



JUDICIARY

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 77 OF 2014

BETWEEN

CHARLES MAUZU a minor (through next of kin JANE MAUZU) PLAINTIFF

AND

WILD BATSON 1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED 2ND DEFENDANT

CORAM HER HONOUR MRS E. BODOLE

Ulaya, of Counsel for the Plaintiff

Ngwata, of Counsel for the Defendant

Mrs. Ngoma, Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

Introduction

The plaintiff is a minor and commenced this action against the defendants seeking compensation for personal injuries. Judgment on liability for personal injuries was entered against the defendants. The matter has now come for assessment of



damages. I must thank Counsel for the plaintiff and defendant for the authorities on assessment of damages which were useful to this court.

The Evidence

On 17th May, 2015 the plaintiff was hit by motor vehicle registration number MJ 5331 Toyota Hiace minibus driven by the 1st defendant at Mulanje Canning Factory. He was then aged 7 years. As a result of the accident the plaintiff sustained injuries and losses. The medical report which was marked Exhibit P.2 and was issued on 12th September, 2014 shows that the plaintiff sustained fractures of the tibia/fibula on both legs, multiple wounds on the right shoulder, multiple wounds on the face, and deep cut wounds on the left and right legs. He was admitted in hospital for 9 days. He was treated as an out-patient from 27th May, 2014 to 20th June, 2016. The fractures and wounds healed but he has a permanent deformity of the left leg and he feels severe persistent pain on the site. He is unable to walk long distances.

The plaintiff's next of kin, Jane Mauzu, testified that the plaintiff still feels pain in the left leg and is unable to walk long distances. As a result of the pain he is unable to go to school most times. The left leg is bent and it was not like that before the accident. This court noted that he walks with the left leg bent sideways.

The plaintiff is claiming damages for pain and suffering, loss of amenities of life and disfigurement. He is claiming a sum of K3,000 and K10,500 as special damages for obtaining the medical and Police reports respectively.

General Law on Damages

A person who suffers bodily injuries due to the negligence of another is entitled to the remedy of damages. Such damages are recoverable for both pecuniary and non-pecuniary losses. The principle underlying the award of the damages is to compensate the injured party as nearly as possible as money can do it – **Elida Bello v Prime Insurance Co. Ltd** Civil Cause No. 177 of 2012 (unreported).

The damages cannot be quantified in monetary terms by use of a mathematical formula but by use of experience and guidance affordable by awards made in decided cases of a broadly similar nature – **Wright v British Railway Board [1983] 2 AC 773**. The court, however, considers the time the awards were made and

currency devaluation – **Kuntenga and Another v Attorney General** Civil Cause No. 202 of 2002.

The non-pecuniary head of damages include pain and suffering, loss of amenities of life and loss of expectation of life. These are assessed by the court. Pecuniary loss is also called special damages and must be pleaded and proved. – In **Renzo Benetollo v Attorney General and National Insurance Co. Ltd** Civil Cause No. 279 of 1993 (HC) the court held that where a party has not proved special damages reasonable compensation in the circumstances can be awarded. In **Phiri v Daudi** [1992] 15 MLR 404 (HC) the court did not allow the claim for loss of profits as these were special damages that had to be specifically pleaded and strictly proved. The court awarded damages on the basis that during the period the vehicle was with the defendant, the plaintiff lost profit and use of the vehicle.

Pain and Suffering

Pain and suffering is attributable to the plaintiff's injury or to any necessary surgical operations and mental anguish such as that suffered by a person who knows that his expectation of life has been reduced or who being severely incapacitated, realizes the condition to which he has been reduced – **Sakonda v S.R. Nicholas** Civil Appeal Cause No. 67 of 2013. It is clear from the evidence that the plaintiff suffered great pain. He sustained fractures of the tibia/fibula on both legs, multiple wounds on the right shoulder, multiple wounds on the face, and deep cut wounds on the left and right legs. He was admitted in hospital for 9 days. He was treated as an out-patient for close to a month. The fractures and wounds healed but he has a permanent deformity of the left leg and he feels severe persistent pain on the deformed part. This means that he is still suffering from pain.

Loss of Amenities of Life

Loss of amenities is attributable to deprivation of the plaintiff's capacity to engage in some sport or past-time which he formerly enjoyed – **Kanyoni v Attorney General** [1990] 13 MLR 169. It means that he is incapable of performing some activities he used to do. It is clear from the evidence that the plaintiff is unable to enjoy life as he used to. He is unable to walk long distances as he still feels pain in the left leg and is unable to walk long distances. As a result of the pain he is unable to go to school most times. This is a very unfortunate circumstance as the plaintiff

is still very young. His absence from school will affect his grades and future. He has a bleak academic future. It is common knowledge that school is the gateway for a better tomorrow.

Deformity/Disfigurement

Disability is a limitation either physically or mentally for someone to do what any other person can do without reasonable accommodation. In **Ching'amba v Deerless Logistics Ltd** Civil Cause No. 2888 of 2007 the court stated that disfigurement is not a matter to be taken lightly and casually. It is something that one has to live with permanently. The evidence adduced in this court shows that the plaintiff's left leg is bent and it was not like that before the accident. This court noted that he walks with the left leg bent sideways. He has a permanent deformity on this leg. This means that he is deformed for life.

Award of Damages

In **Malisewo v Charter Insurance Company Ltd** Civil Cause No. 915 of 2012 the plaintiff suffered a wound on the head and had hair scrapped off. He also suffered a fracture of the left tibia and fibula on the left leg, soft tissue injuries with abrasions and bruises, and was hospitalized for 21 days. He was awarded a sum of K2,100,000.00 for pain and suffering and loss of amenities of life and K600,000.00 for disfigurement. The award was made on 29th October 2012. The injuries suffered by the plaintiff in the present case are more or less similar to the ones suffered by the plaintiff in the case **Malisewo v Charter Insurance Company Ltd** (supra) case. I, therefore, award the plaintiff a sum of K1,500,000.00 as damages for pain and suffering, K1,000,000.00 as loss of amenities of life, and K800,000.00 as damages for disfigurement.

Special damages are supposed to be pleaded and proved. There is no evidence to show that the plaintiff expended the amount he is claiming for obtaining the medical report from Mulanje District Hospital. This is a free hospital so if some money had been spent, that should have been shown to the court. However, this court is mindful of the fact that the plaintiff had to travel to the hospital from home in order to obtain the medical report. Reasonable compensation for that is fair and

just. I, therefore, award him a sum of K2,500.00 as costs for obtaining the medical report.

I also award the plaintiff a sum of K3,000.00 as costs for obtaining the Police report, and also award him costs of the action.

Conclusion

In conclusion, the plaintiff is hereby awarded a total sum of K3,305,500.00 and costs of the action.

Pronounced in chambers this 16th day of June, 2017 at Blantyre.



EDNA BODOLE (MRS)

ASSISTANT REGISTRAR