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IN THE HIGH COURT OF MALAWI

MZUZU REGISTRY

CIVIL CASE NO. 109 OF 2018

BETWEEN

TELSON MUNTHALI..... CLAIMANT

-AND -

MIGHTY CHIPETA.....1ST DEFENDANT

REUNION INSURANCE COMPANY LIMITED..... 2ND DEFENDANT

CORAM:

H.H. Brian Sambo, Assistant Registrar

Mr. C. Ghambi, counsel for the Claimant

Mr. L. Mbulo, counsel for the Defendants

Mr. Henry Kachingwe, Court Clerk/Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

BACKGROUND

This matter comes before this court for assessment of damages following Mediation which took place on 11th day of September 2017 before Hon. Justice D.A. DeGabriele where she entered liability against the 1st and 2nd defendants.

BRIEF FACTS

Facts of this matter are simple enough. There was a road accident which happened at Nkhawa area, along the Chitimba-Uliwa road in the district of Karonga, involving a motor Vehicle registration number BN 8958 Toyota Sprinter which was insured by the 2nd Defendant. It was on the 27th day of January 2017 when the Claimant was standing off-road with the intentions of crossing the road and was hit by the said motor vehicle driven by the 1st defendant. As a result, he sustained serious injuries. It is from this background that the Claimant claims for a compensation of **MK8 451 000.00** being damages for pain and suffering and loss of amenities of life, disfigurement, special damages and costs this action.

EVIDENCE

During the Assessment proceedings, the Claimant testified. He adopted his witness statement as evidence in his matter.

During cross-examination, he told the court that he was admitted in hospital for 9 Months and 2 weeks. He said that he had his arm heavily injured to the extent that his left hand was no longer functioning, normally. He further testified that he had

spent MK145 000.00 on transport in that he had hired a minibus from and to Karonga.

ANALYSIS OF FACTS AND DETERMINATION

I have gone through the evidence adduced by the Claimant, and also submissions made by counsels from both sides. I had time to look at other comparable case law relevant to the present assessment, as well.

I will deal with these heads of damages separately. However, before I begin my assessment I feel obligated to point out that, the law, when it comes to cases of this nature requires that the victim should prove that he indeed incurred or suffered some damage and that the defendant was the cause of his injuries out of his negligence. Once that has been done, the duty remains with the court to assess the extent to which the victim should be compensated. This follows the cardinal principle of *restitution in integrum* which simply means to be compensated as far as money can do; the law will try to place the injured person in the same condition he was before the accident had happened. See **Black's Law Dictionary 9th Edition p1428**.

I appreciate the fact that unliquidated or general damages are difficult to assess. However, it has been held in **Raninger Simbeye vs. Chibowa & another Civil Cause No. 58 of 2012**, that the only possible way to circumvent to these difficulties is to seek guidance from decided cases of a comparable nature. And that in doing so, the court bears in mind the devaluation of the Malawi Kwacha that has obtained since the awards in those comparable cases were made. Further, the courts also bear in mind the merits of each case to avoid occasioning injustice.

DAMAGES FOR PAIN AND SUFFERING AND LOSS OF AMENITIES OF LIFE

The definition of pain and suffering was given in the case of **Esnart Mpulula v Prime Insurance Ltd**, Personal Injury Cause number 108 of 2016, where the court stated that '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, embracement and sickness. Whereas 'Loss of amenities of life' was described as loss of faculties of pleasures of life resulting from one's injuries. In that case, the plaintiff fell on the ground when she was hit and had to be rushed to the hospital where her injured ankle was placed in plaster of Paris. For this, she was awarded, on 31st day of May 2017 compensation of up to **MK2, 000,000.00**. In **Javious Enerst v Steven Levison & Prime Insurance Company**, civil cause no. 92 of 2014, the plaintiff was awarded on 22nd March 2018, **MK6, 000,000.00** for sustaining fractured tibia of left leg, multiple bruises, multiple cuts on the upper and lower extremities and dislocated shoulder.

In **Mica Banda vs. Fabiano & others**, Civil Cause No. 82 of 2013, the court on 4th May 2018 awarded the plaintiff the sum of **MK3, 500,000.000** for sustaining Massive bruises on his scalp, Bruises on his face, back and posterior chest.

On 30th day of August 2018 the court in **Joseph Manyumba v Kondwani Phiri & Other**, Civil cause no. 533 of 2013, awarded the plaintiff the sum of **MK3 500 000.00** as damages for all heads on the fact that he sustained a dislocation of right elbow.

The medical report herein shows that the Claimant sustained closed fracture of mandible, left humerus and laceration on the chin, and back side of left elbow. I

believe the Claimant suffered great pain during and after the accident comparing the cases cited above. He told the court that he still felt pain on his injured limbs when he was trying to do certain activities or movements. Therefore, I feel that it will be just to award him **MK2, 500,000.00** as being damages for pain and suffering and loss of amenities of life.

DAMAGES FOR DISFIGUREMENT

'Disfigurement' can simply be described as permanent physical deformity of the body. In **Ronaldo Likoloma vs. Iqbal Mahomed**, Civil Cause No. 870 of 2013 the plaintiff on 14th May 2017 was awarded the sum of **MK350 000.00** being damages for disfigurement out of dog bites that left a visible scarring.

In **Mica Banda vs. Fabiano & others**, *Supra*, the court awarded the plaintiff the sum of **MWK600 000.00** being damages for disfigurement on his head and other bodily parts.

In this case, the Claimant has 10% of permanent body incapacitation. I saw him in court walking with a limb and had scars all over his body. He was a teenager with only 19 years of age; he had a lot of years to live ahead of him and hence I share my sympathy with Counsel Christon Ghambi to the extent that those deformities would likely haunt him the rest of his life. I therefore under this head award him **MK3, 500 000.00** as compensation.

SPECIAL DAMAGES

Generally, special damages are specifically pleaded and strictly proven. See **General Farming Limited v Chombo** (1996) MLR 16. On this part I have appreciated the tendering of the Medical report and Police Abstract report as evidence for this. I therefore award them MK6 000.00 for both reports. However, I am not persuaded to award him all claimed transport expenses on the sole ground that he did not produce sufficient evidence to substantiate his claim. Thus, on transport, I award him MK80, 000.00. In total, covering this head of special damages, I award the Claimant the sum of MK86, 000.00.

COSTS

It is a settled law that cost follow the event. The successful litigant is compensated for the troubles faced in commencing this case. It is, however, pleasing to note that the Claimant has already proposed the amount of costs to be awarded to him being MK1, 500,000.00. I think, this is not exaggerated. All I can do, knowing that these ought not to be received as gospel truth in the absence of justification, is to reduce them by MK100, 000.00. I therefore award the Claimant MK1, 400,000.00 being costs of this action.

CONCLUSION

In summary, the Claimant is awarded as follows:

- i. **MK2,500,000.00** being damages for pain and suffering and loss of amenities of life

ii. **MK3,500,000.00** being damages for disfigurement

iii. **MK86,000.00** being special damages

iv. **MK1,400,000.00** being costs of the present action

In total, the Defendants shall pay the sum of **MK7, 486,000.00**; payable within 7 days from today.

Made in chambers today Wednesday the 19th of November, 2018.

Brian Sambo

Assistant Registrar