

The Judiciary

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 99 OF 2016

Between

MR. ALBERT KAMBOVA..... CLAIMANT

-and-

SHADRECK SHOMBE.....1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED..... 2ND DEFENDANT

CORAM: Austin Jesse Banda, Assistant Registrar

Mr. Shabir Khan, for the Claimant

None Present, for the Defendants

Ms. Madalitso Galafa, Clerk/ Official Interpreter

Banda, Assistant Registrar

ORDER ON ASSESSMENT OF DAMAGES

Background

On 5th November, 2018, the claimant got judgment and costs in his favour for his claims of damages for personal injuries that he suffered due to the 1st defendants negligent driving that of a Toyota Hiace Minibus in which the claimant was a passenger. The minibus hit other vehicles due to the negligence afore-stated. The Honourable Justice Tembo had struck out the

defendants' defence because the defendants did not follow the order that they file a trial bundle. The Judge ordered that the registrar should assess damages and costs. The claimant filed and served a notice of assessment of damages. The defendants did not avail themselves on the scheduled date despite due service of the notice. I heard the claimant in the defendant's absence.

Evidence

The claimant was the only witness. He told the court through his prepared witness statement that he was a passenger in a minibus driven by the 1st defendant when the minibus was involved in an accident. As a result of the accident he sustained bruises and wounds on the left arm, right elbow, both knees and on the head. He showed the court spots where he suffered bruises and wounds which are now scars and a bump on the head that he suffered as his head clashed the tarmac road. The medical report shows he was treated at Mtengo Umodzi Private Hospital whilst his statement states he was treated at QECH. He stated that he was given analgesics and wound dressing. He said he was forced to obtain a police and medical report at a cost of K13, 500.00. He tendered a medical and police reports. He prayed for damages and costs of the proceedings.

Issue

The only issue the court is faced with now is the quantum of damages that the claimant should receive as compensation for the damage he suffered.

Analysis of Law and Fact and Determination

The High Court in **Ngosi t/a Mzumbamzumba Enterprises v H Amosi Transport Co Ltd [1992] 15 MLR 370 (HC)** set the basis for assessment of damages:

'Assessment of damages...presupposes that damages have been proved. The only matter that remains is the amount or value of the damages.'

The rule is that prior to assessment, the injured party has provided proof of damage sustained. See **Yanu-Yanu Co Ltd v Mbewe (SCA) 11 MLR 405**. The issue of the defendants' liability was thus settled in the judgment of Justice Tembo. The defendants are liable to pay damages to the claimant for his injuries. The heads as pleaded are damages for pain and suffering; damages for disfigurement; damages for loss of amenities of life, damages for nervous shock caused and special damages at K13, 500.00.

It is impossible to come up with an amount of money that fully compensates a non-monetary loss, with mathematical precision, like is the case with personal injuries. As a result, to achieve certainty and consistency of awards in like cases, courts use awards in comparable cases as a guide, without losing sight of specific losses suffered by a particular claimant. See

Chipeta v. Dwangwa Sugar Corporation, Civil Cause No. 345 of 1998, High Court, Principal Registry (unreported). Courts also take into account the rise or fall of value of the currency over the period of time that has passed between a comparable case and an instant one- **Paulo v. Mwakabanga [1991] 14 MLR 409.**

The claimant is bound to prove damage. From the evidence of the claimant it is my finding that he has not proved damage for nervous shock. I do not make any award under that head.

As for pain and suffering, the claimant was bruised and wounded. He must have experienced pain from the bruises and wounds and also anxiety of apprehension of the pain and injury at the time of the accident. He is healed with wounds but he still experiences headaches since the accident. He has scars now on the areas where there were wound including a bump on the head that he showed the court.

In the case of **Patricia Demesani Bannet v. Isaac Lizimba and Another, Civil Cause Number 811 of 2011 High Court Principal Registry (unreported)** the court awarded the sum of K2,000,000.00 as damages for pain and suffering and loss of amenities of life for a claimant who suffered a sprained ankle, multiple bruises over the body and face.


In **Monica Benesi v. Thawe and Prime Insurance Company Limited Personal Injury No. 242 of 2016 High Court, Principal Registry (unreported)**, for a claimant who had a fracture of the metatarsal, had a painful shoulder, not fractured, a ribcage and knee bruising and she was in a Plaster of Paris for a period of more than a month was awarded sums of **K1, 500,000.00** and **K 750,000.00** for pain and suffering for the first award and disfigurement for the second award respectively. This case appears to me to be similar to the case at hand. While as there was a fracture of the metatarsal in the Monica Benesi case, and while as there is no fracture in the case at hand, the bumping of the head that has left the claimant with a somewhat permanent bump is just as serious as a fracture. The head is also a sensitive area and the bump shows on top of his forehead making the claimant have an ugly permanent disfigurement. I have also considered the time of awards to increase the awards of pain and suffering and also disfigurement.

It is my opinion that the claimant here in be awarded K1, 900,000.00 for pain and suffering; K950,000.00 for disfigurement and K450,000.00 for loss of amenities of life. The claimant is also granted K13, 500.00 as refund for costs of police and medical report.

Conclusion

I award the claimant a total award for personal injuries at **K3, 313, 500.00**. The claimant is further awarded costs of the assessment hearing which if not agreeable will be assessed by the registrar.

Made this 23rd day of July, 2018.



Austin Jesse Banda
ASSISTANT REGISTRAR