



Republic of Malawi
IN THE HIGH COURT OF MALAWI
MZUZU DISTRICT REGISTRY

Civil Cause No. 109 of 2013

Between:-

SIMON NYONDO (Suing on behalf of Margaret Ng'ambi [Mentally challenged]).....PLAINTIFF

-AND-

BANJALA MTSOGOLO.....1ST DEFENDANT

CORAM

Brian Sambo, Assistant Registrar (Ag)

Patrick Ngwira, of counsel for the Plaintiff

Kondowe, of counsel for the Defendant

Henry Kachingwe, Official Interpreter

ASSESSMENT OF DAMAGES FOR PERSONAL INJURY

INTRODUCTION

On Wednesday, April 23, 2018, I received evidence and heard the plaintiff's submissions on assessment of damages for pain and suffering, loss of amenities of life, disfigurement, and special damages for costs of a police Report and Medical Report plus costs of this litigation.

The Defendant, Banja La Mtsogolo was an exclusive owner of motor vehicle Registration Number BLM 10, Mitsubishi L200 Double Cabin.

Brief facts of the matter are that the Defendant's driver, Fredrick Thindwa, on the 13th of November, 2012 was driving the motor vehicle stated above in Chitipa district and he hit the Plaintiff's wife by the name of Margret Ng'ambi. Due to the impact, the Plaintiff sustained a number of body injuries. The findings by the police established that the accident was influenced by the driver's careless and negligent driving of the said motor vehicle as he was over-speeding.

Simon Nyondo testified as PW1. He told the court that before the accident, his wife was sane and strong; she would do everything at home as a wife and a mother to his children. He said, as a result of the accident, she sustained severe head injuries, fracture of the left humerus and bruises on the left side of her head and on her left upper arm. He said that his wife was a pastor; she would speak quite eloquently, but after the accident she had difficulties to speak and think, rationally. He further told the court that his wife was a business woman and a farmer but she stopped doing all this as a result of the accident. She was entirely relying on her family for assistance. The Plaintiff brought his wife, and out of my own impression, the woman was seemingly in agony, and had scars on her body which the Plaintiff described as an aftermath of the accident. The woman did not testify as counsel for the Plaintiff had told me that she would not be able to speak sensible facts because she had developed dementia as a result of the accident.

Counsel for the Defendant had insisted that a Medical Report stating her dementia condition had to be tendered in evidence as a matter of proof, but counsel for the

Plaintiff told the court that the dementia medical report was supposed to be produced by Mzuzu Central Hospital but he was unable to get it. He thus relied on the Medical Report from Chitipa District Hospital.

ANALYSIS OF FACTS AND THE LAW

Liability of the Defendant came out of mutual consent of the parties. I wish to say that, initially, there were two defendants comprising of the Defendant herein and United General Alliance Company Limited, but the latter was struck out as a party out of the parties' mutual consent.

Coming back to the matter at hand, what stands out clear and supported is that the Plaintiff's wife sustained head injuries, fracture of the left humerus and bruises on the left side of the head and on the left upper arm. This piece of evidence was duly supported by the Medical Report from Chitipa District Hospital (Marked - PEX1). I do not have evidence of dementia. The mere fact that the woman was unable to speak before me is not, by itself, proof of dementia. Therefore, in my assessment, the unsupported issue of dementia will not influence this court's decision.

A person who suffers bodily injuries due to the negligence of another, such as the Defendants herein, is entitled to the remedy of damages. Indeed the principle guiding the award of damages is to compensate the injured party as nearly as possible as money can do. However, the court is guided by the merit of each case as stated in *D Kwataine Malombe et al v GH Chikho, t/a Bec Line Minibus*, Civil Cause No. 3687 of 2001. Merit is considered when granting damages in order to achieve consistency and uniformity in cases of broadly similar nature. See *Kwataine* case above.

I had time to go through comparative judicial precedents and I have noted that in **Saidi v Prime Insurance Company**, personal Injury cause No. 402 of 2012, the plaintiff was awarded K5,000.000.00 disfigurement, after he had suffered a fracture of the 4th figure and 5th metacarpal, deep cut wound on his forehead and a wound on his right hand. This award was made in his favour on the 26th of October, 2015; just a year ago.

In **Black Luwayo v Adam Msumuko**, Pangani Sambo and Prime insurance Company, Civil Cause No. 1262 of 2009, the plaintiff who suffered a fracture of his left tibia, crushed nose, cut on left hand and dislocated of the right able was awarded K5, 104,500.00 as damages two years ago.

In another similar circumstance; in **Akimu Chingamba v Prime Insurance Company Limited**, Civil Cause No. 574 of 2011, the plaintiff was awarded damages to the tune of K3, 000,000.00, three years ago, after he had sustained multiple tissue injuries on his hip, a fracture of radius and ulna, dislocation of metacarpal bones, painful back and left shoulder, was in plaster of paris for two months, incapacity of 20% and reduced mobility of the arm.

Admittedly, the precedents above are quite relevant to the matter at hand. In the instant case, the Plaintiff, Simon Nyondo (on behalf of his wife) is claiming damages for pain and suffering, loss of amenities of life, disfigurement, and special damages for costs of a police Report and Medical Report let alone costs of his litigation.

It is trite law that when a driver of a motor vehicle, who owes different duties of care to different roads users, the questions of foreseeability, causation and remoteness would always arise in respect of different roads users affected by his negligence. See **Wright v Lodge and another Kerek v Lodge and others** [1993] 4 All ER 299. Thus, if his vehicle is involved in an accident as a results of his own negligence, he is responsible for personal injuries as well as for subsequent events which would occur incidental thereto; arising from his negligence when driving his motor vehicle. See **Bradford v Robinson Rentals Ltd** [1967]1 All ER 276. This entails that all expenses incurred by the plaintiff as a result of the accident; liability is still shouldered by the negligent driver.

In this matter, admittedly, the injuries were more serious. I had physically seen the disfigurement on the Plaintiff's wife. She is no longer strong to work and fend for her family. Being a family woman this condition is heartrending. The Medical Report itself proves how much she injured. Nevertheless, she deserves a substantial compensation.

I noted that the Plaintiff demands a total of MK15,000,000.00; covering damages for pain and suffering plus damages for loss of amenities of life and costs of this action. Considering the facts before me and the present condition of the Plaintiff's wife, Margaret Ng'ambi, my assessment is this:

- i. MK4,100,000.000 being damages for pain and suffering, disfigurement and loss of amenities of life
- ii. MK3,000.00 being refunds for costs of Police Report and Medical Report
- iii. MK1,200,000.00 being Party-and-Party costs

The sum of the above is MK5,303,000.00 which is payable within 7 days from today.

Made in chambers today the 21st of May, 2018.


Brian Sambo

Assistant Registrar (Ag)
