



MALAWI JUDICIARY

IN THE HIGH COURT OF MALAWI

CIVIL CASE NO. 653 OF 2018

BETWEEN:

HASSAN SINOYA

PLAINTIFF

AND

ENERST KALUPSA

BRITAM INSURANCE COMPANY LIMITED

DEFENDANTS

CORAM:

H/H MAKHALIRA

ASSISTANT REGISTRAR

CLAIMANT

REPRESENTED BY MR L. MASTER

1ST DEFENDANT

REPRESENTED BY MR J.G MWAKHWAWA

2ND DEFENDANT

REPRESENTED BY MR J.G MWAKHWAWA

COURT CLERK

MR MATHANDA

ORDER OF COMPENSATION

The award of damages for pain and suffering depends upon the claimant's personal awareness of pain and his capacity for suffering – see *Limpoh choo vs Camden and Islington Area Health Authority* (1980) HC 174 at 183.

The claimant as per the medical report tendered as part of his evidence sustained several serious injuries. He had to be admitted in hospital for three days. He had sutured as a result. Obviously, he indeed went through pain and suffering.

LOSS OF AMENITIES OF LIFE

Damages are paid under the head of loss of amenities for life to compensate the claimant's deprivation of the pleasures of life which amounts to substantial loss whether the claimant is aware or nor of that loss- see *City of Blantyre Vs Sagawa* (1993) 16 (1) MLR 67 (SC17).

In the present case as per the witness statement of Mr. Ajibu Mang'anda, the litigation guardian of the claimant, it was stated that as a result of the injuries the claimant's ability to do sporting activities and household chores has been greatly affected. The claimant, further is a young man who is supposed to enjoy his life with friends and family.

DEFORMITY/ DISFIGUREMENT

Damages are paid under the head of disfigurement for the change in the physical form of a person injured either as a result of the impact of the injury or its treatment, such as a scar coming in as a result of surgical operation necessitated by the injury. It is a change in appearance but it is capable of limiting a person from doing certain things as was observed by the court

in the case of Austin Julius Vs Rasika Gunawardena and General Alliance Limited, Personal Injury cause Number 316 of 2014.

Potani J. in the case of Ching'amba Vs Deerless Logistics Limited Civil cause number 2888 of 2007, stated that disfigurement was not something to be taken lightly and casually as a person lives with the deformity for the rest of his life.

In the present case the medical report which the witness for the claimant tendered in court concluded that the claimant was incapacitated by 40%.

Looking at comparable cases like Malichi Vs Prime Insurance Limited, Civil cause number 2613 of 2009, High Court Principal Registry (unreported) the claimant suffered a cut wound on the scalp, bruises on the face, swollen head and fracture of the left tibia. He had headaches and limped when walking. He was awarded **K 4,500,000.00** for pain and suffering and loss of amenities of life, on 29th May, 2012.

In a more recent case of Mariam Kennedy a minor suing through her mother and next of friend Edna Bwaila Vs Fred Maiden and prime Insurance, Personal Injury Cause number 457 of 2018, my brother Registrar, His Honour Austin Banda awarded the applicant **K 3, 500,000.00** for pain and suffering, **K1, 500,000.00** for loss of amenities of life and **K 1,200,000.00** for disfigurement.

In the present case therefore, I award the applicant **K 4,000,000.00** for pain and suffering, **K 1,500,000.00** for loss of amenities for life and **K 1,000,000.00** for disfigurement.

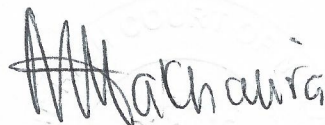
The claimant also prayed that he be awarded the sum of **K 13,500.00** as special damages for procuring a police report and medical report. The law is clear that where one is claiming special damages, the same should be specially proven.

Looking at the police report it is clear that the applicant indeed paid **K 3,000.00** to procure the police report under GR No. 6094414.

I awarded him this special damage. However, there is no evidence before the court that the medical report was procured at a fee. I will therefore decline to award any damages for the medical report.

In total therefore, the claimant is awarded the sum of **K 6,503,000.00** as damages for the personal injury that he suffered. The defendants must also meet the costs of the action. The parties have **14 days** to agree on the costs, failing which costs shall be assessed by the Registrar.

Made this **9th** day of **July** 2019 at High Court Principal Registry.



HIS HONOUR MANGAWA MAKHALIRA
ASSISTANT REGISTRAR

The parties through a consent Judgement on Liability against the defendants entered on the 18th of March, 2019, agreed that the defendants do pay the Claimant damages to be assessed if not agreed save that the liability of the 2nd Defendant be limited under the policy covering the motor vehicle.

The parties also as per the consent Judgement agreed that costs of and occasioned by this order be taxed if not agreed.

Upon the parties failing to agree on the quantum of damages, the matter came for assessment on the 22nd of May, 2019.

The claimant in this case, Hassan Sinoya, a minor sued the defendants through his litigation guardian and next friend Ajibu Mang'anda.

The applicant or claimant is seeking damages for pain and suffering loss of amenities of life and disfigurement. The Claimant further prays the court to award him the sum of **K 13,500.00** as specific claim for procuring the police and medical reports and costs of the action.

When the matter came for assessment on the 22nd of May ,2019, counsel for the claimant informed the court that the counsel Mwakhwawa representing the defendants was attending another matter before the Commercial Division, but gave the go-ahead for the assessment to proceed as he did not intend to cross examine the applicant.

He however told the court that counsel Mwakhwawa only asked that the court after the assessment hearing, give him 21 days to file submissions before the court makes its ruling.

The court then proceeded to do the assessment. The only witness called to give evidence was the Litigation guardian and next friend of the claimant, Ajibu Mang'anda.

In his oral evidence, Mr. Ajibu Mang'anda told the court that he comes from Mdooka village, T/A Jalasi in Mangochi District.

He further told the court that the claimant Hassan Sinoya is his nephew and that he was present in the court.

He then tendered three documents, namely his witness statement, a police report and a medical report. These were marked as Ex PW 1, PW 2 and PW 3 in that order by the court.

He lastly told the court in his oral evidence that the claimant sustained injuries on the back of his head, on the thigh, a deep cut wound on the left leg and soft tissue injury.

To supplement his oral evidence, the witness in his witness statement told the court that as a result of the injuries sustained by the claimant, he was taken to the hospital where he was admitted for three days and received treatment of suturing, analgesics and dressing of the wound. He referred the court to the medical report tendered in support of this evidence.

He further told the court that as a result of these injuries the claimant's ability to do sporting activities and household chores has been greatly affected as he suffered permanent in capacity of **40%**.

He lastly prayed that in order to pursue these proceedings, the claimant had to incur a sum of **K 13,500.00** to procure the police report and the medical report.

He therefore prayed the count to award the claimant damages for pain and suffering loss of amenities of life and disfigurement and the sum of **K 13,500.00** as cost for procuring the police and medical reports. He also prayed for costs of the action.

The issue at this stage in this case is the amount of damages that the claimant must be awarded for the personal injury he suffered under the heads as pleaded.

The starting point is that assessment of damages presupposes that damages have been proved and what remains is the measure of the amount of damages- see the case of Ngosi T/A Mzumbamzumba Enterprise Vs Amosi Transport company limited (1992) 15 MLR 370 (HC).

Damages in a case like this one is not awarded to punish the defendant or tortfeasor but to fully compensate the claimant of all the losses that he has suffered as direct or consequential result of the defendant's wrongful act or omission. In the case of George Nankhuni vs Shire Bus Lines Ltd civil cause 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 integrum.

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 of the individual case that the court is dealing with, see *Chipeta vs Dwangwa sugar corporation*, civil cause no. 345 of 1998 HC 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 between the case at hand and the comparable one- see *Hon. Kennedy Kuntenga vs Attorney General* Civil Cause no. 2002 of 2002, High court Principal Registry (unreported).

As indicated earlier the claimants is praying for damages for pain and suffering loss of amenities of life and disfigurement.

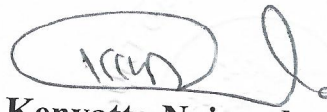
PAIN AND SUFFERING

The word pain and suffering 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(Butter worths, 1985)P8.

In the circumstances, it is the considered view of the Court that the Plaintiff has failed to provide good and substantial reasons for his failure to appeal within the prescribed period of fourteen days following the date of judgment sought to be appealed against. Such being the case, it is not necessary for the Court to proceed to ascertaining and certifying whether the notice of appeal, *prima facie*, shows a good cause why the appeal should be heard.

For leave to appeal out of time to be granted, an applicant ought to first satisfy the court on both the two above-mentioned factors. As the Plaintiff has stumbled over one factor, his application for leave to appeal is fatally wounded. It is, accordingly, dismissed with costs to the Defendant.

Pronounced in Chambers this 26th day of February 2018 at Blantyre in the Republic of Malawi.


Kenyatta Nyirenda
JUDGE