



MALAWI JUCICIARY

IN THE HIGH COURTOF MALAWI
PRINCIPAL REGISTRY



PERSONAL INJURY CAUSE NO. 626 OF 2014

BETWEEN

FRANCIS MADEYA

PLAINTIFF

and

ABOObAKAR SEEDAT

1ST DEFENDAN

REAL INSURANCE COMPANY LIMITED

2ND DEFENDANT

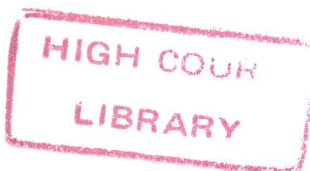
HALLS CARS LIMITED

3RD DEFENDANT

CORAM: N USIWA USIWA, DEPUTY REGISTRAR
Mr Khondiwa of Counsel for the Plaintiff
ABSENT Counsel for the Defendant
Mr M Kakhobwe **Official Interpreter**

ORDER ON ASSESSMENT OF DAMAGESP

This is an Order on Assessment of Damages. On 22nd October 2015 the Court entered judgment against the third defendant for damages for pain and suffering and damages for loss of amenities.



The said Judgment was entered following the third defendant's failure to give notice of intention to defend and /or defence to the plaintiff's claim.

The matter now comes for assessment of damages.

ISSUES

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

THE LAW AND ANALYSIS

The purpose of an award of damages is to as nearly as possible arrive at the sum of money that will put the party who has been injured in the same position as he would be in if he had not suffered the injury: ***Livingstone v Rawyards Coal Company(1880) 5APP Cas 25.***

Since it is not easy to quantify pain and suffering and loss of amenities of life, the court will strive to compare cases of similar nature to arrive at a fair compensation bearing in mind that the precedents are not binding and that each case is to be treated differently: ***Tembo v Industrial Development Group (1) (1993) 16(2) MLR 865 at 878.***

The plaintiff herein suffered a fracture of the right thigh. Pieces of glass entered into his eyes and he also suffered cuts in both hands. He was admitted in hospital for 23 days with a permanent incapacity of 35%. His leg was shortened by 2cm and he walks with a limp.

He cannot walk long distances. He cannot lift more than 5 kilos of weight. The loss of amenities of is therefore quite enormous.

In the case of ***Masautso Salima vs Attorney General High Court Principal Registry Civil Cause Number 1956 of 2007(unreported)***, the plaintiff suffered an open fracture of right femur, closed fracture of left ulna and laceration

wound on the right elbow which was sutured. On 14th November 2007, the court awarded him the sum of mk3, 000,000.00 for his injuries.

In the case of **Lucky Kaduya(a minor suing through his father and next friend Frank Kaduya) Prime Insurance Company Limited High Court Zomba District Registry Civil cause Number 85 of 2012(unreported)**, the plaintiff suffered fracture of the right femur, multiple lacerations on the scalp which left permanent scars , he felt pain in the right leg which was shortened by two centimeters and his degree of incapacity was assessed at 25% having been hospitalized from 3rd October 2011 to 28th October 2011. On 29th August 2012, the court awarded him the sum of MK3, 500,000.00 as damages for pain and suffering and loss of amenities of life as well as disfigurement and loss of earnings capacity.

And in the case of **Zuze Bonjesi vs Prime Insurance company Limited High Court Principal Registry Civil Cause Number 488 of 2011(unreported)**, the plaintiff suffered severe open fracture of left tibia, massive wound exposing the bone and tendons and deep wound on the right leg. He was in hospital for about 3 months and his permanent incapacity was rated 45% on 17th July 2012, the court awarded him the sum of MK7, 000,000.00 as compensation.

In the present case, the Plaintiff who I saw walking across the chamber with a shortened leg on 3 February 2016 also testified that he used to work until this accident happened. So I award him K 5,000,000.00 to be paid by the Defendants within 14 days of this award.

The Defendants shall also be condemned with costs.

MADE in Chambers this 7th day of **June, 2016.**



Nyakwawa Usiwa Usiwa
DEPUTY REGISTRAR