



The Judiciary

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 612 OF 2011

Between

EVELYN JAMU..... CLAIMANT

-and-

PRIME INSURANCE COMPANY LIMITED..... DEFENDANT

CORAM: Austin Jesse Banda, Assistant Registrar

Mr. Kalua, for the Claimant

None, for the Defendants

Ms. Madalitso Galafa, Clerk/ Official Interpreter

Banda, Assistant Registrar

ORDER ON ASSESSMENT DAMAGES

Background

The Honourable Justice Kenyatta Nyirenda entered judgment on liability for the claimant and against the defendant who is an insurer of a motor vehicle, a Toyota Hiace Minibus, registration number MC 3808 that was driven negligently in overtaking without a proper lookout from which a collision with an on-coming vehicle caused the claimant injuries. The honourable Judge ordered that assessment of damages be done by the registrar. On 4th December, 2018 I heard the claimant. The defendant who was served with a notice of the assessment hearing by the firm on record as its legal practitioner, Messrs Mbendera and Nkhono Associates but also personally never availed themselves or by counsel, without any explanation whatsoever.

Evidence

The claimant was her own only witness. Evelyn Jamu told the court in her evidence in chief that on 10th May, 2011 she injured in the accident that the minibus she boarded was involved in. She said she had a deep cut wound on the left leg, fracture of 4 ribs on the right side of the chest, soft tissue injury to the right shoulder, injury to the head which became swollen and loosening of two teeth. She said that she actually lost consciousness on the spot and only discovered that she was in hospital at Ntcheu District Hospital where she was discharged five days later.

The claimant went further to say that she discovered that she had lost a mobile phone and two wrapper cloths (*zitenje*) both worth K1,000.00

The claimant further said she was still visiting the hospital as an outpatient at Malosa Mission Hospital. She said that she was still experiencing severe pains on the left side of the chest where she had fractured ribs and also on the right-hand side of her head. She said a deep cut wound was not completely healed at the time of making the statement in 2011. At the time of the assessment hearing on 4th December, 2018, she said she was better but still felt pain in the ribs at times and had headaches.

Issue

The only issue the court has to determine is the quantum of damages under the following heads as pleaded: damages for pain and suffering; loss of amenities of life and special damages.

Analysis of Law and Fact; and Determination

Damages are the remedy that is open to a victim of the wrongful act of another. Courts do award damages not to punish the defendant but to fully compensate the claimant of all the losses she has suffered. In the case of **George Kankhuni v. Shire Buslines Ltd, Civil Case Number 1905 of 2002**, Katsala, J stated as follows:

“The law demands that the plaintiff, as far as money can do it, be put in the same position as if he has not suffered the loss. This is what is referred to as *restitution in intergrum*.”

It is not easy to quantify damages for losses that are not monetary in nature such as personal injuries. Courts as such use comparable cases as a guide to the quantification of applicable damages, without losing sight of particularities in the individual case that the court is dealing with. See **Chipeta v. Dwangwa Sugar Corporation, Civil Cause No. 345 of 1998, High Court, Principal Registry (unreported)**. The court will also consider factors such as passage of time since a particular comparable award was made, as well as currency fluctuations within the period between the case at hand and the comparable one- **Hon. Kennedy Kuntenga v. Attorney General, Civil Cause No. 2002 of 2002, High Court, Principal Registry, (unreported)**.

Pain and Suffering

The word pain connotes that which is immediately felt upon the nerves and brain, be it directly related to the accident or resulting from medical treatment necessitated by the accident, while suffering includes fright, fear of future disability, humiliation, embarrassment and sickness- Ian Goldrein et al, Personal Injury Litigation, Practice and Precedents (Butterworths, 1985) p8.

Loss of Amenities of Life

Damages are paid under the head of loss of amenities of life to compensate the claimant's deprivation of the pleasures of life, which amounts to substantial loss, whether the claimant is aware or not of that loss. See **City of Blantyre v. Sagawa [1993] 16(1) MLR 67 (SCA)**; Kemp and Kemp, The Quantum of damages, Vol .1(2nd Ed)., 1961, p.624.2

Comparable Cases

In the case of **Mrs. Veronica Kayamba v. Prime Insurance Company Limited Civil Cause No. 2158A of 2008**, a claimant who sustained a fracture of the left leg and a deep cut wound

at the back was compensated with an award of K4, 000,000.00 for pain, suffering and loss of amenities of life.

In the case of **Robert Piason and Three Others v. Prime Insurance Company Limited, Personal Injury Cause No. 413 of 2013**, a claimant who sustained a head injury, deep cut wound on the back near the shoulder, multiple bruises on the knee and a cut at the pelvis was awarded a sum of K3,000,000.00, in an award made on 6th September, 2014.

In **Joseph Danger v. Prime Insurance Civil Cause No. 1760 of 2010**, the claimant sustained a fracture of the leg, deep cut wound on the knee, painful leg, bruises on both arms and at the back and a cut wound on the forehead. The court made a total award of K6, 500,000.00 in April, 2013.

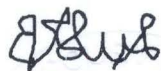
Determination

In the circumstances and light of comparable injuries and suffering there-from above, which in my view were a bit more serious than in this case, and also comparable awards, I find a compensation of K4,555,000.00 for pain and suffering to be fair. I also award the claimant K1,445,000.00 for loss of amenities of life. I award her K3,000 special damages to recover the cost of the police report.

Conclusion

The claimant is awarded a total sum of **K6, 003,000.00** as damages for the personal injury that she suffered as a result of the negligence of the defendant's insured. The claimant is further awarded cost of the assessment hearing.

Made this 13th day of December, 2018.



Austin Jesse Banda

ASSISTANT REGISTRAR