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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CASE NUMBER 251 OF 2014

Between

MANUEL PAUL..... CLAIMANT

-and-

BT NDAWALA.....1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED..... 2ND DEFENDANT

CORAM: A.J. Banda, Assistant Registrar

Mr. Chimowa, for the Claimant

Mr. Chikaonda, for the Defendant

Mr. Chitsulo, Clerk/ Official Interpreter

BANDA, A.R:

ASSESSMENT ORDER

1. Background

By the judgement of Honourable Justice Mbvundula, of 20th March, 2017, the 1st and 2nd defendants were found liable in the causation of injuries to the claimant, as owner of the motor vehicle that hit the claimant and insurer of the said vehicle, respectively. The claimant is a minor who sued through his father and litigation guardian, Mr. Hamilton Paul, for damages for: pain and suffering; loss of amenities of life and the cost of medical report and police report. The honourable judge ordered that damages be assessed if not agreed by the parties. The

claimant obtained a date for assessment of damages with the registrar, and the hearing was conducted on the 8th day of May, 2018.

2. Evidence

The claimant himself was the only witness. Maunel Paul told the court that he was 13 years old by age. He adopted his witness statement that was filed earlier. It was stated in his statement that a driver of motor vehicle registration number BP 7824 hit him when he suddenly fell from his bicycle which had a collision with another bicycle due to the sudden hooting sound of a motor vehicle. As a result of the incident, Manuel said that he sustained a closed fracture of the right fibula and degloving of the right leg. He tendered a medical report, which was prepared by Mr. Danford Nundi, a Senior Clinical Officer at Mulanje District Hospital that showed that he had a permanent incapacity of 15%.

3. Issue

The issue in this proceeding is the quantum of damages that the defendants must pay as compensation for the injuries caused to the claimant.

4. Analysis of Law and Fact

Damages are the remedy that is open to a victim of the wrongful act of another. Courts do award damages not to punish the defendant but to fully compensate the claimant of all the losses he has suffered. 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 [now called the Claimant], 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.

In the case of **Phiri v. General Insurance Co. Limited Personal Injury Cause no. 350 of 2012, High Court Principal Registry, (unreported)**, a claimant who sustained a fractured leg and had a dislocated ankle was awarded K3,000,000.00 damages for pain and suffering.

In the case of **Land Mawiro v. Elias Bakuli and Prime Insurance Co Ltd, Personal Injury Cause Number 14 of 2015, High Court, Principal Registry (unreported)**, in an award made on 11th June 2018, the claimant was awarded K2, 500,000.00 as damages for pain and suffering, for a claimant who sustained an open fracture of the tibia.

In an award made on 3rd September, 2012, a claimant who suffered a left tibia fracture and soft tissue injuries was awarded a sum of K3, 500,000.00 as compensation for pain and suffering and loss of amenities of life. This is the case of **Lipenga v. Prime Insurance Company Limited Personal Injury Cause No. 2493 of 2009, High Court, Principal Registry (unreported)**.

Having considered the like cases and the period in which they were made, but also looking at the particularities of the injuries of the claimant in this case, I award him the sum of K3,000,000.00 as damages for pain and suffering.

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.*

The claimant told the court that he used to play football and athletics but he can no longer do so since the injury. He was in standard 8 during the injury and a young teenager. He is at the age where one is most energetic to discover his talents and learn and grow skills for enjoyment of amenities. He will lose out on the beautiful and popular game of football and other athletic sports he may have grown in. He will live with his loss for long. The degree of permanent incapacity after the injury is 15%.

In the case of **Kachisi and Baluti v. United General Insurance Co. Limited, High Court, Principal Registry, Personal Injury Cause No. 87 of 2017 (unreported)**, the 2nd Claimant who was a minor was awarded a sum of K 1,000,000.00 as damages for loss of amenities of life, on 14th July, 2017, with his young age considered highly. I award the same in this case.

Special Damages

These are damages that the claimant incurs as a result of a defendant's negligence, that are ancillary but in nexus to the defendant's wrongful action or omission. They are the actual loss arising out of the injury that are quantifiable at the outset. They have to be specifically pleaded, but also proved. In this instant case the claimant states that he incurred costs to obtain a medical and also a police report. No specific evidence of that fact was made. However, it is not in

dispute, and I find it reasonable that indeed an expense of K2,000.00 and K 3,000.00 was made to purchase a medical and police report. There is not a need for a receipt per se where the court believes that a reasonable expense was made- **Renzo Benetollo v. Attorney General and National Insurance Company Limited Civil Cause No. 279 of 1993, High Court Principal Registry (unreported)**. I award the claimant **K 5,000.00** as special damages recoverable for the procurement of the two aforementioned reports.

5. Conclusion

The claimant suffered damage for which the defendants are liable. He is compensated with the sum of K4, 005,000.00 (Four million and five thousand Kwacha) as damages for pain and suffering, loss of amenities of life and special damage. The claimant is granted costs of the assessment hearing.

Made this 3rd day of July, 2018.



Austin Jesse Banda
ASSISTANT REGISTRAR