



MALAWI JUDICIARY

IN THE HIGH COURT OF MALAWI
SITTING AT BLANTYRE PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 719 OF 2011



BETWEEN

RODRICK DUMBO **PLAINTIFF**

and

KENNEDY MDALA **1ST DEFENDANT**

PRIME INSURANCE CO LTD **2ND DEFENDANT**

CORAM : **HIS HON. N. USIWA USIWA..... DEPUTY REGISTRAR**
Mr. Chayekha of Counsel for the Plaintiff/Applicant
Miss Khaki .. of Counsel for the Defendant/Respondent
Mrs D MteghaOfficial Interpreter

ORDER ON ASSESSMENT OF DAMAGES

This is an order on assessment of damages. It follows the successful striking out of a defence to an action on negligence in an accident.

On 26th March 2011 the Plaintiff was cycling along the Blantyre /Zalewa road towards Blantyre. When he reached TEEM Bus Company he was hit by motor vehicle registration number P324 PVU which was driven by the first Defendant and insured by the second Defendant.

As a result of being so hit he sustained the following injuries: Soft tissue injuries to the right arm and leg and Bruises. He was also admitted in hospital for a day. The rate of incapacity was put at 15%.

Today when he appeared before me he adopted a statement which claims that due to the injuries he suffered pain and he was not able to use my arm easily and also walking is difficult. Nowadays he says he has healed generally.

THE LAW

The law on assessment of damages in personal injury matters is settled. When assessment damages the intention of the Court is to compensate the injured party



as nearly as possible as money can do. The principal of compensation which has been established in a number of cases is known as the principle of *restitutio in integrum*. To this end Lord Blackburn in the case of **Livingstone vs. Raw yards Coal Company (1880) 5 AC at 49** stated as follows:

'where any injury is to be compensated by damages, should as nearly as possible get at that sum of money which will put the party who has been injured in the same position he would have been in if he had not sustained the injury for which he is now claiming compensation'

However it is acknowledged that money cannot renew a physical frame that has been battered and shattered. As such, all judges and courts can do is to award a sum of money which must be regarded as giving reasonable compensation. This acknowledgement takes into account another fact that it is not possible for money to give a perfect compensation in money terms for physical injury and bodily injury, pain and suffering and loss of amenities as the damages cannot be calculated in terms of money: **Zaina Chipala vs Dwangwa Sugar Corporation Civil Cause Number 435 of 1998.**

Although it is impossible to perfectly compensate and renew a physical frame that has been battered, the court uses the reasonableness approach. So whatever is awarded has to be reasonable compensation: **West vs Shepherd(1946) AC 326.**

In doing so the court must have regard to cases of comparable nature without losing sight of the injuries and pain suffered by the particular plaintiff in any given case: **Chidule vs Medi MSCA Civil Appeal Number 3633 of 2005.**

Further to having regard to comparable cases the court takes into account the value of money over the years. The court considers such factors as devaluation: **Tiyamike Mazambani vs. Prime Insurance Company Limited Civil Cause Number 1029 of 2009.**

To this effect the Plaintiffs cited the following cases. In the case of **Felix James Kamwana vs. The Attorney General Civil Cause Number 636 of 2009** the plaintiff who suffered bruises on the back of the head, neck near left eye and right leg was awarded MK600,000.00. This was in November 2009

In the case of **Mac Tony Naitha vs. Citizen Insurance Company Limited Civil Cause Number 2041 of 2010** MK800,000.00 was awarded to the plaintiff for suffering loss of consciousness, swollen ankle, painful back and legs and dizziness. This was in August 2011.

In the case of **Kenneth Katunga vs Arthur Chipungu and Citizen Insurance Company Limited Civil Cause Number 1922 of 2010** MK800,000.00 was awarded to the plaintiff who suffered soft tissue injuries, bruises and abrasions leaving a scar . This was in August 2011.

In **Tione Mnenula and Evance Kamowa vs United General Insurance Company Limited Civil Cause Number 537 of 2010** MK 900,000.00 was awarded to the 2nd Plaintiff who suffered head injuries and cuts on the ribs. This was in November 2010.

Finally Counsel for the Plaintiff prayed for a sum of **MK900, 000.00**. But the Miss Khaki for the Defendant proposed **MK400,000.00**. She relied mainly on two cases. In **Hopeson Magasa and 10 others v AGand NICO (PI No. 874 of 2012** and **Mayeso Magalasi v UGI, PI No. 701 of 2012** where K350,000.00 and K400,000.00 were awarded respectively in 2014 and 2013 respectively.

I From the above authorities and considering the depreciation of the currency and how the plaintiff got injured I think **K 850,000.00** would be reasonable and adequate compensation to the Plaintiff. I so order.

The Defendants shall also be condemned with costs.

MADE in Chambers this **16th** day of **June, 2016**.



Nyakwawa Usiwa Usiwa
DEPUTY REGISTRAR