



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 430 OF 2016

BETWEEN

NOEL PHIRI PLAINTIFF

AND

MR. MAURICE CHEMBEZI 1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED 2ND DEFENDANT

AND

CORAM : HER HONOUR MRS. BODOLE, ASSISTANT REGISTRAR

Kaluwa, of Counsel for the Plaintiff

Counsel for the Defendants, Absent

Ms. Kazembe, Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

The plaintiff brought proceedings against the defendants claiming damages for pain and suffering, loss of amenities of life, disfigurement, the sum of K3,000.00 and K10,000.00 as costs for obtaining the Police and medical reports respectively, and costs of the action. The plaintiff obtained default judgment and the matter has now come for assessment of damages.

The Evidence

The evidence before this court is that on 6th December, 2015 the plaintiff was coming from his home and going to a friend's house. He was walking on the dirty verge of the road. Motor vehicle registration number KA 3669 Toyota Cresta saloon hit him when he reached a place called Mbwelera at Chemusa in Blantyre.

As a result of the accident the plaintiff sustained injuries. The plaintiff's Health Passport which is exhibit P.2 shows the treatment he received on 20th February, 2016 which shows that he had isolated left fibula and he was given some medication and was referred for physiotherapy. In his oral testimony the plaintiff testified that his left leg's bone and knee were broken. The plaintiff's statement of claim shows that the plaintiff sustained fracture of the left tibia and fibula, injury to ligament on the left knee, bruises on the face, bruises on the back, left hand, right hand, and all over the body. The Police Report which is exhibit P.1 and addressed to Noel Phiri shows that Noel Chaona and not Noel Phiri sustained fracture of the left leg.

Applicable Law

The burden of proof lies upon the party who asserts the affirmative of the issue – **Phips on Evidence** (16th edition) 127. As such the plaintiff has a burden of proving the injuries he sustained for the court to make a proper assessment of damages. In **Msachi v Attorney General** [1991] 14 MLR 287 it was held that the standard of proof in civil cases is on a balance of probabilities.

Analysis of Facts and Applicable Law

The plaintiff's statement of claim upon which the default judgment is based shows that he sustained a fracture of the left tibia and fibula, injury to ligament on the left knee, bruises on the face, back, left hand, right hand, and all over the body. His oral testimony shows that he sustained a fracture of the left leg and knee. His Health Passport is not very clear as to what injuries he sustained except that he had isolated left fibula and was given some medication and referred for physiotherapy. This Health Passport is dated 20th February, 2016.

The plaintiff's testimony on his the injuries he sustained is so mixed up that it is difficult for me to find what kind of injuries he sustained.

The plaintiff's name is Noel Phiri. The Police report shows that the person who sustained the fracture of the leg is Noel Chaona and not Noel Phiri. This makes it the more confusing as to what injuries the plaintiff sustained as a result of the accident.

All in all, I find that the evidence on the injuries sustained by the plaintiff is so contradictory that it cannot be relied on by the plaintiff to prove his injuries for the court to make a proper assessment of damages. The plaintiff has failed, on a balance of probabilities, to prove to this court the injuries he sustained.

The assessment proceedings are, therefore, dismissed.

Pronounced in court this 1st day of February, 2018 at Blantyre.



E. BODOLE (MRS)

ASSISTANT REGISTRAR