



REPUBLIC OF MALAWI

**IN THE HIGH COURT OF MALAWI**

PRINCIPAL REGISTRY

PERSONAL INJURY CASE NO. 406 OF 2017

**BETWEEN**

AGNESS PHIRI(Suing through her mother and

Next of friend Joyce Lyson Phiri).....CLAIMANT

**AND**

AMAD NDAGEA.....DEFENDANT

Coram: **WYSON CHAMDIMBA NKHATA (AR)**

Mwandira- 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 default judgment on liability entered in favour of the claimant on the 27<sup>nd</sup> of May 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 plaintiff in this matter took out a writ of summons issued on the 11<sup>th</sup> of September 2017 against the defendant claiming damages for pain and suffering, loss of amenities of life, disfigurement, special damages and costs of the action. In her Statement of Claim, she had alleged that at all material times the defendant was a driver of motor vehicle registration number MHG330 Toyota Corolla saloon. On or

about the 15<sup>th</sup> of August 2016 at about 19:30 hours, the defendant negligently managed the said vehicle and caused it to hit the plaintiff who was lawfully crossing the road at Chisangalalo Minibus Stage. She believes the accident was caused by the negligence, incompetence and unlawful driving of the defendant by reason of which her daughter suffered a fractured right distal femur and general body pains. It is against this background that she claims damages for pain and suffering and loss of amenities of life, damages for disfigurement and costs of this action.

The matter came for hearing on assessment of damages on the 16<sup>th</sup> of August 2018. The defendant did not avail himself for the hearing. There was evidence that the notice of hearing was served on his lawyers. Initially, the matter had been scheduled for hearing on assessment of damages on the 19<sup>th</sup> of July 2018 but was further adjourned to the 16<sup>th</sup> of August 2018 on account that the defendant had just retained legal representation. On the 16<sup>th</sup> of August 2016, the court proceeded with the assessment having not received any excuse from the defendant or the purported legal representatives.

The claimant was the sole witness for her case. She adopted her witness statement in which on the material parts she averred that as a result of the accident her daughter sustained fracture of the right distal femur. She was taken to Queen Elizabeth Central Hospital where she was treated and admitted from the 16<sup>th</sup> of August to the 20<sup>th</sup> of September 2016. She exhibited medical report which the court marked EXP2. She was her guardian from the date of admission to the date she was discharged. She further averred that her daughter was fitted with a metal rod on the fracture to support the leg and she tendered an x-ray report to validate the issue of her daughter being fitted with a metal rod. It was her testimony that her daughter was readmitted on the 20<sup>th</sup> of September 2016 to have the metal rod removed. She also stated that her daughter now experiences difficulties in walking and still complains about pain. It is on this basis that she now brings this claim.

Essentially, this court has been called upon to determine what could be a reasonable quantum to compensate the claimant for the damages and losses suffered.

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:

**Kennedy Kamphepo v Charter Insurance Company limited** Civil Cause No. 88 of 2012 in which the plaintiff suffered fracture of the distal radius and was awarded K2,000,000.00 for disfigurement on the 7<sup>th</sup> of August 2012.

**Mary Kampila v Ronnex Charwita and Prime Insurance Company** Civil Cause No 1669 of 201 where the Plaintiff suffered a fracture and was awarded K1,500,000.00. The award was made in 2011.

**Christina Mande v Charter Insurance Company Limited, High Court, Principal Registry**, Personal Injury Cause Number 329 of 2016. The Plaintiff sustained a fracture of the right femur (inclusive of the knee cap), dislocation of the right hip joint, cuts on the head and lost consciousness on the spot of the accident. Surgery was performed on the patella/knee cap and metal rods inserted to hold the joint together. The Plaintiff was awarded MK6,300,000.00 for pain and suffering, loss of amenities of life and disfigurement.

It was therefore Counsel's submission that in the circumstances of this case, the reasonable compensation for pain and suffering would be K3,500,000.00, loss of amenities of life and K1,000,000.00 for disfigurement and the sum of K800,000.00 for pain and suffering. Essentially, he is praying for K5,300,000.00 as damages for the injuries herein.

I should mention here that the claimant from her demeanour and deportment appeared to be a credible witness. I believe her in every aspect of her testimony. She frankly and truthfully spoke about the injuries of her daughter. Having considered the nature and extent of the injuries suffered by the claimant's daughter, this court finds that she suffered considerable pain and suffering resulting from the accident and the surgical operations that she had to undergo. Undoubtedly she suffered discomfort, inconvenience and distress having to live with a piece of metal inserted in her leg. Further, this court finds that the plaintiff has a partial permanent disability of 15% in her mobility as she has to walk with a limp consequent on the injury.

It is therefore upon a thorough consideration of facts and circumstances of this case, and upon an exhaustive consideration of the submissions by the plaintiffs' Counsel in the light of the relevant and applicable law regarding damages for the claimed heads herein I award the plaintiff K4,500,000.00 under all heads claimed and proved.

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

DELIVERED IN CHAMBERS THIS 21<sup>st</sup> DAY OF AUGUST 2018



**WYSON CHAMDIMBA NKHATA**

ASSISTANT REGISTRAR