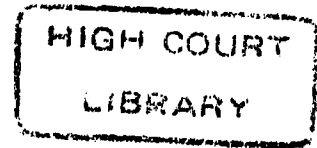


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REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 476 OF 2012

BETWEEN:

JOHN MADEYA.....CLAIMANT

AND

MAPHUMUZANA JERE..... 1ST DEFENDANT

PRIME INSURANCE CO. LTD.....2ND DEFENDANT

CORAM

Mrs T. Soko : Assistant Registrar

Mr Mumba : Counsel for the claimant

Mr Chipembere : Counsel for the defendant

Mrs Mkandawire : Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

BACKGROUND

This is an order on assessment of damages following a Judgment entered by Justice Madise on 11th October 2017. The Claimant's claim is for damages for pain and suffering, loss of amenities of life, disfigurement, cost of police report, cost of medical report and costs for the action. The facts derived from the statement of claim

over that on 26th May 2012, the 1st defendant who was driving a motor vehicle registration number BR 5613 VW Golf Saloon insured by the 2nd defendant hit the claimant who was walking on the pavement near Stylex Centre along Haile Selassie Road in Blantyre. Due to the accident, the claimant sustained a fracture on the left hip, injuries in the ribs, leg and painful chest and back.

EVIDENCE

On the date of hearing of assessment, the claimant appeared through his Legal Practitioner Mr Shepherd Mumba. The claimant adopted his witness statement where he stated that on the date of the accident, he was at Stylex Shop in Blantyre where he works as a guard. As he was sitting, he was hit by a motor vehicle registration number BR 5613 VW Golf Saloon which was coming from the direction of ESCOM roundabout heading to Nandos. The claimant stated that as a result of the accident, he sustained open fracture of the right hip, fractured ribs, chest pains and painful back and legs. The claimant said he was taken to Queen Elizabeth Central Hospital where he was admitted for one week. The claimant stated that he has not completely healed since he still have hip problems and walk with difficulties. The claimant added that sometimes the pain is so severe that he cannot walk without a walking stick. The claimant tendered a police and medical report as part of evidence.

In cross examination, the claimant stated that he still experiences pain. He said he never went for a checkup after the accident because of financial problems.

SUBMISSIONS

Only Counsel for the claimant filed skeletal arguments where he submitted that the claimant should be awarded a sum of K8, 000,000.00. Counsel cited a number of comparable authorities to substantiate the submissions which I will use later.

ISSUE

The quantum of damages to be awarded to the claimant

GENERAL LAW ON DAMAGES

In assessing damages for personal injuries, the intention of the court is to compensate the injured party as nearly as possible as money can do. The principle is to put the plaintiff at the position he would have been if it would have not been for the tort committed. **See Namwiyo v Semu (1993) 16 (1) MLR 369.**

In calculating damages, therefore, the Courts consider, in monetary terms, the sum which will make good to the sufferer, as far as money can do, the loss he has suffered as a result of the wrong done. **See Admiralty Commissioners vs S.S Valeria (1992) 1 A.C. 242 at 248.**

In Christina Mande vs Charter Insurance Co. Ltd Personal Injury Cause No. 329 of 2016 the Court quoting Wright vs British Railway Board 1938 AC 1173, 1177 stated that:

'Non-economic loss... is not susceptible of measurement in money. Any figure at which the assessor of damages arrives cannot be other than artificial and, if the aim is that Justice meted out to all litigation should be even handed instead of depending on idiosyncrasies of the assessor, whether Judge or Jury the figure must be basically a conventional figure derived from experience and from awards in comparable cases.'

In the case of **City of Blantyre vs Sagawa** the court said the following:

*'It would appear to us that if the award is to be conventional, **an award for a similar injury** should be comparable and should, to some extent, be influenced by amounts awarded in the previous case, either in the same or neighboring jurisdictions. In citing previous awards the court should not lose sight of factors like devaluation of the currency since the awards were made.'*

PAIN AND SUFFERING

In damages for pain and suffering, the court considers the physical experience of the nerves and mental anguish which comes as a result of the injury. **See Lemon Banda and 19 others V Mota Engil Limited and General Alliance Insurance Limited, personal injury cause number 178 of 2012 (unreported).**

In the **City of Blantyre vs Sagawa 1993 16 (1) MLR 67** the court quoted Kemp and Kemp volume II paragraph 1007 where it was stated that;

Pain is, it is suggested, used to describe the physical pain caused by or consequent upon the injury, while suffering relates to the mental element of anxiety, fear, embarrassment and the like.

Page 831 of **Mc Gregor** on damages defines pain as the immediately felt effect on the nerves and brain of some lesion or injury to a part of the body, while suffering has been defined as the distress which is not felt as being directly connected with any bodily condition. Pain includes any pain caused by medical treatment or surgical operations rendered necessary by the injury inflicted by the defendant. Suffering includes fright at the time of the injury and fright reaction, fear of future incapacity, either as to health, sanity or the ability to

make a living, and humiliation, sadness and embarrassment caused by disfigurement. **Also see Gedion Mhango vs Nico General Insurance Co. Ltd Personal Injury Cause No. 703 of 2016 (unreported).**

LOSS OF AMENITIES OF LIFE

Loss of amenities is concerned with loss of enjoyment of life. This follows from the fact that human beings enjoy certain activities which may as a result of the injury be curtailed. **See Lemon Banda and 19 others V Mota Engil Limited and General Alliance Insurance Limited, personal injury cause number 178 of 2012 (unreported).**

Birkett L.J in Manley vs Rugby Portland Cement Co. (1951) C.A No. 286 stated that there is a head of damage which is sometimes called loss of amenities, the man made blind by the accident will no longer be able to see familiar things he has seen all his life, the man who had both legs removed and will never again go upon his walking excursions- things of that kind- loss of amenities. **Mc Gregor on damages at Page 834** explains that loss of impairment of any one or more of the five senses is compensated under this head. Besides loss resulting from interference with the plaintiff's sexual life

DISFIGUREMENT

Disfigurement is concerned with change of looks of the individual. This may be scars, amputations and postures. **See Lemon Banda and 19 others V Mota Engil Limited and General Alliance Insurance Limited, personal injury cause number 178 of 2012 (unreported).** Damages for disfigurement are normally awarded as part of pain and suffering. They are awarded separately if the plaintiff has been ridiculed, lost his social status, or that his is in need of plastic surgery. **See Mary Kamwendo vs Stage coach Malawi Limited Civil Cause No. 840 of 1995**

DETERMINATION

The medical report shows that the claimant had an open fracture of femur since a bone was exposed. The medical report also shows that the claimant sustained rib fractures on the right side, backache and soft tissue injuries. The claimant was given painkillers such as diclofenac and ibuprofen. He also underwent a surgical operation such as open reduction and internal fixation after debridement. The degree of incapacity was assessed at 40%. The medical personnel who treated the claimant explained in the report that the limb was shortened by 2cm since he has a limp when walking. The report stated that he can perform his previous job

with some limitation and will no longer be able to perform manual work. The report also shows that the injuries were very serious to the extent that the claimant's ability to perform sporting activities is affected.

The report is clear that the claimant's injuries were serious and he suffered pain due to the injuries and the treatment that he went through. Besides it is clear from the evidence and the report that the claimant's life has been affected such that he will not be able to perform other duties and will even walk with a limp for the rest of his life. Counsel for the Claimant cited a case of **Nyirenda vs Funsani and another Civil Cause No. 2013 of 2007** where the claimant sustained a fractured pelvis on the right side, a fractured metacarpal bone and multiple bruises. The Court on 17th May 2011 awarded the claimant a sum of K1, 700,000.00 damages for pain and suffering, loss of amenities of life and disfigurement. Counsel also cited a case of **Mabaso and others vs Kumwenda and another Civil Cause No 242 of 2010** where the 10th claimant sustained a dislocated hip, fractures of the right leg and hand, cuts and bruises. The Court awarded a sum of K3, 000,000.00 damages for pain and suffering and loss of amenities of life. The award was made on 31st October 2012. Considering the authorities cited above, the devaluation of currency and the nature of injuries the Court awards a sum of K 3, 500, 000.00 damages for pain and suffering including disfigurement and K1, 500,000.00 damages for loss of amenities of life. The Court also awards the claimant a sum of K3, 000.00 cost for a police report which was paid under GR No. 726263. The total award adds up to K5, 003,000.00. Costs are for the claimant.

Pronounced in chamber on this 12th day of June 2018.



T. SOKO

ASSISTANT REGISTRAR