



REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CASE NO. 533 OF 2013

**BETWEEN**

JOSEPH MANYUMBA.....CLAIMANT

**AND**

KONDWANI PHIRI.....1<sup>st</sup> DEFENDANT

GENERAL ALLIANCE INSURANCE CO. LIMITED.....2<sup>nd</sup> DEFENDANT

Coram: **WYSON CHAMDIMBA NKHATA**

Khan - of Counsel for the Claimant

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 on the 18<sup>th</sup> of June 2018. 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 claimant for the losses and damages herein.

The claimant in this matter took out a writ of summons issued on the 8<sup>th</sup> of September 2018 against the defendant claiming damages for pain and suffering, loss of amenities of life, disfigurement, special damages and costs of the action. In his Statement of Claim, he indicated that on or about the 25<sup>th</sup> of July 2017 at around 18:25 hours he was hit by a motor cycle registration number MG965 Suzuki ITF 125

which was being ridden by the 1<sup>st</sup> defendant. He further stated that the 1<sup>st</sup> defendant was riding from the direction of Zomba City heading towards Thondwe along Zomba-Blantyre road. Upon arrival at Zomba Catholic Secondary School the 1<sup>st</sup> defendant lost control of the said motor cycle and swerved to the nearside dirt verge where he hit him. Consequent to the said accident, he sustained a dislocation of the right elbow joint. It is against this background that he now claims damages for pain, suffering and loss of amenities of life, damages for disfigurement and costs of this action.

The matter came before this court for assessment of damages on the 26<sup>th</sup> of July 2018. The claimant was the sole witness for his case. He adopted his witness statement in which he averred that on or about the 25<sup>th</sup> of July 2017 at around 18:25 hours he was hit by a motor cycle registration number MG965 Suzuki ITF 125 which was being ridden by the 1<sup>st</sup> defendant from the direction of Zomba City heading towards Thondwe along Zomba-Blantyre road. He tendered a Police Report marked “JM1”. He sustained a dislocation of the right elbow joint and was taken to Zomba Central Hospital where he received among other things a reduction under pethidine and was cast in a Plaster of Paris. He tendered a Medical Report marked “JM2”. He therefore prays for an award for damages for pain and suffering, loss of amenities and disfigurement. In cross-examination, he stated that he still feels pain when he stands for a long time. He also stated that he fell on his ribs. He was admitted for a month but stayed 2 more months with a Plaster of Paris.

The defendants opted not to parade witnesses as such the hearing was closed with Counsel for the claimant adopting his Skeletal Arguments as his final written submissions. Counsel for the defendant sought 7 days to file written submissions which he did. As aforementioned, this court has been called upon to determine a quantum that would reasonably compensate the claimant for the injuries suffered.

It is trite 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.

However, it ought to be borne in mind that it is not possible to quantify damages for pain and suffering, loss of amenities and deformity as claimed in this matter with mathematical precision. As a result,

courts use decided cases of comparable nature to arrive at awards. That ensures some degree of consistency and uniformity in cases of a broadly similar nature: See **Wright -vs- British Railways Board** [1983] 2 A.C. 773, and **Kalinda -vs- Attorney General** [1992] 15 M.L.R. 170 at p.172. As such this court will have recourse to comparable cases to arrive at the appropriate quantum of damages for the claimant.

In this case, the claimant sustained a dislocation of the right elbow joint. Counsel for the claimant is of the opinion that this was a serious injury warranting an award of K7,500,000.00 for pain and suffering, loss of amenities and disfigurement. He called upon the court to consider the following cases in the light of the devaluation of the Malawi currency:

**Christina Mande v Charter Insurance Ltd Co.**, Personal Injury Cause No. 329 of 2016, in which the plaintiff sustained a fracture of the right femur, dislocation of the right hip joint, cut on head and lost consciousness on the spot of the accident. He also sustained a sprained right hand and a cut on the left hand. The court awarded him the sum of K6,300,000.00 as damages for pain and suffering and loss of amenities of life. The award was made on 11<sup>th</sup> January, 2017.

**Stanley Chiwanda v Masha Missi and Prime Insurance Company** Civil Cause No 92 of 2014 where the Plaintiff sustained a closed fracture on the forearm, sprained knee joint and lacerated wound on the left hand. The court awarded him K7,400,000.00 for pain and suffering, loss of amenities and disfigurement. The award was made on the 27<sup>th</sup> of April 2017.

On the other hand, Counsel for the defendants argues that the claimant herein only sustained a dislocation of the right elbow. He contends that the claimant can still move the elbow but cannot fully straighten it. He further pointed out that in cross-examination the claimant clearly indicated that his main injury was the dislocation and the same was substantiated by the medical report. He went on to remind the court that the purpose of awarding damages is not to punish the wrongdoer but to place the claimant at a position he was but for the accident. He therefore proposed a sum of K2,500,000.00 as damages under all heads claimed and called upon the court to consider the following cases:

**Javious Enerst v Steven Levison and Prime Insurance Co. Ltd** Personal Injury Case No. 231 of 2015 where the claimant suffered injuries in the form of a fractured tibia left leg, multiple bruises, multiple cuts on the upper and lower extremities and a dislocated shoulder. He was awarded K6,000,000.00 on the 22<sup>nd</sup> of March 2018.

**Dalitso Shumba and Timothy Mereka and Prime Insurance Company Limited** Personal Injury Case No. 901 of 2014, where the 1<sup>st</sup> claimant sustained a deep cut wound on the lower jaw which was stitched, a cut wound on the thigh, laceration on the right side stomach, bruises on the right leg, swollen and painful neck, dislocation of the right wrist. On the 19<sup>th</sup> of June 2016, the court awarded the sum of K3,000,000.00 as damages for pain and suffering, loss of amenities and disfigurement.

I have 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 claimant's right elbow and his present physical condition. I gave meticulous thought to the written submissions filed by both counsel. I considered the relevant aspects of some of the precedents cited by both counsel. Evidently, the injury sustained in this case is a dislocation on the elbow. I see no point why the claimant should wish to erode his credibility by impeaching the medical report by making all sorts of exaggerations like injuries to the ribs. I strongly believe that if he had fallen over his ribs this could have been featured on the medical report. I must join Counsel for the defendant in stating that the essential purpose and the most basic principle of tort law is that the claimant must be put at a position he was but for the defendant's negligence. It is not an opportunity to make a windfall. If anything the injuries herein are merely aggravated by the impact they have on the claimant's livelihood being a skilled labourer.

It is therefore upon a thorough consideration of facts and circumstances of this case and upon an exhaustive consideration of the submissions by both Counsel in the light of the relevant and applicable law regarding damages for the claimed heads that I award the claimant K3,500,000.00 under all heads claimed and proved. The claimant is also awarded K3,000.00 being special damages for the cost of obtaining a Police Report under GR. No. 425502. I proceed to award him as such.

In summary the claimant is awarded K3,503,000.00 as damages. The plaintiff is further awarded costs of this action to be taxed if not agreed by the parties.

DELIVERED IN CHAMBERS THIS 30<sup>th</sup> DAY OF AUGUST 2018

  
**WYSON CHAMBIMBA NKHATA**

ASSISTANT REGISTRAR