



REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CASE NO. 432 OF 2018

BETWEEN

BLESSINGS KWALENGA.....CLAIMANT

AND

MICHAEL CHIRAMBO.....1st DEFENDANT

REUNION INSURANCE COMPANY LIMITED.....2nd DEFENDANT

Coram: **WYSON CHAMDIMBA NKHATA (SRM)**

Mickeus- of Counsel for the plaintiff

Chitsulo- Court Clerk and Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

The claimant in this matter took out a writ of summons issued on the 30th of July 2018 against the defendants claiming damages for pain and suffering, deformity, loss of use of motor vehicle, refund of the cost of car hire at K35,000.00 per day from the date of the accident to the date of the replacement of the motor vehicle, damages for inconvenience and costs of this action. On the 16th of October 2018, the claimant appeared before Honourable Justice Kenyatta Nyirenda on an application for summary judgment against the defendants. The application was successful and the claimant was granted the reliefs he sought. This is the court's order on assessment of damages.

The matter was scheduled for assessment of damages on the 29th of November 2018. The defendants did not avail themselves for the hearing albeit having been duly served. There being no excuse from the defendants, the court proceeded to hear the claimant. The claimant was the sole witness for his case. He adopted his witness statement in which he stated that at all material times the 1st defendant was driving motor vehicle registration number MC 69 Hyundai IX Station Wagon and that the 2nd defendant was the insurer of the said motor vehicle. He further averred that on the 9th of June 2018, he was driving from the direction of Catholic Institute (CI) heading towards Mpemba along the Blantyre-Chikwawa road. Upon arrival at or near Moneymen his motor vehicle registration number BS 3607, Toyota Avensis saloon was hit by motor vehicle registration number MC69 Hyundai IX Station Wagon which was joining the main road from an adjacent road.

The claimant further testified that he was severely injured and he sustained a deep cut wound on the head, swollen left hand, painful chest and general body pains as a result of the accident. He further indicated that he was taken to Queen Elizabeth Central Hospital and was in severe pain. He stated that he underwent painful medical treatment. He further stated that he is now deformed and has ugly scars on the head. He tendered a Police Report and a Medical Report which the court marked "EXP1" and "EXP2" respectively. He also indicated that he feels a headache when he walks long distances or goes for jogging as he previously used to do. It was his testimony further that his vehicle was extensively damaged and had been hiring alternative means of transport so that he can carry out his business properly. He tendered copies of receipts for hire which the court marked "EXP3". He further averred that he completely lost use of his vehicle and the 2nd defendant paid him the cost of replacing at K4,500,000.00. It is on this basis that he now seeks damages for pain and suffering, deformity, loss of use of motor vehicle, refund of the cost of car hire at K35,000.00 per day from the date of the accident to the date of the replacement of the motor vehicle and damages for inconvenience.

Counsel for the Claimant filed skeletal arguments which he adopted as his final submissions in this matter. As earlier alluded to, this court has been called upon to make a determination on the quantum that would reasonably compensate the claimant for the damages and loss suffered.

It is trite that a person who suffers bodily injuries or losses due to the negligence of another is entitled to recover damages. The fundamental principle which underlines the whole law of damages is that the damages to be recovered must, in money terms, be no more and no less than the Plaintiff's actual loss. The principle was laid down in numerous case authorities more particularly by **Lord Blackburn** in the case of *Livingstone v. Rawyards Coal Company (1880) 4 AC 25* in the following terms:

where any injury or loss is to be compensated by damages, in settling a sum of money to be given as damages, you should as nearly as possible get at the sum of money which will put the party who has been injured, or who has suffered loss, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.

However, it ought to be borne in mind that it is not possible to quantify damages for pain and suffering, loss of amenities and deformity as claimed in this matter with mathematical precision. As a result, courts use decided cases of comparable nature to arrive at awards. That ensures some degree of consistency and uniformity in cases of a broadly similar nature: See **Wright -vs- British Railways Board** [1983] 2 A.C. 773, and **Kalinda -vs- Attorney General** [1992] 15 M.L.R. 170 at p.172. As such this court will have recourse to comparable cases to arrive at the appropriate quantum of damages for the plaintiff.

In this case, the claimant sustained a deep cut wound on the head, swollen left hand, painful chest and general body pains. Counsel for the Claimant called upon the court to consider the following cases:

Felista Kachaso vs. Kondowe and others [(Civil Cause No. 320 of 2009) (unreported)], in which the plaintiff suffered a big cut wound at the back of the head, a closed fracture of the right humerus, and an open fracture of the right lower leg. As a result of the injury to the head, the plaintiff became forgetful. She was initially awarded K7, 500, 000.00 in damages but this was reduced to K5, 600, 000.00 on appeal. The reduced award was made on 16th October, 2009.

Charles Kamanga v Prime Insurance Company Limited Personal Injury cause No. 3011 of 2008 in which the claimant sustained general body pains especially at his back. The court awarded her the sum of K2,500,000.00. The award made on the 30th of April 2009.

Ayatu Ganishe v NICO General Insurance Company Limited Personal Injury cause No. 239 of 2015 in which the claimant sustained a deep cut wound on the head, a painful chest and soft tissue injuries. The court awarded her the sum of K2,000,000.00.

Dalitso Shumba and Timothy Mereka and Prime Insurance Company Limited Personal Injury Case No. 901 of 2014, where the 1st claimant sustained a deep cut wound on the lower jaw which was stitched, a cut wound on the thigh, laceration on the right side stomach, bruises on the right leg, swollen and painful neck, dislocation of the right wrist. On the 19th of June 2016, the court awarded the sum of K3,000,000.00 as damages for pain and suffering, loss of amenities and disfigurement.

It was therefore Counsel's submission that the claimant has been deformed as a direct result of the accident. He further indicated that the claimant underwent painful medical procedures as a result of the

accident. He is of the view that in the circumstances of this case, the reasonable compensation would be K3,000,000.00 for pain and suffering and K1,000,000.00 for deformity.

I have perused the medical evidence as to the injuries and the prognosis given by the medical expert. I had the opportunity to observe the injury on the claimant's scar as evident from the scar running across his head and his present physical condition. I gave meticulous thought to the written submissions filed by Counsel for the claimant and the relevant aspects of some of the precedents cited by Counsel. The claimant laments that he sustained a fracture of the arm. Unfortunately, there is nothing of that sort mentioned in the Medical Report save for lacerations on the left scalp, sprained wrist and other chest injuries. All the same, I believe the injuries exposed him to excruciating pain which was also experienced during medical procedure which he received. He now laments that he cannot lift heavy material anymore. The authorities cited by Counsel for the claimant share atleast a commonality with the injuries herein. The awards range from K2,000,000.00 to K3,000,000.00. The latest of the cited cases was decided in the year 2016 which is two or so years down the line. That notwithstanding, believe an award of K3,000,000.00 under all heads claimed and proved is sufficient recompense for the claimant for the injuries sustained.

The present claim also relates to a claim for damages for loss of use of his motor vehicle, it is further trite law that in determining such damages, the court actually considers the market value of the use of the car. Thus, such damages will usually depend on the type of the car and the period of the loss (see the case of **Hassen vs SR Nicholas**, 11 MLR 505 and **Namandwa vs Tennet (J) and Sons Ltd**, 10 MLR 383). The court may however, award such damages on conventional basis where there is no evidence of hiring a vehicle and the court opines that general damages may suffice. Where the court adopts this approach, damages are awarded by reference to comparable cases (see **Emmie Chanika vs Blantyre City Assembly**, civil cause No. 84 of 2010).

In the present case, the claimant indicates that he did not have a vehicle for personal use at the time of the accident and had to hire alternative means of transport. There is evidence of receipts proffered indicating that he hired a vehicle a Toyota Camry registration number MH5808 from TBK Investments from the 11th of June 2018 to the 5th of August 2018. It would appear that the vehicle was hired for 25 days at a rate of K35,000.00 per day. I believe that loss of use has been sufficiently proved. I therefore award the claimant K835,000.00 as damages for loss of use.

With regard to damages for inconvenience, it is trite law that where a party suffers inconvenience due to the wrong doing of the other, he is entitled to damages as inconvenience is a cause of action in its own right, see **Pemba vs Stagecoach (Mal) Ltd**, 16(1) MLR 348 and **Kalulu vs Blantyre Water Board**, 13

MLR 160. I have seen the cases of **LM Nakoma vs Kachemwe and Reunion Insurance Limited, Civil Cause 84 of 2010** and **Emmie Chanika vs Blantyre City Assembly Civil Cause No. 84 of 2010** in which the court awarded K150,000.00 and K483,000.00 for loss of use respectively. In the former case, the vehicle was off road for 49 days while in the latter it was off road for 161 days and both awards were made in December 201. In the present case, taking into consideration the period of inconvenience, time factor and currency devaluation and depreciation, I am of the view that K300,000.00 would fairly compensate the plaintiff for the inconvenience suffered and I proceed to award her accordingly.

From the foregoing analysis, the damages awarded to the plaintiff can be summarised as follows:

1. The sum of K3,000,000.00 as damages for injuries sustained.
2. The sum of K875,000.00 as damages for loss of use.
3. The sum of K300,000.00 as damages for inconvenience.

In total, therefore, the claimant is awarded the sum of K4,175,000.00. The plaintiff is further awarded costs for the assessment proceedings.

MADE IN CHAMBERS THIS 10th OF DECEMBER, 2018


WYSON CHAMDIMBA NKHATA
ASSISTANT REGISTR