



JUDICIARY

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 368 OF 2016

BETWEEN

DORCAS KITALO MSISHA PLAINTIFF

AND

NATIONAL BUS COMPANY LIMITED DEFENDANT

CORAM HER HONOUR MRS E. BODOLE, ASSISTANT REGISTRAR

Mwakhwawa, of Counsel for the Plaintiff

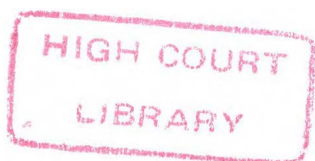
Counsel for the Defendant, absent

Mrs. Ngoma, Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

Introduction

The plaintiff commenced this action against the defendant seeking compensation for personal injuries. Judgment on liability for personal injuries was entered against the defendant. The matter has now come for assessment of damages. I must thank



Counsel for the plaintiff for the authorities on assessment of damages which were useful to this court.

The Evidence

During the assessment proceedings only one witness testified and that was the plaintiff herself.

The facts of this case are that the plaintiff is aged 33 years and is married with two children. She works as a teacher at Chigwaja Primary School in Blantyre. On 9th August, 2014 she was a passenger in motor vehicle registration number BQ 4802 Scania Bus belonging to the defendant. The bus was coming from Karonga to Blantyre. Upon arrival at Chabwera village along Liwonde-Machinga road, the bus overturned.

As a result of the accident the plaintiff suffered serious personal injuries. A police report to that effect was tendered in evidence and marked exhibit P2. She was taken to Liwonde District Hospital. Due to lack of treatment she was later taken to Queen Elizabeth Central Hospital. A medical report showing the injuries she suffered was tendered in evidence and marked exhibit P.3. It shows that she sustained a fracture of a cuboid bone on the left wrist. A POP was applied on the wrist and she was with the POP for 6 weeks. She was treated as an out-patient from 8th August, 2014 to 20th September, 2014. As a result of the injuries she suffered, she cannot lift heavy objects at work and at home. She also has reduced range of motion of the left hand.

The plaintiff is claiming damages for pain and suffering, loss of amenities of life and disfigurement. He is claiming a sum of K3,000.00 and K10,000.00 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. – **Renzo Benetollo v Attorney General and National Insurance Co. Ltd** Civil Cause No. 279 of 1993 (HC).

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 sustained a fracture of a cuboid bone on the left wrist and was in POP for 6 weeks. She was treated as an out-patient from 8th August, 2012 to 20th September 2014. This is a clear indication that the plaintiff went through a lot of pain and suffering.

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 she formerly enjoyed – **Kanyoni v Attorney General** [1990] 13 MLR 169. It means that she is incapable of performing some activities she used to do. It is clear from the evidence that the plaintiff is unable to enjoy life as she used to. She has reduced range of motion of the left hand and she is unable to lift heavy items at school and at home. The plaintiff is a married woman and a mother. On top of that she is a teacher. The limited use of the left hand has

far greater implications on her ability to perform household chores and work as a teacher.

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 has limited range of motion of the left hand. The lack of normal range of motion shows that she is disfigured.

Award of Damages

In **Phiri v Reunion Insurance Company Limited** Personal Injury Cause No. 736 of 2014 the plaintiff sustained a fracture of his arm and the wrist. He was admitted for one day and the arm was cast in a POP for over one and half months. He was awarded a sum of K1,000,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement on 7th August, 2015. In view of the decided case herein cited, and in view that the award was made some time back, I award the plaintiff a sum of K1,500,000 as damages for pain and suffering, loss of amenities of life and disfigurement.

Special Damages

Special damages are supposed to be pleaded and proved. In **Renzo Benetollo v Attorney General and National Insurance Co. Ltd** (supra) 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.

In the present case, there is no evidence to show that the plaintiff expended the amount he is claiming for obtaining the medical report from Queen Elizabeth

Central 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 K1,505,000.00 and costs of the action.

Pronounced in chambers this 26th day of June, 2017 at Blantyre.

EDNA BODOLE (MRS)

ASSISTANT REGISTRAR