



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 64 OF 2018

BETWEEN

BLESSINGS MPANDO (Minor suing through his

Mother and litigation guardian RHODA MAKWITI) CLAIMANT

AND

DEBORAH NGALANDE 1ST DEFENDANT

REUNION INSURANCE COMPANY LIMITED 2ND DEFENDANT

CORAM : HER HONOUR MRS. BODOLE, ASSISTANT REGISTRAR

Mwabungulu, of Counsel for the Claimant

Mrs. Chambalo, of Counsel for the Defendant

Ms. Kazembe, Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

Introduction

The claimant brought proceedings against the defendants claiming damages for personal injuries he sustained in a road traffic accident involving the 1st defendant. He also claimed special damages and costs of the action. Judgment on liability

against the defendants was pronounced by the court on 17th May, 2018. The matter has now come for assessment of damages.

The Evidence

During the assessment proceedings only one witness testified and that was PW1, Rhoda Makwiti, the mother and next friend of the claimant.

The facts of this case are that the claimant is a minor. He was aged 7 years at the time of the accident. On 14th October, 2017, the claimant was walking on the extreme right hand side of Luchenza-Mulanje Road from the direction of Chinakanaka heading towards Luchenza. Upon arrival at or near Chinakanaka Mosque, the claimant was hit by a motor vehicle registration number BU 5837 Toyota Cummie Station Wagon which veered off to the extreme right hand side of the road whilst being driven from the opposite direction.

As a result of the accident the claimant suffered loss and damage. The claimant sustained fracture of the left clavicle, cut wound on the right eye, laceration on the forehead and chin, multiple bruises on the elbow joints and lower legs and blunt chest injury. The treatment he received was wound cleaning and dressing, and splinting of the left shoulder. He was admitted in hospital from 14th October, 2017 to 18th October, 2017. As a result of the injuries he sustained, the claimant has multiple scars and still feels pain in the shoulder.

The claimant is claiming damages for pain and suffering, loss of amenities of life and disfigurement. He is claiming a sum of K3,000.00 and K10,346.00 as costs for procuring the Police and medical 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.

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 disfigurement. These are assessed by the court. Pecuniary loss must be pleaded and proved. In ***Renzo Benetollo v Attorney General and National Insurance Co. Ltd*** Civil Cause No. 279 of 1993 the court held that where a party has not proved special damages reasonable compensation in the circumstances can be awarded.

Pain and Suffering

Pain and suffering is attributable to the claimant'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 claimant went through a lot of suffering and was in great pain and is still suffering. He sustained fracture of the left clavicle, cut wound on the right eye, laceration on the forehead and chin, multiple bruises on the elbow joints and lower legs and blunt chest injury. The treatment he received was wound cleaning and dressing, and splinting of the left shoulder. He was admitted in hospital for 4 days. The claimant still feels pain in the shoulder.

Loss of Amenities of Life

Loss of amenities is attributable to deprivation of the claimant's capacity to engage in some sport or past-time which he formerly enjoyed – ***Kanyoni v Attorney General*** [1990] 13 MLR 169. It means that he is incapable of performing some activities he used to do.

No evidence was adduced by the claimant to show that he is unable to perform some activities he used to do before the occurrence of the accident. It is, therefore, impossible to make any assessment under this head.

Deformity/Disability

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.

It is clear from the evidence that the claimant has multiple scars on the parts of his body that he was injured. He has, therefore, been disfigured.

Award of Damages

In **Edwin Jackson v General Alliance Insurance Company Limited** Personal Injury Cause No. 900 of 2014 the claimant sustained a fracture of the right leg. The court awarded the claimant a sum of K1,400,000.00 as damages for pain and suffering, and loss of amenities of life. In **Pirirani Kamwendo and Others v Prime Insurance Company Limited** Personal Injury Cause No. 305 of 2014 the 3rd claimant sustained deep cut wound on the left upper arm, deep cut wound on the shoulder with loss of soft tissue. The wound was debrided and sutured. She was awarded a sum of K2,300,000.00 as damages for pain and suffering and loss of amenities of life. The injuries suffered by the claimant in the above cited cases are more or less the same as the injuries suffered by the claimant in the present case.

I, therefore, award the claimant a sum of K1,700,000.00 as damages for pain and suffering, and a sum of K700,000.00 as damages for disfigurement.

Special Damages

Special damages are supposed to be pleaded and proved. The claimant proved that he had spent K3,000.00 and K10,346.00 in order to procure the Police and medical reports. He is, therefore, awarded a sum of K13,346.00 as costs for procuring the Police and medical reports.

Conclusion

In conclusion, the claimant is awarded total sum of K 2,413,346.00 and costs of this action.

Pronounced in court this 24th day of October, 2018 at Blantyre.



EDNA BODOLE (MRS)

ASSISTANT REGISTRAR