



MALAWI JUDICIARY

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 709 OF 2015



BETWEEN

INSPECTOR GOODSON CHABWERA

1ST PLAINTIFF

ANDREW CHIDZALIMBO

2ND PLAINTIFF

and

PRIME INSURANCE COMPANY LIMITED

DEFENDANT

CORAM: N USIWA USIWA, DEPUTY REGISTRAR

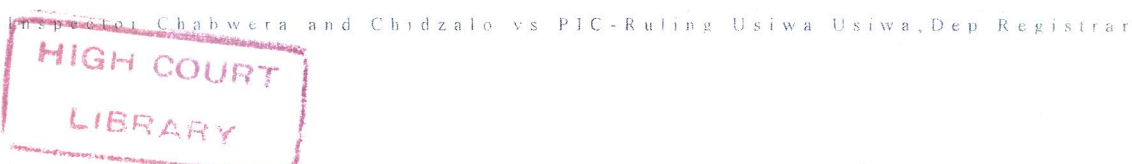
Mr G Gondwe of Counsel for the Plaintiff
ABSENT Counsel for the Defendant

Mr M Kakhobwe Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

Usiwa Usiwa, D/R

This is an order on assessment of damages. It follows a writ taken by the plaintiffs on 18 August 2015. It was never defended until 10 September the same year. The



assessment took place on 4 March 2016, also undefended. In all instances there had been due service proved. During the assessment I heard two witnesses whose statements forms the basis of the facts below.

FACTS

On 12th day of March 2015, The first Plaintiff was riding a motorcycle along the Robert Mugabe Highway from the Bangwe direction with a pillion passenger, Mr Andrew Chidzalimbo, the second Plaintiff. The Defendant's insured driver negligently drove, controlled and managed Motor-vehicle Registration No. NE 1266, Toyota Hiace Minibus that hit the motorcycle as he was trying to turn around on the road, making a U-turn.

Both plaintiffs sustained serious injuries as a result of the accident, ranging from spinal injury to severe soft tissue injuries as evidenced by healed scars and post traumatic pains.

ISSUES

The only issue to be determined is how much should be the damages payable.

THE LAW

When assessing damages the intention of the Court is to compensate the injured party as nearly as possible as money can do as was stated in the cases of **Namwiyo v Semu & Others [1993] 16 (1) MLR 369: Livingstone v Rawyards Coal Co. (1880) 5 A.C. 25.**

Further, money awarded as damages cannot renew a physical frame that has been battered and shattered but whatever is awarded has to be what can be regarded as reasonable compensation: **West v Shepherd [1946] A.C. 326.**

Again, courts must have regard to cases of comparable nature in order to award damages consistently but without losing sight of the injuries suffered by the particular plaintiff in any given case: **Chiule v Medi MSCA Civil Appeal No. 3633 of 2005 (Unreported)**.

The plaintiff is claiming damages for pain and suffering, loss of amenities of life and disfigurement.

The supreme court of Appeal in **Chidule v Medi MSCA Civil Appeal No. 12 of 1993** advises that in assessing damages for pain and suffering, the court must consider the pain which the particular plaintiff has suffered because of the circumstances of the particular plaintiff are bound to have a decisive effect in the assessment of damages. The Court must consider a number of factors when awarding damages for pain and suffering like the extent of injuries, period of hospitalization prospects of pain and suffering continuing, Treatment and permanent capacity.

Damages for disfigurement are awarded for some form of permanent scars or deformity left on the body of the victim and may even include the shortening of limb or loss of teeth, **Nachuma v Forty & Another Civil Cause No. 188 OF 1999**. Although this head of damages can be awarded separately it is normally awarded as part of pain and suffering and loss of amenities of life: **Tabord v David Whitehead & Sons (Malawi) Ltd [1995] 1 MLR 297**.

Loss of amenities of life means loss of faculties of pleasures of life resulting from one's injuries. Loss of amenities of life should not, however, be confused with loss of earning capacity, unless it is shown that he enjoyed doing his work. Loss of enjoyment of sex is also loss of amenities of life.

Courts must have regard to cases of comparable nature in order to award damages consistently but without losing sight of the injuries suffered by the particular plaintiff in any given case: **Kalinda v Attorney General [1992] 15 MLR 170, 172 and Chidule v Medi MSCA Civil Appeal No. 3633 of 2005 (Un reported)**.

In the case of ***Lucius v Mkandawire & Another, Civil Cause No. 2442 of 2010***, the plaintiff sustained fractures of right humerus and tibia, severe head injuries and was awarded MK 6 Million for the injuries he sustained and the award was made on 17th May, 2011. In ***Chibwana v Prime Insurance Company Ltd, Civil Cause No.117 of 2009***, the plaintiff who sustained a cut wound on the left elbow that was not healing properly and severe head injuries was awarded MK6, 500, 000.00 as damages for pain and suffering and loss of amenities of life. The award was made on 21st October, 2009.

In ***Kachaso v Kondowe & Others Civil Cause No. 320 of 2009***, the plaintiff sustained a big cut wound at the back of the head, closed fracture of right humerus, open fracture of right lower leg near ankle, closed fracture of pelvis. The Court awarded him MK5, 600, 000.00 as damages for pain and suffering and loss of amenities of life. The award was made on 16th October, 2009.

In ***Bonjesi v Prime Insurance Company Ltd, Civil Cause No. 488 of 2011***: The Plaintiff sustained severe open fracture of left tibia, massive wound exposing bone and tendons and deep wound on right leg. The court awarded him MK 7 Million as damages for pain and suffering and loss of amenities of life.

In ***Nellie Manda v Prime Insurance Company Ltd, Civil Cause No 2442 of 2010*** an award of MK6,500,000.00 was made on the 25th April 2012 for a fracture left upper arm, deep wound on the thigh, bruises on the leg and cut wound on the left limb.

In ***Raphael Lungu v Prime Insurance Company Ltd, Civil Cause No. 2024 of 2010***; an award of MK5,000,000.00 for a fractured distal humerus open fracture of radius and ulna. The award was made on the 17th May, 2012.

In the present circumstances I agree that the first plaintiff sustained personal injuries being spinal injury severe soft tissue injuries and they healed with scars and

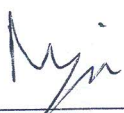
post traumatic pains and the second Plaintiff sustained personal injuries being soft tissue injuries and healed with scars.

These are very serious injuries and considering the above awards and the period that has lapsed since the above awards were made, an award of **MK3,000,000.00 (three Million Kwacha) for the first Plaintiff** and the sum of **MK2,000,000.00 (two Million Kwacha)** for the second Plaintiff, would be reasonable and adequate as damages for pain and suffering, disfigurement and loss of amenities of life.

The defendant is therefore ordered to pay the first Plaintiff the sum of **MK3,000,000.00 (three Million Kwacha)** and the second Plaintiff be compensated with the sum of **MK2,000,000.00 (two Million Kwacha)** as lump sum damages for all the claims made by the two Plaintiffs I observed and heard during the assessment.

The defendants shall also be condemned with costs.

MADE in Chambers this **18th** day of **May, 2016**.



Nyakwawa Usiwa Usiwa
DEPUTY REGISTRAR