



MALAWI JUDICIARY



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NUMBER 482 OF 2014

BETWEEN

TRIFONIA KAISI PLAINTIFF

and

VERAMO MUKOMERA 1ST DEFENDANT
PRIME INSURANCE COMPANY LIMITED 2ND DEFENDANT

CORAM: N USIWA USIWA, DEPUTY REGISTRAR

Mr Malijani of Counsel for Plaintiff

Mr T Lemucha of Counsel for the Defendant

Mr M Kakhobwe..... Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

This is an order on an assessment of damages. It follows the judgment of Honourable Justice Chirwa delivered on 18th May, 2015.

FACTS

The Plaintiff is an adult female and brought this action in her own respective right.

The 1st and 2nd Defendants were at all material times the driver and insurer respectively of motor vehicle Nissan Patrol station wagon Reg. No. MG433AF.

On 10th February, 2014 the Plaintiff was lawfully walking near Fegs Junction along Zomba robots road heading towards Zomba zero when she was hit by the said insured motor vehicle which was at the material time driven by the 1st Defendant.



As a result of the accident the Plaintiff sustained injuries. She suffered multiple cuts on the chest, legs and on both elbows, she also had a bruised face. She has permanent disfigurement scars and experiences residual shoulder pain.

ISSUES

The only issue to be determined herein is the appropriate quantum of damages due to the Plaintiff.

THE LAW

A person who has suffered damage due to the negligence of another is entitled to recover damages. The aim of awarding damages is to compensate the injured party as nearly as possible as money can do: **Livingstone vs. Rawyards Coal Company (1880) 5 A.C. 25.**

In the above case the court said at p49:

"Where any injury is to be compensated by damages, in setting a sum of money to be given for damages, you 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."

In Viscount Dunedin in **Admiralty Commissioner vs S.S. Susquelianna [1926] AC 655 at 661** it was stated that "...the common law says that the damages due to either for breach of contract or tort are damages which, so far as money can compensate will give the injured party reparation for the wrong act."

In **Zaina Chipala vs. Dwangwa Sugar Corporation Civil Cause No. 435 of 1998**, the late Honorable Justice ChimasulaPhiri said:-

"It is important to bear in mind that damages in personal injuries cannot give a perfect compensation in money terms, for physical injury and bodily injury, pain and suffering and loss of amenities cannot be calculated in terms of money."

In **West vs. Shepherd [1964] A.C. 326 at p346**, Lord Morris said:-

"Money cannot renew a physical frame that has been battered and shattered. All judges and courts do is award a sum which must be regarded as giving reasonable compensation."

It is not possible to quantify damages for pain, suffering and loss of amenities with mathematical precision. As a result, courts use decided cases of comparable nature to arrive at awards. That ensures some degree of consistency and uniformity in cases of a broadly similar nature: **Wright vs. British Railways Board [1983] 2 A.C. 773, and Kalinda vs. Attorney General [1992] 15 M.L.R. 170 at p172.**

In **H.Q. Chidule vs. MEDI M.S.C.A. Civil Appeal No 12 of 1993**, the court said:

"In assessing damages for pain and suffering, the court must consider the pain which the particular plaintiff has suffered because the circumstances of the particular plaintiff are bound to have a decisive effect in the assessment of damages."

In the case of **City of Blantyre vs. Sagawa [1993] 16(1) MLR 67**, the Supreme Court said:-

"Appreciated, as a matter of practice, the courts have always proceeded to treat pain and suffering and loss of amenities as one head. This, in our view, is rather unfortunate, because the three are distinct heads of damage. Although these are lumped together under compendious pain and suffering and loss of amenities, they have different elements. As the author of Kemp and Kemp, Volume II, observes at paragraph 1007:-

"'Pain' is, it is suggested, used to describe the physical pain caused by or consequent upon the injury, while 'suffering' relates to the mental element of anxiety, fear, embarrassment and the like."

And, as Lord Scarman said in **Lim Poh Chao v Camden & Islington Area Health Authority [1980] AC 174 at 188**, an award of damages under this head depends upon the plaintiff's personal awareness of pain, his capacity for suffering.

On the other hand, loss of amenities embraces all that which reduces the plaintiff's enjoyment of life, his deprivation of an amenity whether he is aware of it or not. In some cases, it is more pronounced and underlined for example, where a footballer or a dancer loses his leg. If another person sustained similar injury as the two, but did not particularly enjoy sport with his leg, he probably could get less damages. In short, therefore, although it is the practice to lump the three heads together in awarding damages for personal injuries, the court does look at each one of them before coming to a final figure. There is no arithmetical formula to an award for personal injury and one does not expect the awards to be the same. The circumstances differ and one should, therefore, expect reasonable differences in awards for similar injuries."

In *Patricia Bannetvs Alfred Lizimba and another, civil cause number 811 of 2011*, the Plaintiff was awarded the sum of **MK2,000,000.00** for soft tissue injuries. The award was made on 3rd September, 2012.

In *Kennedy Mphopo v Charter Insurance Company Limited Civil Cause No. 88 of 2012*, the Plaintiff was awarded **MK2,000,000.00** for general body pains.

In *Foster Muleso and Kaulumu Chinseche v Rashy Motors, Civil Cause No. 1626*, the 1st Plaintiff was awarded MK1,000, 000.00 for muscular injuries, soft tissues injuries and pain on the chest. The award was made on 7th August, 2012.

Considering the current value of the kwacha, I think that MK1,800,000.00 would adequately compensate the Plaintiff for the injuries he sustained. Therefore I order the Defendants to pay Trifonia Kaisi a lump sum of **K1,800,000.00**, with costs; within 14 days of this Order.

Made in Chambers this 9th day of June 2016



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Deputy Registrar