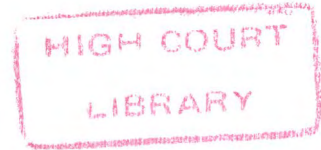




The Judiciary



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 523 OF 2014

Between

YUSUF MATEMBA..... CLAIMANT

-and-

FRED SUMANI 1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED 2ND DEFENDANT

CORAM: Austin Jesse Banda, Assistant Registrar

Mr. D. Jere, for the Claimant

Mr. W. Hara, for the Defendant

Ms. M. Galafa, Clerk/ Official Interpreter

Banda A.R.

ASSESSMENT ORDER

Background

The parties settled the issue of liability by a consent judgement that was endorsed by the court on 10th April, 2017. The judgment entered was to the effect that the defendants were liable to pay damages for pain and suffering, loss of amenities of life, disfigurement and special damages. The matter came before the court on 24th July, 2018 for assessment of the said damages.

Evidence

The claimant was the only witness in the assessment hearing. He told the court that he was involved in a road accident at Naisi trading centre in Zomba district. He was treated at Zomba

Central Hospital for his injuries that were as follows; painful right leg, painful left hand, swollen frontal head, sprained left shoulder joint and multiple bruises in the head.

Yusuf Matemba said that he had excessive pain and suffering and his wounds were treated with iodine. He said he now has arthritis of the left shoulder joint and that his degree of permanent incapacity was assessed at 10%. He says he can only perform manual work with difficulties. He exhibited a medical report in his prepared witness statement which was objected to by the defendants through counsel. The court struck off this medical report from the claimant's evidence for lack of authenticity. There was a Surgical Case Sheet which he also exhibited containing a record of the claimant's complaint, diagnosis and treatment at the Zomba Central Hospital. This piece of evidence was admitted by the court.

In cross examination, Mr. Matemba said that he was able to walk. He said that he was admitted at the hospital for 3 days. He said that he suffered no broken bones in the accident but that he had scars on the hand.

Issue

The only issue to be determined by the court is the amount of damages payable by the defendant to the claimant in the circumstances.

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 she 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, 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.

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

Disfigurement

The claimant also prays for damages for disfigurement. Disfigurement refers to changes in the physical bodily frame that has been caused by the injuries in an accident.

Special Damages

These are losses that a claimant undergoes as in the course or incidental to the wrongful action or omission of the defendant. they are recoverable only when the claimant specifically pleaded for them and the claimant has actually proved them. See the case of **Knight Frank v. Blantyre Synod and Steven Aipira Achaje t/a Mvumba Investments Civil Appeal Cause Number 38 of 2000 Malawi Supreme Court of Appeal (unreported)**

This Case and Comparable Cases

The claimant in this case sustained only soft tissue injuries. By his own evidence in cross examination he sustained no fractures. In the medical document he tendered, the "YM2", he had a headache, painful right leg and a painful left hand. It was said that he was walking with a limp. There was nothing like he had a sprained shoulder joint. There was nothing about arthritis in it. I saw the witness in the assessment and I observed his demeanor. I doubt he sustained a sprained shoulder joint at all. I did not see any scars on him as well despite making some effort to pull his shirt sleeves up his arms.

I have reason to believe that the pain he had and the limp in walk was a result of soft tissue injuries in his head, legs and arms but not fractures or any serious wounding.

In the case of **Sinoya Mainja v. Manobec, Civil Cause Number 439 of 2008, High Court Principal Registry (unreported)**, this court awarded the claimant the sum of K420, 000.00 for pain and suffering and K135,000.00 for loss of amenities of life. In that case, the claimant had his foot hit by a security gate that was negligently supported by a stone and not a metal pin. He suffered soft tissue injuries and the leg would still be painful at times if he walked a distance. This award was made on 3rd July, 2018.

In a case cited by the 2nd defendant in their final submission for assessment of damages, this court, on 31st May, 2018, made an award of K620,000.00 for pain and suffering and loss of amenities of life to a claimant who sustained bruises on both lower legs, had swollen legs, painful ribs and general body pains. This is the case of **Masautso Sukali and another v. Prime Insurance Co Limited, Personal Injury Cause No. 45 of 2015, High Court, Principal Registry (unreported)**.

In my opinion the injuries in the **Sinoya Mainja** case were minor than the ones in this case due to multiplicity of the soft tissue injuries in this matter. I find the injuries in the case **Masautso Sukali** case much more comparable to this case. The only difference being the swelling of the fore head in this case as opposed to the swelling of the legs in the Masautso Sukali case. The claimant in this case also had multiple bruises in the head, a vital organ of the body.

I considered the cases cited by the claimant in his skeletal arguments that were adopted as submissions after the hearing. In my opinion in all these cases, the claimants suffered more serious injuries like sprained joints and multiple cuts, injuries that this claimant did not suffer.

For the above reasons, I award the claimant a sum of K855,000.00 for pain and suffering and a token K140,000.00 for loss of amenities of life, since he is well and the pleasures of life he has not enjoyed since the incident are restricted to a long walk when he feels pain, which could also be sheer tiredness of muscles as is normally anticipated.

I make no award for disfigurement as there is no disfigurement proved as already pointed out. I also make no award for the cost of medical report. The medical report was struck off in the and there was no proof of cost for obtaining the other medical document that was admitted. I award K3,000.00 only as special damage for the police report as it shows clearly that the sum was paid and a general receipt with the number 168967 was issued for it.

Conclusion

The claimant must recover the sum of K998,000.00 as a total award of damages for the personal injuries he suffered. The claimant is also given costs of the assessment which will be assessed by the court if not agreeable by the parties.

Made this 3rd day of August, 2018.



Austin Jesse Banda

ASSISTANT REGISTRAR