



REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CASE NO. 521 OF 2017

BETWEEN

LIMION PETER.....CLAIMANT

AND

JOSEPH EDWARD MAPUNDI.....1ST DEFENDANT

WILLZ GENEARL DEALERS.....2ND DEFENDANT

Coram: **WYSON CHAMDIMBA NKHATA**

Khan- of Counsel for the plaintiff

Chitsulo- Court Clerk and Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

This is the court's order on assessment of damages pursuant to a judgment on liability entered in favour of the claimant against the two defendants on the 18th of June 2018 by Honourable Justice N'riva. The issue of the Defendant's liability having been settled already by the said judgment, the duty placed upon this court was to determine the reasonable quantum of damages that would adequately compensate the Plaintiffs for the losses and damages herein. The defendants did not avail themselves for the hearing on the assessment of damages. There is evidence on the record that they were duly served. This court opted to proceed in their absence.

The claimant in this matter took out a writ of summons which was issued on the 12th of September 2017 against the defendants claiming damages for pain and suffering, loss of amenities of life, disfigurement, special damages and costs of the action. He had alleged that he sustained injuries in an accident influenced by the 1st defendant's negligence. Apparently, the 1st defendant was driving motor vehicle registration number MC5920/MZ6062 Freightliner Truck from the direction of Biwi Petroda Filling Station heading towards St Johns along Kamuzu Procession road. It is believed that upon arrival at or near Walkers Total Filling Station he negligently drove the said motor vehicle and collided with the claimant. Consequent to the accident, the claimant avers that he sustained amputation of the leg from the knee. He lamented that his ability to do household chores and sporting activities has been seriously affected. His permanent incapacity has been pegged at 60%. It is against this background that the claimant claim damages for pain, suffering and loss of amenities of life, damages for disfigurement and costs of this action.

I must state that the law generally provides that a person who suffers bodily injuries or losses due to the negligence of another is entitled to recover damages. The fundamental principle which underlines the whole law of damages is that the damages to be recovered must, in money terms, be no more and no less than the Plaintiff's actual loss. The principle was laid down in numerous case authorities more particularly by Lord Blackburn in the case of *Livingstone v. Rawyards Coal Company* (1880) 4 AC 25 in the following terms:

where any injury or loss is to be compensated by damages, in settling a sum of money to be given as damages, you should as nearly as possible get at the sum of money which will put the party who has been injured, or who has suffered loss, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.

I diligently perused the medical evidence as to the injuries and the prognosis given by the medical expert. I had the opportunity to observe the injury on the leg and the present physical condition of the claimant. I gave meticulous thought to the written submissions filed by counsel for the claimant. I considered the relevant aspects particularly of the following precedents cited by the counsel:

The case of **Rabecca M'bwana v Attorney General and NICO General Insurance Civil cause No. 1958 of 2009 (Unrep)** in which the court on the 17th of July 2012 awarded the sum of MK10,500,000.00 as damages for pain and suffering, loss of amenities and disfigurement to the Plaintiff who sustained a fractured humerus and amputated leg.

Counsel also cited the case of **Cliford Petulo (suing through his mother and next of friend, Maria Lomosi Petulo) v General Alliance Limited Personal Injury Cause Number 847 of 2014**, in which the plaintiff suffered a fractured left lower leg (tibia/fibula), painful left leg, bruises on the head and had a plaster of Paris for several months. The court awarded him the sum of K4,000,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement. The award was made on 29th of October 2015.

Further Counsel cites the case of **Anastanzia Elias v NICO Insurance Company Limited Personal Injury Cause Number 117 of 2011 (unrep)** in which the plaintiff lost use of her hand and one of her legs was amputated below the pelvis. The plaintiff was awarded K15,000,000.00 as damages.

Lastly, Counsel for the claimant cites the case of **Chilembwe Phiri v General Alliance Insurance Limited, Personal Injury Cause Number 350 of 2012 (unrep)** in which the court on the 19th of April 2013 awarded the sum of K7,000,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement where the plaintiff sustained fractures on both legs.

It was therefore Counsel's submission that in the circumstances of this case, the reasonable compensation would be K30,000,000.00 bearing in mind the severity of the injuries, permanent incapacity and the devaluation of the Malawi Currency with respect to the cited cases.

In order to get an even wider perspective, the court on its own looked at the case of **Malimau v Mota Engil Civil Cause Number 206 of 2011** where the plaintiff had a fractured left foot, tibia and fibula and had the leg amputated, he was awarded the sum of K10,000,000 for pain and suffering and loss of amenities of life on 17th June 2011 and the case of **Clemence Mwale v Real Insurance Company Limited Civil Cause No 892 of 2011** where the Plaintiff sustained a fracture of the right leg resulting into an amputation. An award of K8,403,850.00 was made on 4th December 2013 for pain and suffering and loss of amenities of life.

This court is aware that in the exercise of its discretion with regard to the appropriate amount that is to be awarded as general damages the court has to be fair and reasonable to both parties. Whilst the claimant must be sufficiently and properly compensated for the injuries he has suffered in the accident, the defendant should not be unnecessarily burdened with an inordinately high award. This court takes note that the claimant suffered gruesome injury which involved loss of a limb. I believe this is a serious injury. The claimant must have undergone excruciating pain. The injury has left an unpleasant and very inconveniencing aftermath. His mobility has been heavily affected as he will from now on rely on crutches as noted when he came to court. Furthermore, his ability to do household chores not to mention supporting

his family has been heavily setback. I am of the opinion that the case before me is a dire matter where plaintiff's life has been negatively altered.

With this in mind, however, I do not agree that the amount suggested by the Counsel for the claimant is reasonable. My considered view is that a fair and reasonable sum that can help to ameliorate the plaintiff's unfortunate position is K20,000 000,00 and I accordingly order likewise.

The plaintiff also claims K13,500,00 being special damages. I take note that he paid K3,000.00 for the police report under GR. No. 4238651. There was production of a medical report but it was not accompanied by supporting evidence that the same was paid for. I will find it hard to make an award for a medical report.

The plaintiff is further awarded costs of this action to be taxed if not agreed by the parties.

DELIVERED IN CHAMBERS THIS 23rd DAY OF JULY 2018



WYSON CHAMDIMBA NKHATA

ASSISTANT REGISTRAR