



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 360 OF 2015

BETWEEN

CIDRECK WHITE CLAIMANT

AND

JOSEPH NDEKWA 1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED 2ND DEFENDANT

CORAM : HER HONOUR MRS. BODOLE, ASSISTANT REGISTRAR

Mussa, of Counsel for the Plaintiff

Mpaka, of Counsel for the Defendant,

Ms. Kazembe, Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

Introduction

The claimant brought proceedings against the defendants claiming damages for personal injuries he suffered due to the negligence of the 1st defendant, and costs of the action. Judgment on liability against the defendants was entered on 7th November, 2017.

I must thank Counsel for the claimant and defendants for the authorities on assessment of damages which were useful to this court.

The Evidence

The evidence before this court is that on 22nd June, 2014, around 3.30 am the claimant was involved in a road traffic accident in which the defendants have already been held liable. As a result of the accident, the claimant sustained injuries. According to the medical report the claimant sustained an open fracture of the left arm, deep cut on the left side shoulder, bruises all over the body, soft tissue injuries and general body pains. His wounds were sutured and dressed. He was on Plaster on Paris twice. He was admitted in hospital for at least 6 days.

As a result of the accident, the claimant's left shoulder movement is limited. He has difficulties in driving a manual car in that he feels pain in his arm joint when he is changing gears. He also has difficulties in lifting heavy objects. The claimant works as a Scientist in a laboratory and uses both hands. The pace of working is slower than before. The claimant has a visible huge scar on his left shoulder.

The claimant is also claiming damages a sum of K5,000.00 and K10,000.00 as costs for obtaining the Police and medical reports respectively.

General Law on Damages

A person who suffers bodily injuries due to the negligence of another is entitled to the remedy of damages. Such damages are recoverable for both pecuniary and non-pecuniary losses. The principle underlying the award of the damages is to compensate the injured party as nearly as possible as money can do it – **Elida Bello v Prime Insurance Co. Ltd** Civil Cause No. 177 of 2012 (unreported).

The damages cannot be quantified in monetary terms by use of a mathematical formula but by use of experience and guidance afforded by awards made in decided cases of a broadly similar nature – **Wright v British Railway Board [1983] 2 AC 773**. The court, however, considers the time the awards were made and currency devaluation – **Kuntenga and Another v Attorney General** Civil Cause No. 202 of 2002.

The non-pecuniary head of damages include pain and suffering, loss of amenities of life and disfigurement. These are assessed by the court. Pecuniary loss must be pleaded and proved. In **Renzo Benetollo v Attorney General and National Insurance Co. Ltd** Civil Cause No. 279 of 1993 (HC) the court held that where a party has not proved special damages reasonable compensation in the circumstances can be awarded.

Pain and Suffering

Pain and suffering is attributable to the claimant's injury or to any necessary surgical operations and mental anguish such as that suffered by a person who knows that his expectation of life has been reduced or who being severely incapacitated, realizes the condition to which he has been reduced – **Sakonda v S.R. Nicholas** Civil Appeal Cause No. 67 of 2013.

It is clear from the evidence that the claimant suffered great pain and is still suffering. He sustained an open fracture of the left arm, deep cut on the left side shoulder, and bruises all over the body, soft tissue injuries and general body pains. The wounds were sutured and dressed. He was on Plaster on Paris twice. He was admitted in hospital for at least 6 days. He is unable to drive a manual motor vehicle because whenever he changes gears, he feels pain in the arm joint.

Loss of Amenities of Life

Loss of amenities is attributable to deprivation of the claimant's capacity to engage in some sport or past-time which she formerly enjoyed – **Kanyoni v Attorney General** [1990] 13 MLR 169. It means that he is incapable of performing some activities he used to do.

It is clear from the evidence that the claimant is unable to enjoy life as he used to. He has difficulties in driving a manual car in that he feels pain in his arm when he is changing gears. He also has difficulties in lifting heavy objects. The claimant works as a Scientist in a laboratory and uses both hands. The pace of working is slower than before.

Deformity/Disability

Disability is a limitation either physically or mentally for someone to do what any other person can do without reasonable accommodation. In **Ching'amba v Deerless Logistics Ltd** Civil Cause No. 2888 of 2007 the court stated that disfigurement is not a matter to be taken lightly and casually. It is something that one has to live with permanently.

The claimant's left shoulder movement is limited which makes him unable to do things he used to. His arm has, therefore, been impaired. He also has a visible huge scar on his left shoulder.

Award of Damages

I went through the cases submitted by the claimant and defendants. In **Raphael Lungu v Prime Insurance Company Limited** Civil Cause No. 2024 of 2010, the claimant sustained fracture of the distal humerus and open fracture of radius and ulna. He was awarded a sum of K5,000,000.00 on 17th July, 2012. In **Gladys Jonasi v Prime Insurance Company Ltd** Personal Injury Cause Number 390 of 2012 the claimant sustained a fracture of distal tibia and multiple soft tissue injuries. He was awarded K2,000,000.00 for pain and suffering and K800,000.00 for loss of amenities of life on 9th May, 2016.

The injuries suffered by the claimant in the present case are more or less similar to the ones suffered by the claimants in the cases cited above. I, therefore, award the claimant a sum of K2,500,000.00 as damages for pain and suffering, K1,000,000.00 as damages for loss of amenities of life, and K1,000,000.00 for disfigurement.

Special Damages

Special damages are supposed to be pleaded and proved. There is no evidence to show that the claimant expended the amount he is claiming for obtaining the medical report. If some money had been spent, that should have been shown to the court. However, this court is mindful of the fact that the claimant had to travel to the hospital from home in order to obtain the medical report. Reasonable compensation for that is fair and just.

I, therefore, award the claimant a sum of K2,500.00 as costs for obtaining the medical report. I also award the claimant a sum of K3,000.00 as costs for obtaining the Police report.

Conclusion

In conclusion, the claimant is hereby awarded the total sum of K4,505,500.00 and costs of the action.

Made in court this 12th day of July, 2018 at Blantyre.



EDNA BODOLE (MRS)

ASSISTANT REGISTRAR