



The Judiciary

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 471 OF 2018

Between

**OVERTON NANKUMBA (A minor suing through Leah Nankumba, his mother and
Litigation Guardian CLAIMANT**

-and-

NATHAN MAZOMBWE1ST DEFENDANT

UNITED GENERAL INSURANCE COMPANY LIMITED.....2ND DEFENDANT

CORAM: Austin Jesse Banda, Assistant Registrar

Mr. Mzumara, for the Claimant

None for the Defendants

D. Mkangala, Clerk/ Official Interpreter

Banda, Assistant Registrar

ORDER ON ASSESSMENT DAMAGES

Background

The minor claimant obtained judgment in his favour in his claim for damages for personal injuries that he suffered owing to the negligence of the 1st defendant who was at the material time insured by the 2nd defendant. The matter came before me for assessment of damages. Despite being served with a notice of hearing, the defendants did not appear either in person or through counsel, without any explanation. I heard the claimant only whose only witness was his mother Leah Nankumba.

Evidence

Mother of the claimant told the court that her son Overton was hit with a car by the 2nd defendant's insured driver when he crossed the Chidzanja road in Lilongwe. She stated that her son sustained a lot of injuries from the accident, namely an open fracture of the left tibia, an open fracture of the left fibula and bruises. The minor claimant was admitted for four days at Kamuzu Central Hospital, where he underwent debridement, and had a plaster of paris administered.

The mother said that that her son is now disfigured and in her oral testimony she further said that her son has persistent pain in the left leg and that swells at times. She said that her son could no longer run or walk properly and that his ability to do sports has been compromised. She stated that her son incapacity due to the accident has been placed at 25%. She tendered a medical report.

Issue

The only issue in this case is the amount of damages that the defendants must pay as compensation to the claimant.

Analysis of Fact, Law and Determination

Damages are the remedy that is open to a victim of a wrongful act of another. With general damages courts do award them not to punish the defendant or tortfeasor, but to fully compensate the claimant of all the losses that he has suffered as a direct or consequential result of their wrongful act or omission. In the case of **George Kankhuni v. Shire Buslines Ltd**, Civil Case 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 intergrum*. ”

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 in the individual case that the court is dealing with. See **Chipeta v. Dwangwa Sugar Corporation**, Civil Cause No. 345 of 1998, High Court, 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 within

the period between the case at hand and the comparable one- **Hon. Kennedy Kuntenga v. Attorney General, Civil Cause No. 2002 of 2002, High Court, Principal Registry, (unreported).**

Pain and Suffering

The word 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, embarrassment and sickness- Ian Goldrein et al, Personal Injury Litigation, Practice and Precedents (Butterworths, 1985) p8. 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 v. Camden and Islington Area Health Authority [1980] AC 174 @ 183.**

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 v. Rasika Gunawardena and General Alliance Limited, Personal Injury Cause Number 316 of 2014.** Potani, J, in the case of **Chingámba v. Deerless Logistics Limited Civil Cause No. 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 **Zaina Chipala v. Dwangwa Sugar Corporation Civil Cause Number 345 of 1998, High Court, Principal Registry, per Chimasula, J,** it was held that money cannot renew a physical frame that has been battered and shattered. The courts must therefore award a sum that is regarded as reasonable compensation.

Loss of Amenities of Life

Damages are paid under the head of loss of amenities of life to compensate the claimant's deprivation of the pleasures of life, which amounts to substantial loss, whether the claimant is

aware or not of that loss. See **City of Blantyre v. Sagawa** [1993] 16(1) MLR 67 (SCA); Kemp and Kemp, The Quantum of damages, Vol .1(2nd Ed)., 1961, p.624.2

Loss of Earning Capacity

Under this head, the court awards loss where a claimant continues in the occupation that he was into before the accident, after suffering an injury in the accident. The court, where it finds that the claimant can no longer earn his pre-accident rate of earnings, awards damages for loss of earning capacity. It is calculated based on the annual figure and taking into account the age of the claimant and his working life span. It also takes into account the usual working contingencies and also taxation. Courts also assess the prospect of losing employment or reduced earnings in future- **Tembo v. City of Blantyre Civil Cause Number 1355 of 1994, High Court Principal Registry (unreported).**

Justice Mwaungulu, as he was a judge of the High Court then, in the case **Sakonda v. S.R. Nicholas Ltd, Civil Appeal Cause No. 67 of 2013, High Court Principal Registry (Unreported)** suggests that for loss of income, the real loss must be ascertainable and hence calculable for purposes of the award of damages, whilst a court can make an award for loss of earning capacity where the loss is not ascertainable.

Comparable Cases

In this case, the evidence of the claimant is uncontroverted. The injuries, suffering and degree of incapacitation and disfigurement as appears in the evidence of the claimant in this case are taken for a fact.

In an award made on 20th July, 2012, a claimant who suffered a sprained right ankle and had multiple bruises such that she was admitted in hospital for a day was awarded K2,000,000.00 for pain and suffering and loss of amenities of life- see **Patricia Demcsani Bannet v. Isaac Lizimba and Another, Civil Cause No. 811 of 2011 (unreported).**

In **Wisted Chaleka v. Dalitso Subaila and Prime Insurance Company Limited, Personal Injury Cause Number 247 of 2014 (unreported)** the court on 26th June 2014 awarded a sum of K3, 800,000.00 as damages for pain and suffering and loss of amenities of life. In that case, the claimant had sustained soft tissue injuries, a painful neck, multiple bruises on the neck and had excessive body pain.

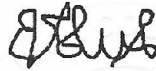
Determination

In light of the above cases and facts of this instant case, I award the claimant the sum of K1, 950,000 as damages for pain and suffering; K1, 200,000 as damages for loss of amenities of life and K800,000.00 as damages for disfigurement.

Conclusion

The claimant is hereby awarded a sum of **K3, 950,000.00** as damages for the personal injury that he suffered as a result of the negligence of the defendant's insured. The defendant should also pay costs of the assessment hearing.

Made this 21st day of December, 2018.



Austin Jesse Banda

ASSISTANT REGISTRAR