



The Judiciary



IN THE HIGH COURT OF MALAWI

MZUZU REGISTRY

CIVIL CAUSE NUMBER 188 OF 2015

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BETWEEN

DYSON MOYO.....CLAIMANT

AND

DRIVER CONSTABLE SAVE MKANDAWIRE.....1<sup>ST</sup> DEFENDANT

REUNION INSURANCE COMPANY LIMITED..... 2<sup>ND</sup> DEFENDANT

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CORAM: A.J. BANDA, ASSISTANT REGISTRAR

Mr. C. Chithope Mwale and Mr. Duke, of counsel, for the Claimant

Ms. Khumbizeni Wawanya, For the Defendants,

Mr. A. Kanyinji, Clerk/Official Interpreter

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Banda, AR

ASSESSMENT ORDER

1. Background

The claimant in in this proceeding obtained judgment on liability in his favour against the defendants who are driver of a motor vehicle that hit the claimant's motor vehicle and insurer of the wrongful vehicle respectively. He had claimed damages for loss of use of a motor vehicle, damages for inconvenience and a refund of cost of repairs and a police report. The honourable judge Justice D.T.K. Madise in his judgement dated 5<sup>th</sup> April, 2017 granted all reliefs the claimant asked for and directed that assessment of damages hearing be before the registrar. This is therefore, the order after assessment of damages hearing.

## **2. Evidence**

The only witness in the assessment hearing was the claimant, Mr. Dyson Moyo. He told the court in his statement that it costed him K2, 185,540.00 to repair his vehicle. He exhibited the quotation that he got from Mzuzu Panel Beaters which was marked 'DM2'. He also exhibited the police report which had a cost of K3,000.00 as paid under General receipt number 1457817, marked 'DM1'. He went on to say that due to the vehicle being hit, he lost the use of the vehicle and was walking on foot, and he could not carry his family and friends and also goods for domestic and commercial use. He said that he also abandoned his routine in order to serve the defendant's lawyers with court documents in Blantyre, and also to make himself available at the court for trial, but also to arrange the towing of his vehicle to the garage and meet associated costs. Mr. Dyson Moyo said he also had to arrange for the driver of his vehicle, Mr. Joseph Tembo to be treated at the hospital and visiting the police several times to obtain the police report.

In cross examination, Mr. Moyo told the court that the cost of repairing the vehicle was claimed as it costed him, just as the repairer had quoted. He said it was fine as such even though he had used the vehicle for 3 years, and even though the cost of repairs was as good as what the car had costed him on purchase. In re-examination he said spare parts were expensive than a whole car, in explaining the cost of repairs being close to the cost of purchase.

## **3. Issue**

The only issue for the court to resolve is the quantum of damages payable to the claimant, in the circumstances, under the heads of; loss of use of a motor vehicle, damages for inconvenience, and a refund of cost of repairs and a police report.

## **4. Determination**

Damages are the remedy for a victim of a wrong and the wrongful party has to compensate the victim, in as far as money can, to be put back in the same place that the victim would have been if not for the wrong- **Elida Bello v. Prime Insurance Company Limited, Civil Cause No177 of 2012 (unreported)**. In the instant matter, the 1<sup>st</sup> defendant is the one responsible for the damage to the claimant's vehicle. He should pay back the cost of repairing vehicle back to its re-useable state. The cost quoted by the firm that repaired the vehicle was **K2, 185, 540.00**. The claimant must recover that sum, as damages for repair costs. The defendants, with their negligence, necessitated a police report which comes at a cost. It was recorded on the report, which was exhibited as 'DM 1' that the report was paid for at a cost of K3,000.00 and the General Receipt given was numbered 1457817. The claimant should recover this sum of **K3,000.00**.

The claimant further claims damages for loss of use of the motor vehicle. He quantifies the loss at K700,000.00 in his submission. It must be stated that the claimant did not explain his quantification of the loss. There is no evidence of an alternative car being in use. He stated that



he used to walk and his family and friends were denied the use of the vehicle. This was a family and business car. I tried to find guidance as to the normal usage of a family and business car. The claimant did not state for how long he was without the car, as it underwent repairs. This however, does not mean he did not suffer loss of use of the motor vehicle. In **Renzo Benetollo v. Attorney General and National Insurance Company Limited Civil Cause No. 279 of 1993, High Court Principal Registry (unreported)** the court held that where a party has not proved damages, reasonable compensation in the circumstances can be awarded. It is my most considered opinion that **K250,000.00** is reasonable compensation for loss of use of the motor vehicle in the circumstances. I so award the claimant.

The claimant further prayed for the award of damages for inconvenience. Damages for inconvenience are awarded where substantial physical inconvenience and discomfort was caused or effected by the negligent or otherwise unlawful action or omission of the defendant. The discomfort should not just be psychological or emotional- **Hobbs v. L.S.W. Ry [1885] 10 QB 111 per Mellor, J.** In this case, the claimant had to walk on foot, where he would have used his vehicle, abandoned his routine in pursuit of having his car repaired by towing it to the garage but also ensuring the driver who was authorised to drive his vehicle had been attended to at the hospital; and also for this matter when the defendants denied liability. He prayed for damages in the region of K700,000.00 under this head. I find the sum of **K450,000.00** as adequate compensation under this head.

#### **5. Conclusion**

The claimant should recover **K2,185, 540.00** as repair costs of his motor vehicle. He should also recover **K3, 000.00** as cost of the report that he obtained from the police. He is further awarded the sums of **K250,000.00** and **K450,000.00** as damages for loss of use of motor vehicle and inconvenience respectively. In total the claimant gets an award of **K2, 888,540.00.** I also award the claimant cost of the assessment hearing which will be assessed by the registrar if not agreeable by the parties.

Made this 22<sup>nd</sup> day of June, 2018



**Austin Jesse Banda**

**ASSISTANT REGISTRAR**