



REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CASE NO. 100 OF 2018

BETWEEN

UPILE NAMANGALE.....CLAIMANT

AND

PETER JUMA.....1st DEFENDANT

PRIME INSURANCE COMPANY LIMITED.....2nd DEFENDANT

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

Kusiwa - of Counsel for the Claimant

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 10th of April 2018 against the defendants claiming damages for pain and suffering, loss of amenities of life, disfigurement and costs of the action. The matter was scheduled for hearing before Honourable Justice N'riva on the 16th of July 2018, the defendants did not avail themselves for the hearing. The defence was struck out and judgment was entered in favour of the Claimant. It was ordered that the matter proceeds for assessment of damages unless the parties agreed. Apparently, the parties did not reach an agreement as the claimant took out a notice for appointment to assess damages. This is the court's ruling on assessment of damages.

The matter was scheduled for hearing on assessment of damages on the 29th of November 2018. The defendants did not avail themselves for the hearing albeit having been served. There being no excuse from the defendants, the court proceeded to hear the claimant. The claimant was the sole witness for her case. She adopted her witness statement in which she stated that on or about the 18th day of September 2017, she was walking out of Limbe Bus Depot after disembarking from a minibus and she was heading towards Kanjedza. It is her testimony that she was walking on a slab away from the main road and close to the drain. As she was walking, she was hit from behind on the left hip by motor vehicle registration number BLK 4391, upon which she fell down and her legs ended up landing on the main road. The motor vehicle then hit his left leg. When the minibus driver realized that he had hit her, he reversed and she rolled herself away from the main road towards the drain.

It is her testimony that due to the accident, she sustained a dislocation of the left ankle, deep cut wound on the left ankle exposing the bone which was discharging pus and debridement of the dead tissue was done, bruises on the lower leg, cannot stand for over 20 minutes as the left leg swells, swollen leg below the knee for one week, was walking using a stick for 2 weeks, sprained right hip with bruises, cannot stand for a long time, suffered a permanent incapacity of 25%. He tendered his medical report which was marked "UP1". She showed the court the scar just above the ankle and lamented that she no longer wears short skirts because of the same. She further lamented that she does not play netball as she used to do. Such was the uncontroverted testimony of the claimant.

As earlier alluded to, the duty placed upon this court is to determine a reasonable quantum of damages that would adequately compensate the claimant for the losses and damages herein.

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 claims to have sustained a dislocation of the left ankle, deep cut wound on the left ankle exposing the bone which was discharging pus and debridement of the dead tissue was done and bruises on the lower leg. Counsel for the claimant called upon the court to consider the following cases:

- **Chitekwe vs. Conforzi Plantations Ltd and Another, Civil Cause Number 1137 of 2007** where the plaintiff was awarded K2,000,000.00 for a left ankle dislocation and fracture of bilateral malleolar. The award was made on 21st November 2008.
- The case of **Paul Matsimbe vs Patricia Kapachira and another, civil cause Number 585 of 2009**, in which the Plaintiff was awarded the sum of K2,000,000.00 for cut a wound on the leg and a lower lip, the award that was made on 26 June 2010.

It was therefore Counsel's submission that in the circumstances of this case, the reasonable compensation would be K5,000,000.00 for pain and suffering, loss of amenities and disfigurement considering that the awards in the cited case above were made some years back and our currency has continued to fall since that time.

I considered the relevant aspects of some of the precedents cited by the counsel and the authorities cited above. The injuries suffered by the claimant were indeed serious. In my opinion, she risked amputation. The scar on the lower left leg clearly indicates that the wound took time to heal. In her narration to the court, she stated that the part where there was the wound went bad and they to remove the flesh exposing the bone. I believe she suffered a lot of pain and for a prolonged period. I further take note that she sustained a dislocation and had her leg cast on POP. Indeed, she has now healed but she has been leg with a permanent imprint of a scar on her lower left which she has to strive to hide by putting on trousers or long skirts. Apparently, she used to enjoy playing netball and this is something she must shy away from now.

Thus, in view of the foregoing analysis of the facts and circumstances of the present case in light of the applicable law, and also having looked and considered the comparable case authorities as cited by the claimant in similar heads of the claimant's claims coupled with the recent devaluation of the Kwacha, I believe an award of K3,500,000.00 under all heads claimed and proved is sufficient recompense for the

claimant for the injuries sustained. The plaintiff is further awarded costs of the assessment proceedings to be taxed if not agreed by the parties.

DELIVERED IN CHAMBERS THIS 10th DAY OF DECEMBER 2018



WYSON CHAMBIMBA NKHATA

ASSISTANT REGISTRAR