



IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
PERSONAL INJURY NUMBER 855 OF 2014

BETWEEN  
CHIFUNDO LAJABU (THROUGH ALICE LAJABU HIS MOTHER).....PLAINTIFF  
AND  
EKLEZIO KASITOMU.....FIRST DEFENDANT  
CHARTER INSURANCE COMPANY.....SECOND DEFENDANT

RULING ON ASSESMENT OF DAMAGES

CORAM:

HONOURABLE MZONDE MVULA : ASSISTANT REGISTRAR  
PRESIDING MR. KAGUNDU : OF COUNSEL FOR PLAINTIFF  
RESPONDENTS : ABSENT (WITHOUT REASON)  
MRS J. CHILIMAMPUNGA : COURT CLERK & OFFICIAL INTEPRETER

ORDER

1.0 INTRODUCTION

The plaintiff took out a writ of summons on 29<sup>th</sup> August 2014 claiming negligence which occurred on the heels of a motor vehicle accident that occurred on or about 2nd July 2014. By Judgment of the Court, the applicant succeeded in damages for pain and suffering and loss of amenities of life, which damages to be assessed by the registrar. Costs for the action to be borne by the defend ant. Matter was set down for assessment on 1<sup>st</sup> June 2017 at 11.00am, on which date both defendants were absent. On proof of due service, we proceed to deliver the order as follows:

2.0 THE LAW

In civil cases the burden of proving negligence lies on the one alleging the same, mostly the plaintiff. The burden of proof lies upon the party who substantially asserts the affirmation of the issue See **Robins v. National Trust Company [1927] AC 515**. In Malawian jurisprudence the standard of proof in civil cases is on the balance of probability. See **Msachi v. Attorney General [1991] 14 MLR 287**.

The issue for determination is how much the plaintiff should be paid under each head of the claim herein.

## 2.1 Damages for pain and suffering

The applicant submits that the court should look at the figure that will put the plaintiff in a position he would have been had the tort not been committed. See **Livingston v. Raywards Coal Co. (1880) 5 A.C 25**. The Court said on p.39:

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

## 2.2 The injuries

During evidence given *viva voce*, the applicant who was 16 years old at the time of the accident, submitted that he had suffered an open fracture on the first metatarsal, as well as multiple bruises on the right leg. This was provided on exhibit CL I (a) the medical report. The same provided level of incapacity at 20%. Citing the most recent case in this submission, the applicant draws reference to the case of **Elida Bello v. Prime Insurance Company Limited civil cause 177 of 2012**. The plaintiff in that case sustained a deep cut wound on the left leg and another on the head. She was awarded the sum of K2, 500,000.00 on 14th January 2013. In a related development, in **Elizabeth Mmadi and Magret Mmadi v. Reunion Insurance Company personal Injury cause 385 of 2011**, the first applicant suffered cut wounds and injuries. She was awarded K550, 000.00 for pain and suffering. This was made on 3rd May 2012. In **Wonderson Mbeta v. Steve Adam and Prime Insurance Company Limited civil cause 178 of 2011**, the plaintiff suffered a deep cut wound on the left side of the head, bruises on the right foot and ear, and cut in the right eye. He was awarded K 2,000,000.00 as damages for pain suffering and loss of amenities of life. This was on 20th January 2013.

In the instant case, it was observed that the plaintiff sustained a deep cut wound under his foot that required 6 stitches to suture, bruises on his leg and a major sprain on top of the right foot. This necessitated the applicant to wear a protective boot for the bones to come back together. The plaintiff is a form 3 student at Soche Excel who said he is feeling better despite suffering numbness if he stays idle for long periods. Considering that the plaintiff is aged 19 and with chance to heal somehow as he matures as he is still developing, the injury is to the leg which is almost fully recovered as applicant was able to climb the steps and give evidence at Court as well as walk to and from school, I feel the sum of k1, 400, 000 would adequately compensate him with 20% incapacitation for damages for

pain suffering and loss of amenities of life. The decided cases which the applicant submitted for us to consider to mete out a higher award were considered. However looking at the injuries sustained, against the decided cases to persuade me to award higher quantum, to me, did not justify the said amounts in this case. I have distinguished the cases and injuries sustained, and I feel my judicial discretion which I must exercise judiciously, against other decided cases I looked up to guide me, led me to the conclusion arrived at in the present set up.

### **2.3 Special damages**

The plaintiff submitted under oath in exhibit to have spent K10, 500 for the medical report and K3, 000 for the police report. I shall award the same to the tune of K13, 500.00

### **3.0 Conclusion**

Having heard the case for the plaintiff which is uncontroverted, I shall award the plaintiff the sum of K 1,400,000 as damages for pain suffering and loss of amenities of life, the sum of K10, 500 as special damages for cost of medical report, the sum of K 3,000 as cost of police report bringing the total to **K1, 413,500.00**

### **3.1 Costs**

Costs are in the discretion of the court. In most cases, costs follow the event. In this case therefore, I will award costs to the plaintiff, who succeeded in his claim against the defendants.

### **3.2 Right of Appeal**

Any party dissatisfied with the assessment ruling can appeal to the Judge in Chambers within 30 days of this order.

Made in Court this 20<sup>th</sup> June 2017

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Mzonde Mvula  
**ASSISTANT REGISTRAR.**