



IN THE HIGH COURT OF MALAWI

MZUZU REGISTRY

CIVIL CASE NO. 205 OF 2017

BETWEEN

HADIJA YUSUFU..... PLAINTIFF

-AND -

KONDWANI TEMBO.....1ST DEFENDANT

JENALA CHITETE.....2ND DEFENDANT

PRIME INSURANCE.....3RD DEFENDANT

CORAM:

Brian Sambo, Assistant Registrar

Mr. A. Chunga, counsel for the Claimant

Mr. Chatupa, counsel for the Defendant

Mr. Henry Kachingwe, Court Clerk/Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

BACKGROUND

The present proceedings were commenced by Summons issued on the 7th of December, 2017, the Claimant demanded damages for pain and suffering, loss of amenities of life, disfigurement, special damages and costs of this action.

This assessment hearing follows a successful mediation conducted by Hon Justice T.R. Ligowe in which the Defendants had admitted liability, and the same was duly entered by the honourable judge.

BRIEF FACTS

The Claimant was on board a motor vehicle Registration Number NA 2787 Leyland Daf Lorry on her way to Ekwendeni in the district of Mzimba. Upon arrival at Kaka Motel in the city of Mzuzu, the said motor vehicle developed a mechanical fault and was parked to the extreme nearside verge of the road where it was hit from behind by another motor vehicle Registration Number, KK2662 Mercedes Benz Lorry driven by the 1st Defendant but owned by the 2nd Defendant.

EVIDENCE

During the Assessment proceedings, the Claimant testified. She adopted her witness statement as evidence in her matter. Her Medical Report showed that the Claimant had;

- i. Sustained an open fracture on the right leg
- ii. Sustained deep cut wounds on both the right and left feet
- iii. Sustained scars on both legs
- iv. Suffered deformity of her right leg

She was admitted at Mzuzu Central Hospital for 62 days before being discharged. She was put in Plaster of Paris (POP) for three months. Her permanent total incapacity was rated at 30%. She further testified that before the accident, she was doing business through which she was able to fend for her family. She however said that, since the accident she had become frail and incapable of running her business. She asked the court to consider awarding her damages for pain and suffering, loss of amenities of life, disfigurement over and above special damages and costs of this action.

SUBMISSIONS

Counsel for the Claimant submitted that a quantum of MK7, 524,000.00 inclusive of costs would be reasonable in the circumstances, whereas counsel for the defence, his proposition was MK3, 500,000.00 covering all heads.

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.

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 fracture of her right leg, sustained deep cut wounds on both legs and scars on both legs. I believe the Claimant suffered great pain during and after the accident comparing the cases cited above. She told the court that she still felt pain on her injured legs when she was trying to do certain activities or movements. Therefore, I feel

that it will be just to award him **MK2, 000,000.00** 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 30% of permanent body incapacitation. I saw her in court walking with a limb and had scars all over her legs. She was a young woman; she had a lot of years to live ahead of her and hence I share my sympathy with Counsel Chunga to the extent that those deformities would likely haunt her the rest of her 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 **MK24, 000.00** for both reports.

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 along with damages. This is good. I therefore award MK1, 500,000.00 being costs of this action.

CONCLUSION

In summary, the Claimant is awarded as follows:

- i. **MK2,000,000.00** being damages for pain and suffering and loss of amenities of life
- ii. **MK3,000,000.00** being damages for disfigurement
- iii. **MK24,000.00** being special damages
- iv. **MK1,500,000.00** being costs of the present action

In total, the Defendants shall pay the sum of **MK6, 524,000.00**. This whole amount has to be paid within 7 days from today.

Made in chambers today Wednesday the 22nd of November, 2018.

Brian Sambo
Assistant Registrar

A handwritten signature in black ink, consisting of several overlapping loops and a long vertical line extending downwards.