



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY



PERSONAL INJURY CAUSE NO. 109 OF 2017

BETWEEN:

SGT JACOB HARA

PLAINTIFF

-and-

IBRAHIM MEKE
GENERAL ALLIANCE INSURANCE LTD

1ST DEFENDANT
2ND DEFENDANT

CORAM I.M. NEBI, AR

Mr I. Kalua, Counsel for the Plaintiff,

Mr G. Mwenelupembe Counsel for the 2nd Defendant,

Mr Chisulo, Court Clerk

ORDER ON ASSESSMENT OF DAMAGES.

The plaintiff is a police officer. On 1st January 2017 he was assigned to provide security at Justice De Gabrielle's house in Chigumula. The following morning upon knocking off he was picked by a motor vehicle registration number MG 685 AH Toyota Quantum minibus driven by the 1st defendant and insured by the 2nd defendant. At about 3.30 hours the said minibus got involved in accident in Chigumula area. The plaintiff was severely injured,

the extent of which is comprehensively covered in his medicolegal report. The plaintiff's claim is for compensation.

The issue of liability was resolved by a consent judgment executed by the parties on 17 October 2017. My duty therefore is to assess damages payable to the plaintiff.

The law on this subject is to the effect that once one has suffered injury due to the negligent acts or omission of another, he or she is entitled to be fully compensated for the injuries suffered. See **Gideon Mhango v NICO General Insurance Company** Personal Injury Cause No. 703 of 2016. The fundamental principle followed in awarding damages was stated in **Livingstone v Rawyards Coal Company** (1880) 5 AC 25 at page 39 that compensation should be that sum of money which puts the party injured in the same position he or she would have been if he or she had not sustained the wrong for which he or she is now getting compensation.

Courts must therefore have regard to cases of comparable nature in order to award damages consistently but without losing sight of injuries suffered.

I had the occasion to see and hear the plaintiff. His evidence is that he lost consciousness at the accident scene. He came to the following day in the hospital. He sustained injuries on his face leaving him with a swollen face; he also had injuries on left leg and right knee and leg. He also sustained neck fracture, was put in a neck collar until 10th January 2017 when he was put in a Halo Frame. He was discharged from hospital on 13 January 2017. He was unable to sit up or walk. He was lying down all the time and was using a catheter. He could not feed by himself he relied on other people to feed him. He started walking with difficulties on 13 April 2017 when the Halo Frame was removed. Thereafter he was attending physiotherapy. It was his evidence that his neck has stiffened. His head feels heavy and he sometimes feels dizzy. Sometimes his body gets numb. In all these he experienced excruciating pain which has subsided but not gone away.

The medicolegal report which he tendered is to the effect that the plaintiff sustained C1 fracture, C1/C2 subluxation, right eye injury, left shoulder. And that at the moment he is experiencing numbness of left hand fingers, right knee pain, numbness of right great toe.

The injuries that the plaintiff suffered in this case are quite rare and severe. They have lifelong effects on the plaintiff. The plaintiff can no longer do physical jobs and this has greatly affected his work as a police officer. He can no longer perform guard duties from which he could earn extra income in form of allowances.

The plaintiff proposed a sum of not less than K15,000,000.00 citing among others the following comparable awards:

- **Smith v Prime Insurance Co Ltd** Civil Cause No. 1242 of 2009 (unrep). The plaintiff suffered C5/6 fracture, dislocation of vertebrae with quadriparesis, resulting in several disabilities. He was hospitalized for 6 months. He was confined to a wheel chair, walked using frame but needed extra support for standing and walking, could not climb steps, had difficulties in sleeping and had to be assisted to turn over, had sexual dysfunctions, felt pain and could not do household chores and was no longer able to do tailoring business. On 26 August 2011 he was awarded K5,000,000.00 for pain and suffering and loss of amenities.
- **Kondowe v Bula and Another** Civil Cause No. 62 of 2008 (unrep). The plaintiff suffered spinal injury which resulted into complete loss of functions below the level of injury. He was confined to wheel chair for mobility. On 14 January 2009 he was awarded K5,000,000.00 as damages for pain and suffering.

All else considered the court would award the plaintiff with a sum of K15,000,000.00 as damages for pain and suffering and loss of amenities of life. The 2nd defendant is thus ordered to compensate the plaintiff with a sum of K4,200,000.00 being the balance on the policy limit. As per the consent order aforementioned the plaintiff is at liberty to recover the balance from the 1st defendant.

Costs are for the plaintiff.

Delivered in chambers this 10th day of August 2018 at Blantyre.



I.M. Nebi

ASSISTANT REGISTRAR