



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 473 OF 2013

BETWEEN

MIKA MATIYA 1ST CLAIMANT

FANNY CHIMBALANGA 2ND CLAIMANT

AND

PRIME INSURANCE COMPANY LIMITED 1ST DEFENDANT

GILBERT MISACHE 2ND DEFENDANT

CORAM : HER HONOUR MRS. BODOLE, ASSISTANT REGISTRAR

Alide, of Counsel for the Claimants

Tandwe, of Counsel for the Defendant

Ms. Kazembe, Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

Introduction

The claimants brought proceedings against the defendants claiming damages for personal injuries they sustained in a road traffic accident involving the 2nd defendant. They also claimed special damages and costs of the action. Judgment

on liability against the defendants was pronounced by the court on 15th June, 2017. The matter has now come for assessment of damages.

The Evidence

On 17th March, 2012 the claimants were lawful passengers in motor vehicle registration number BQ 3769 Toyota Dyna which was being driven by the 2nd defendant. It was being driven from the direction of Liwonde heading towards Ntaja. Upon arrival at or near Machinga Trading Centre, it overturned once.

As a result of the accident the claimants suffered loss and damage. The 1st claimant sustained multiple bruises on the shoulders, arms, fingers and legs. He also sustained a deep cut on the upper lip, cut on the ear lobe and on the right eye. The wounds underwent debridement and suturing and he had a blood transfusion due to blood loss. As a result of the injuries he sustained, the 1st claimant has multiple big scars on the left and right shoulders. He has developed osteoarthritis. He is unable to carry heavy things because his fingers still hurt him.

The 2nd claimant sustained deep cut on the foot, multiple bruises on the back of the right forearm, massive bruises on the whole right leg and dislocation of the ankle. The treatment she received was debridement and suturing of the wounds and back slab. As a result of the injuries she sustained, she has massive scars and has developed osteoarthritis.

The claimants are claiming damages for pain and suffering, loss of amenities of life and disfigurement. They are each claiming a sum of K6,000.00 as costs for procuring the Police and medical reports.

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 claimants went through a lot of suffering and were in great pain and are still suffering. The 1st claimant sustained multiple bruises on the shoulders, arms, fingers and legs, and a deep cut on the upper lip, cut on the ear lobe and on the right eye. The wounds underwent debridement and suturing and he had a blood transfusion due to blood loss. He has developed osteoarthritis. He still experiences pain in his fingers.

The 2nd claimant sustained deep cut on the foot, multiple bruises on the back of the right forearm, massive bruises on the whole right leg and dislocation of the ankle. The treatment she received was debridement and suturing of the wounds and back slab. She has developed osteoarthritis.

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.

The 1st claimant sustained bruises on the fingers. He is unable to carry heavy things because his fingers still hurt him.

There is no evidence to show that the 2nd claimant is unable to perform some activities she used to before the occurrence of the accident.

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 1st claimant has multiple big scars on the left and right shoulders. The 2nd claimant has massive scars. Both claimant have developed osteoarthritis. This clearly shows that the claimants have been deformed.

Award of Damages

In ***Pirirani Kamwendo and Others v Prime Insurance Company Limited*** Personal Injury Cause No. 305 of 2014 the 3rd plaintiff 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 claimants in the above cited cases are more or less the same as the injuries suffered by the claimants in the present case.

I, therefore, award the 1st claimant a sum of K1,700,000.00 as damages for pain and suffering, and K500,000.00 as damages for loss of amenities of life, and

K900,000.00 as damages for disfigurement. I also award the 2nd claimant a sum of K1,700,000.00 as damages for pain and suffering, and K900,000.00 as damages for disfigurement.

Special Damages

Special damages are supposed to be pleaded and proved. The claimants proved that they had spent K6,000.00 in order to procure the Police and medical reports. Each claimant is, therefore, awarded a sum of K6,000.00.

Conclusion

In conclusion, the 1st claimant is awarded total sum of K 3,106,000.00, and the 2nd claimant is awarded a total sum of K2,606,000.00. The claimants are awarded costs of this action.

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



EDNA BODOLE (MRS)

ASSISTANT REGISTRAR