nkhotakota District Hospital and she was later referred to Queen Elizabeth Central Hospital where she was treated. She tendered a medical report marked "VC 2". She further testified since the accident she has post traumatic backache, and permanent scars. She is failing to walk long distances and to lift heavy objects as she used to do before the accident. PW 9 stated that she paid MK30,000.00 for the Medical Report.

*PW10: Jimmy Kulemeka*

He adopted his witness statement in which he stated as a result of the accident he stated that he sustained a cut wound on the head, multiple lacerations on the scalp and foot, bruised neck and lower back, and multiple abrasions and bruises on the body. He was taken to Nkhotakota District Hospital, and he was later referred to Mwaiwathu Private Hospital and Queen Elizabeth Central Hospital where he was treated. He tendered a medical report marked "JK 2". He further testified that since the accident he has intermittent painful neck, and lower back. He also has permanent multiple scars. He is failing to lift heavy objects as he used to do before the accident. He stated that he paid MK30,000.00 for the Medical Report. During cross examination, he stated that he was operated on in his head a long time ago, he however stated that the scar for the injuries sustained during the accident were different from the operation scar. During re-examination, he stated that he did not continue with physiotherapy because it was costly and he also eventually relocated to Lilongwe and could not continue with the same.

On the other hand, the defendants paraded two witnesses: a medical doctor at Mpingwe Private Clinic and a finance officer for the 2<sup>nd</sup> defendant. Their evidence was as follows:

*DW1: Dr Lughano Kalongolera*

He adopted his witness statement in which he stated that he is a medical doctor and he runs a medical clinic. The 2<sup>nd</sup> defendant contacted him to examine the claimants in order to know the extent of the injuries which the claimants suffered for the purposes of reaching a suitable sum of compensation for the claimants. He examined the claimants and the injuries they sustained but nothing significant was found. All the claimants were treated as outpatients and the claimants were advised to go for physiotherapy and

all but two claimants attended physiotherapy and none of the claimants which attended physiotherapy completed the sessions. He further testified that he issued Medical Reports after the examination which confirmed that the claimants suffered injuries but the same were not serious injuries. He took x-rays of all the claimants and he presented the x-rays in court. He went ahead to analyse the actual injuries suffered by each claimant in details. The Medical Reports and the x-rays were tendered in court as part of his evidence.

During cross examination DW 1, he stated that he was hired by the 2<sup>nd</sup> defendant to assess the claimants based on the issue to do with compensation. He also testified on the methodology which was used to come up with his Medical Reports. He stated that he did not meet or interview the doctor who issued the medical reports from Queen Elizabeth Central Hospital. He did not also meet or call the medical doctor who first assessed the claimants at Nkhotakota District Hospital. He also testified that he did not make it one of his methodologies to examine the health passports of the claimants and the various Medical Reports that were issued to the claimants by the various hospitals the claimants went to. He also testified that he asked the claimants on the times the minibus in which they were passengers overturned but he got conflicting information from the claimants. He stated that the motor vehicle just lay on its side. He testified that his medical reports do not contain evidence of the injuries that the claimants sustained, and that his medical reports only concentrated on how the claimants are feeling as of now. He admitted that the Medical Reports he issued were only issued after a long period. He further testified that the reports were only concerned with determining the degree of disability and nothing more. He stated that based on his assessment the injuries sustained were minor ones and not serious.

*DW2: George Chitunga*

He adopted his witness statement in which he stated that he is a Finance Manager of the 2<sup>nd</sup> defendant. He testified that the claimants were involved in accident and that the claimants alleged that they sustained various injuries. He testified they were sent to Mpingwe Clinic where they were examined. He tendered the medical reports issued by Mpingwe Clinic. He stated that most of the claimants returned to work after a few days. He then tendered in evidence the attendance report of the 2<sup>nd</sup> defendant. He also testified that Jimmy Kulemeka had an operation on his head in 2016 and he has a scar in his head following that operation. There was no cross examination.

Such was the evidence on assessment of damages. I would like to thank both Counsel for the guidance as evidenced by the well-researched submissions filed in support of the assessment of damages herein in which several authorities have been cited. This court has given the submissions and the authorities counsels cited the most anxious consideration.

## *THE LAW AND APPLICABLE LEGAL PRINCIPLES*

On the law and principles governing assessment of damages, it is trite that the purpose of awarding damages is to compensate the injured party as nearly as possible as money can do. That is to say, to place the claimant in a position he would be had he not suffered the damage or loss. This is what is termed the principle of *restitutio intergrum*. It is not possible to quantify fully damages for loss of dependency and loss of expectation of life. However, courts use comparable cases as a guide in coming up with a reasonable quantum of damages. See the case of **Kalinda –vs- Attorney General (1992) 15 MLR 170** at p 172. The Court will also consider factors like passage of time when the award was made, as well as the value of the kwacha at the time of making the award.

### *Pain and suffering*

Pain means the physical hurt or discomfort attributable to the injury itself or consequent upon it. It includes the pain caused by any medical treatment which the plaintiff might have to undergo. See **Sakonda v S. R. Nicholas** Civil Appeal Cause No. 67 of 2013. ‘Suffering’ on the other hand denotes the mental or emotional distress which the plaintiff may feel as a result of the injury. This includes but not limited to anxiety, worry, fear, torment and embarrassment. In **City of Blantyre v. Sagawa** [1993] 16 (1)MLR 67. ‘pain’ and ‘suffering’ were defined to suggest physical experience of pain caused by consequent upon the injury while “suffering” relates to the mental element of anxiety, fear, embarrassment and the like.

### *Loss of amenities of life*

In the case of **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 able to do, see, and experience. Justice Mwaungulu (as he then was) in the case of **Mtika v. US Chagomerana t/a trans Usher (Zebra Transport)** [1997] 2 MLR 123, 126 explained that this head covers the loss caused by the injury in that the claimant will be unable to pursue the leisure and pleasures of life that he used to enjoy but for the injury.

### *Disfigurement*

Damages under the head of disfigurement are paid 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. It is a change in appearance but it is capable of limiting a person from doing certain things- see- **Francis Chikoti vs- United General Insurance Company Limited** Personal Injury Cause No. 730 of 2016. Justice Potani (as he was then) in the case of **James Chaika v NICO General Insurance Company Ltd** Civil Cause No. 909 said disfigurement is not a matter to be taken lightly and casually as it is something that one has to permanently live with.

## COMPARABLE CASES

In this case, with respect to the injuries presented by the 1<sup>st</sup> claimant, Chimwemwe Saiti, Counsel cites the following cases for comparison:

- **Rose Moyenda v Timothy Chigwere & Prime Insurance Company Limited**, Personal Injury Cause No. 436 of 2016, in which the claimant suffered cuts on the head and bruises on the face, back and both knees. He was awarded MK3,000,000.00 under all heads on 1<sup>st</sup> March, 2021.
- **Nelson Dinyero vs Frazio Biziwelo & Nico General Insurance Company Limited**, Personal injury cause no. 192 of 1018, in which the claimant sustained a deep cut wound on the right knee exposing the patella, abrasion on the right thigh, scar formation and pain in the joints. The claimant was awarded MK6,500,000.00 for personal injuries. The award was made on 9<sup>th</sup> March, 2020.
- **Issah Idrissah vs Daniel Ndawala & Prime Insurance Company Limited**, Personal Injury Cause Number 67 of 2017, in which the claimant suffered a dislocation of the left hip, a cut on the forehead and another cut on the eyelid and multiple bruises on the leg. He was awarded MK4,900,000.00 damages for Personal Injuries on 11<sup>th</sup> March, 2019.
- **Rhoda Samson v Bester D. Thomson and General Alliance Insurance Limited**, Personal Injury Cause No. 1158 of 2013, in which the claimant sustained a sprained right shoulder and multiple bruises on the face and nose. On 28<sup>th</sup> April, 2015, the court awarded her the sum of MK2,400,000.00 as general damages.

Counsel submits that in light of the above authorities and the injuries sustained by the Claimant the sum of **MK8,000,000.00** would be fair and reasonable compensation for personal injuries and disfigurement suffered by the 1<sup>st</sup> claimant.

With respect to the injuries presented by the 2<sup>nd</sup> Claimant, Innocent Naphiyo, Counsel cites the following cases for comparison:

- **Tumani Abdul v Nico General Insurance Company Limited & Patricia Kapenuka**, Personal Injury Cause No. 660 of 2020, in which the claimant sustained a sprained leg, difficulties in walking, serious cut wounds on the right knee and cut wound on the right foot. He was awarded MK3,800,000.00 damages for personal injuries on 24<sup>th</sup> May 2021.



- **Patricia Bannet v Alfred Lizimba and another**, Civil Cause No. 811 of 2011, in which the claimant was awarded the sum of MK2,000,000.00 as damages for soft tissue injuries. The award was made on 3<sup>rd</sup> November, 2012.
- **Harold Andsen v Rodrick Alumenda and Prime Insurance Company Limited**, Civil Cause No. 211 of 2015, in which the claimant sustained multiple cuts on his left foot and back, plus right knee. He was awarded the sum of MK2,000,000.00 as damages for soft tissue injuries. The award was made in 2015.
- **Nelson George v Anne Makuluni and Another** Personal Injury Cause Number 417 of 2012, in which the claimant suffered bruises and abrasions on both shoulders and cut wounds on the leg and was on 3<sup>rd</sup> August, 2013 awarded MK2,000,000.00 for pain and suffering and loss of amenities of life

Counsel submits that in light of the above authorities and the injuries sustained by the 2<sup>nd</sup> Claimant the sum of **MK4,000,000.00** for personal injuries and disfigurement would be fair and reasonable compensation.

With respect to the injuries presented by the 3<sup>rd</sup> Claimant, Smart Makina, Counsel cites the following cases:

- **Zuze Bonjesi v Prime Insurance Company Limited**, Civil cause no. 488 of 2011, in which the claimant was awarded MK7, 000,000.00 for damages for personal injuries. The plaintiff sustained severe open fracture of the left tibia and deep wound on the right leg. The award was made on 17<sup>th</sup> July, 2012.
- **Louise Chakwantha v Prime Insurance Company Limited**, Civil Cause No. 461 of 2011, in which the claimant was awarded MK6,150,000.00 for damages for personal injuries. The claimant sustained fracture of the left fibula, multiple soft tissue injuries and swollen leg. The award was made on 10<sup>th</sup> August 2012.
- **Nellie Manda v Prime Insurance Company Limited**, Civil Cause No. 619 of 2009, in which the claimant was awarded MK6,500,000.00 for damages for personal injuries. The claimant sustained fracture of the left upper arm, deep cut wound on the left limb. The award was made on 25<sup>th</sup> April, 2012.

- **Francis Matenje v John Tambula & Prime Insurance Company Limited**, Personal Injury Cause No. 714 of 2014, in which the claimant suffered chest pains, a deep cut wound on the occipital and a painful right shoulder. He was awarded MK3,500,000.00 under all heads on 9<sup>th</sup> April, 2020.

Counsel submits that in light of the above authorities and the injuries sustained by the 3<sup>rd</sup> Claimant the sum of **MK9,000,000.00** for personal injuries and disfigurement would be fair and reasonable compensation.

With respect to the injuries presented by the 4<sup>th</sup> Claimant, Grace Nkhata, Counsel cites the following cases for comparison:

- **Nelson Dinyero v Frazio Biziwelo & Nico General Insurance Company Limited**, Personal injury cause no. 192 of 1018, in which the claimant sustained a deep cut wound on the right knee exposing the patella, abrasion on the right thigh, scar formation and pain in the joints. The claimant was awarded MK6,500,000.00 for personal injuries. The award was made on 9<sup>th</sup> March, 2020.
- **Issah Idrissah v Daniel Ndawala & Prime Insurance Company Limited**, Personal Injury Cause Number 67 of 2017, in which the claimant suffered a dislocation of the left hip, a cut on the forehead and another cut on the eyelid and multiple bruises on the leg. He was awarded MK4,900,000.00 damages for Personal Injuries on 11<sup>th</sup> March, 2019.
- **Dalitso Shumba etal v Prime Insurance Company Limited**, Personal Injury Cause no. 904 of 2014, in which the claimant sustained a deep cut wound on the lower jaw which was stitched, a cut wound on the left thigh, lacerations on the right side of the stomach, bruises on the right leg, bruises on the right hand and swollen and painful neck. He was awarded MK3,000,000.00 for personal injuries on 19<sup>th</sup> May, 2016.

Counsel submits that in light of the above authorities and the injuries sustained by the 4<sup>th</sup> Claimant be compensated the sum of **MK9,000,000.00** would be fair and reasonable for personal injuries and disfigurement.

With respect to the injuries presented by the 5<sup>th</sup> Claimant, Matrinda Matonga, Counsel cites the following cases for comparison:

- **Robert Piason & Others v Prime Insurance Company Limited**, Personal Injury Cause No. 1160 of 2013, in which the claimant sustained a painful left side of the head, painful left shoulder and painful left leg. He was awarded MK3,000,000.00 damages for personal injuries on 6<sup>th</sup> September, 2014.

- **Issah Idrissah v Daniel Ndawala & Prime Insurance Company Limited**, Personal Injury Cause Number 67 of 2017, in which the claimant suffered a dislocation of the left hip, a cut on the forehead and another cut on the eyelid and multiple bruises on the leg. He was awarded MK4,900,000.00 damages for Personal Injuries on 11<sup>th</sup> March, 2019.
- **Muhamad Mpulula and Chisomo Thomson v B Ali and Prime Insurance Company**, personal injury cause number 351 of 2013, in which the 1<sup>st</sup> claimant sustained painful right ribs, multiple cut wounds on the chest ribs and upper right arm, bruises on the right arm and swollen thing. He was awarded the sum of MK3,000,000.00. The 2<sup>nd</sup> plaintiff sustained bruises on the scalp and deep cut wound on the left arm. He was awarded the sum of MK3,000,000.00 as well. Both these awards were made on 12<sup>th</sup> February, 2014.
- **Harold Andsen v Rodrick Alumenda and Prime Insurance Company Limited**, Civil Cause No. 211 of 2015, in which the claimant sustained multiple cuts on his left foot and back, plus right knee. He was awarded the sum of MK2,000,000.00 as damages for soft tissue injuries. The award was made in 2015.

Counsel submits that in light of the above authorities and the injuries sustained by the 5<sup>th</sup> Claimant the sum of **MK7,000,000.00** for personal injuries and disfigurement would be fair and reasonable compensation.

With respect to the injuries presented by the 6<sup>th</sup> Claimant, Lordson Lipenga, Counsel cites the following cases for comparison:

- **Kennedy Mphepo v Charter Insurance Company Limited**, Civil Cause No. 88 of 2012, Civil Cause No. 88 of 2012, in which the claimant was awarded the sum of MK2,000,000.00 as damages for general body pains and soft tissue injuries.
- **Patricia Bannet v Alfred Lizimba and another**, Civil Cause No. 811 of 2011, in which the claimant was awarded the sum of MK2,000,000.00 as damages for soft tissue injuries. The award was made on 3<sup>rd</sup> November, 2012.
- **Paul Matsimbe v Patricia Kapachira and another**, Civil Cause No. 285 of 2009, in which the claimant was awarded MK2,000,000.00 as damages for a wound on the left leg, cuts on the finger and lower lip. The award was made in 2010.

Counsel submits that in light of the above authorities and the injuries sustained by the 6<sup>th</sup> Claimant the sum of **MK3,000,000.00** would be fair and reasonable compensation for personal injuries and disfigurement.

With respect to the injuries presented by the 7<sup>th</sup> Claimant, Luckia Milosi, Counsel cites the following cases for comparison:

- **Issah Idrissah vs Daniel Ndawala & Prime Insurance Company Limited**, Personal Injury Cause Number 67 of 2017, in which the claimant suffered a dislocation of the left hip, a cut on the forehead and another cut on the eyelid and multiple bruises on the leg. He was awarded **MK4,900,000.00** damages for Personal Injuries on 11<sup>th</sup> March, 2019.
- **Harold Andsen v Rodrick Alumenda and Prime Insurance Company Limited**, Civil Cause No. 211 of 2015, in which the claimant sustained multiple cuts on his left foot and back, plus right knee. He was awarded the sum of **MK2,000,000.00** as damages for soft tissue injuries. The award was made in 2015.
- **Nelson George v Anne Makuluni and Another** Personal Injury Cause Number 417 of 2012, in which the claimant suffered bruises and abrasions on both shoulders and cut wounds on the leg and was on 3<sup>rd</sup> August, 2013 awarded **MK2,000,000.00** for pain and suffering and loss of amenities of life.

Counsel submits that in light of the above authorities and the injuries sustained by the 7<sup>th</sup> Claimant the sum of **MK6,000,000.00** would be fair and reasonable compensation for personal injuries and disfigurement.

With respect to the injuries presented by the 8<sup>th</sup> Claimant, Hannah Malwanda, Counsel cites the following cases for comparison:

- **Dalitso Shumba et al v Prime Insurance Company Limited**, Personal Injury Cause no. 904 of 2014, in which the claimant sustained a deep cut wound on the lower jaw which was stitched, a cut wound on the left thigh, lacerations on the right side of the stomach, bruises on the right leg, bruises on the right hand and swollen and painful neck. He was awarded **MK3,000,000.00** for personal injuries on 19<sup>th</sup> May, 2016.
- **Muhamad Mpulula and Chisomo Thomson v B Ali and Prime Insurance Company**, personal injury cause number 351 of 2013, in which the 1<sup>st</sup> claimant sustained painful right ribs, multiple cut wounds on the chest ribs and upper right arm, bruises on the right arm and swollen thing. He

was awarded the sum of MK3,000,000.00. The 2<sup>nd</sup> plaintiff sustained bruises on the scalp and deep cut wound on the left arm. He was awarded the sum of MK3,000,000.00 as well. Both these awards were made on 12<sup>th</sup> February, 2014.

- **Nelson George v Anne Makuluni and Another** Personal Injury Cause Number 417 of 2012, in which the claimant suffered bruises and abrasions on both shoulders and cut wounds on the leg and was on 3<sup>rd</sup> August, 2013 awarded MK2,000,000.00 for pain and suffering and loss of amenities of life

Counsel submits that in light of the above authorities and the injuries sustained by the Claimant we propose that the Claimant be compensated the sum of **MK7,000,000.00** for personal injuries and disfigurement. Courts have recourse to the change in value of the Kwacha, see: *Paulo v Mwakabanga* [1991] 14 MLR 409.

With respect to the injuries presented by the 9<sup>th</sup> Claimant, Vanessa Chapambana, Counsel cites the following case for comparison:

- **Blessings Kwalenga v Michael Chirambo and Reunion Insurance Company Limited**, Personal Injury Cause Number 432 of 2018 in which the claimant sustained a deep cut wound on the head, swollen left hand, painful chest and general body pains. As a result of the accident, he has deformed ugly scars on the head. The court awarded him MK3,000,000.00 as damages for injuries on 10<sup>th</sup> December 2018.
- **Dalitso Shumba and Timothy Meleka v Prime Insurance Company Limited**, Personal Injury Cause Number 904 of 2014 in which the 2<sup>nd</sup> claimant suffered some cut wounds surrounding the left eye, headache, dislocation of the left ribs, painful ribs, and bruises on the left leg. He was on 19<sup>th</sup> May, 2016 awarded MK3,000,000.00 damages for pain and suffering and loss of amenities of life.
- **Harold Andsen v Rodrick Alumenda and Prime Insurance Company Limited**, Civil Cause No. 211 of 2015, in which the claimant sustained multiple cuts on his left foot and back, plus right knee. He was awarded the sum of MK2,000,000.00 as damages for soft tissue injuries. The award was made in 2015.

Counsel submits that in light of the above authorities and the injuries sustained by the Claimant the sum of **MK4,500,000.00** would be fair and reasonable compensation for personal injuries and disfigurement.

With respect to the injuries presented by the 10<sup>th</sup> Claimant, Counsel cites the following cases for comparison:

- **Kenneth Zisiana v Pius Masina & Prime Insurance Company Limited**, Personal Injury Cause Number 445 of 2013, in which the claimant was awarded a sum of MK7,500,000.00 for pain and suffering and loss of amenities for a neck injury, cut on the head, swelling ribcage, trauma in the shoulder, lost front tooth and partial loss of senses of sight and hearing. The award was made on 14<sup>th</sup> June, 2018.
- **Clifford Pensulo v General Alliance Insurance Company Limited**, Civil Cause Number 847 of 2014, in which the court awarded the sum of MK4,000,000.00 as damages for pain and suffering, loss of amenities in respect of the plaintiff who suffered sprained ankle, multiple bruises over the body and face. She was admitted at the hospital for a day.
- **Blessings Kwalenga v Michael Chirambo and Reunion Insurance Company Limited**, Personal Injury Cause Number 432 of 2018 in which the claimant sustained a deep cut wound on the head, swollen left hand, painful chest and general body pains. As a result of the accident, he has deformed ugly scars on the head. The court awarded him MK3,000,000.00 as damages for injuries on 10<sup>th</sup> December 2018.
- **Dalitso Shumba and Timothy Meleka v Prime Insurance Company Limited**, Personal Injury Cause Number 904 of 2014 in which the 2<sup>nd</sup> claimant suffered some cut wounds surrounding the left eye, headache, dislocation of the left ribs, painful ribs, and bruises on the left leg. He was on 19<sup>th</sup> May, 2016 awarded MK3,000,000.00 damages for pain and suffering and loss of amenities of life.
- **Harold Andsen v Rodrick Alumenda and Prime Insurance Company Limited**, Civil Cause No. 211 of 2015, in which the claimant sustained multiple cuts on his left foot and back, plus right knee. He was awarded the sum of MK2,000,000.00 as damages for soft tissue injuries. The award was made in 2015.

Counsel submits that in light of the above authorities and the injuries sustained by the 10<sup>th</sup> Claimant the sum of **MK9,000,000.00** would be fair and reasonable compensation for personal injuries and disfigurement.

On the other hand, Counsel representing the defendants contends that the injuries suffered by the claimants were not serious. He points out that they were all treated as outpatients and were only given painkillers and no further treatment. He cites the following cases for comparison purposes:

- **Mabaso and others v Kumwenda and another Civil Cause No 242 of 2010 (unreported)** in which the 16<sup>th</sup> claimant sustained a cut on the head, painful neck and right shoulder. The Court on 31<sup>st</sup> October 2012 awarded the sum of MK600, 000.00 as damages for pain and suffering and loss of amenities of life.
- **Rodrick Dumbo v Prime Insurance Company Limited Personal Injury Cause No. 719 of 2011, (unreported)** in which the Court awarded the sum of MK850, 000.00 for soft tissue injuries on the right arm, leg and bruises on the same. The claimant was admitted to hospital for 2 day. The award was made in June 2016.

Counsel submits that the injuries as sustained by the claimants in the present matter are similar in severity to those that were sustained in the above cited case authorities. He submits that considering the devaluation of our currency the sum of K800, 000.00 as being adequate compensation for each of the claimants herein.

#### *DETERMINATION*

##### *General Damages*

The claimants suffered injuries when the vehicle they were travelling in got involved in an accident at Kambuzi village in Pendwe area along the Nkhotakota M5 road. They have been awarded damages for personal injuries which this court must now consider. The undertones from the claimants' evidence suggests that they suffered serious injuries. The defendants oppose the assertions. Going through the evidence, it is not in dispute that the claimants were first referred to Nkhotakota District Hospital where they were treated as outpatients. According to an Access Control Attendance Report exhibited as "GC2", the claimants returned to work on the 29<sup>th</sup> of August, 2019, 4 four days after the accident. In my considered opinion, the combination of having been treated as outpatients and returning to work four days after the accident does not seem consistent with serious injuries.

Other than that, the evidence tendered by the claimants on the extent of their injuries is quite feeble. They all fell short of producing and tendering Medical Reports from Nkhotakota District Hospital albeit having been their first port of call for medical attention. Jimmy Kulemeka and Luckia Mailosi stated in their evidence that they had other treatments from other hospitals like Mlambe Hospital, Gateway Clinic and Mwaiwathu, but failed to provide the Court with any proof of the treatments received at the respective hospitals. Nevertheless, in order to augment, their averments on the injuries sustained, each claimant admitted that they obtained and tendered Medical Reports from Queen Elizabeth Central Hospital one year after the accident had happened. Even though they were assisted during the evening, for some reason

I believe medical prudence would demand that their prognosis would have been recorded somehow. Their failure to insist on the same clearly has worked at their disadvantage.

Evidently, the injuries sustained by most of the claimants were soft tissue injuries ranging from cuts, bruises, abrasions, sprains to blunt chest trauma. There are assertions of mild head injuries which am compelled to believe were negligible considering that the medical personnel at Nkhotakota District Hospital did not even see the need to admit the claimants for observation. Another distinct assertion is that of a removal of a uterus due to the accident. Nonetheless, the same is not documented in any of the medical reports tendered. I daresay this is a serious condition that ought to have been documented somehow. In the circumstances, it is not safe to link the accident with the same Apart from that, there is an assertion of a cut wound on the head. However, it was put before the court that the claimant asserting the same had a surgery done on his head to remove a tumor, before the accident, and this was consistent with the findings at Mpingwe Private Clinic as the scar appeared to be a surgical scar.

Based on the foregoing, the injuries sustained by the claimants boil down to soft tissue injuries with nothing over and above the same. Be that as it may, I believe the claimants went through agonizing and excruciating pain from the said injuries and the subsequent treatment which they underwent as a direct result of the accident herein.

In my considered opinion, the awards as suggested by Counsel for the defendants K800,000.00 each is way too low and would not amount to a fair and reasonable compensation. On the other hand, the awards proposed for the claimants do not seem in tandem with soft tissue injuries even upon factoring in devaluation of the Kwacha. The proposed awards range from K4,500,000.00 to K9,000,000.00 against cited cases which mostly were K2,000,000.00 to K3,000,000.00 for soft tissue injuries. Thus, upon a thorough consideration of facts and circumstances of this case, and upon an exhaustive consideration of the submissions by both Counsel in the light of the relevant and applicable law regarding damages for personal injuries, I award the claimants **K3,000,000.00** each under the heads claimed and proved.

### *Special damages*

The Claimants submit that they expended the sums of MWK3,000.00 to obtain a Police Report and K30,000.00 each for obtaining a Medical Report. These being special damages, according to an established practice, they must be strictly proved. The court takes note that the Police Report which he tendered carries an endorsement that it was paid for and indicates that a receipt was issued. I therefore award **K3,000.00** for the Police Report. Unfortunately, the same cannot be said for the Medical Reports.



All of the claimants did not adduce evidence that the same were paid for as such the court makes no award for the medical reports.

*CONCLUSION*

In total, the claimants are awarded K30,003,000.00. They are further awarded costs for the assessment of damages proceedings to be taxed if not agreed by the parties.

DELIVERED IN CHAMBERS THIS 2<sup>ND</sup> DAY OF AUGUST 2021



WYSON CHAMBIMBA NKHATA

ASSISTANT REGISTRAR