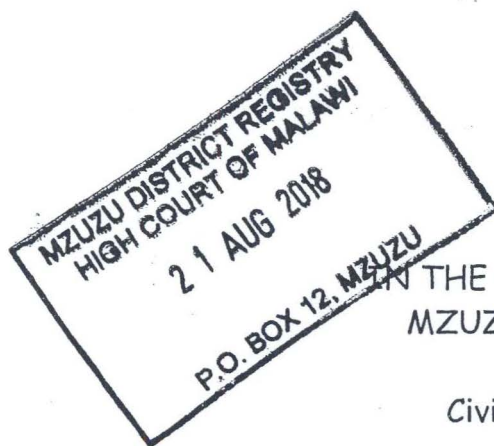




Republic of Malawi
IN THE HIGH COURT OF MALAWI
MZUZU DISTRICT REGISTRY

Civil Cause No. 82 of 2013

Between:-

MICA BANDA PLAINTIFF

-AND-

JUMA FABIANO 1ST DEFENDANT
NATIONAL BUS COMPANY 2ND DEFENDANT
NICO GENERAL INSURANCE COMPANY 2ND DEFENDANT

CORAM

Brian Sambo, Assistant Registrar (Ag)

Christon Ghambi, of counsel for the Plaintiff

Defendants: absent and unrepresented

Henry Kachingwe ; Official Interpreter

ASSESSMENT OF DAMAGES FOR PERSONAL INJURY

INTRODUCTION

On Wednesday, October 20, 2017, I received evidence and heard the plaintiff's submissions on assessment of damages for pain and suffering, loss of amenities of life, disfigurement, and special damages for costs of a police Report and Medical Report plus costs of this litigation.

It is on record that the defendants were duly served with the Notice of Assessment of Damages and all other court processes. Needless to say the defendants did not make an appearance. I therefore proceeded to hear the Applicant's evidence with regard to the present order on assessment, in the defendant's absence.

The Defendants were, respectively, driver and motor vehicle owner; the 3rd Defendant, the insurer was excluded by way of consent of the parties on understanding that, at the time of the accident herein, the insurance policy had already expired, and hence the 3rd Defendant was no longer the insurer of the motor vehicle Registration Number BP 8560 Scania Bus. On the 16th of March, 2018 a Consent Judgment on liability was thus entered against the 1st Defendant and the 2nd Defendant, only. Therefore, this assessment order is with regard to the two stated Defendants.

Brief facts of the matter are that the 1st Defendant, Juma Fabiano, on the 16th of August, 2012, at about 02.00 hours, was driving the motor vehicle stated above and he hit the Plaintiff herein. Due to the impact, the Plaintiff sustained a number of body injuries. The findings by the police established that the accident was influenced by the driver's careless and negligent driving of the said motor vehicle as he was over-speeding.

Mica Banda testified as PW1. He showed the court deep and wide scars on the top of his head, plus some on his back. He told the court that, as a result of the accident he was experiencing loss of memory and quick and proper reasoning because the wound had dug deep into his skull. He told the court that he spent a lot of time in hospital on medical admission. In his written Statement, he told the court that he

sustained serious bruises all over his bod including on his posterior chest. That shortly after the accident he went on coma for more than 20 minutes. He said, as a result of the accident, he was no longer using his head to carry heavy loads let alone perform heavy duties as before. He was relying on his family to perform daily duties.

ANALYSIS OF FACTS AND DECISION

I am now called upon to determine the extent of damages to be awarded to the plaintiff, Mica Banda, in the circumstances. I had the privilege to read the Medical Report (Marked PEX 1) which was tendered in the evidence towards the present assessment order. It reads as follows:

"...upon medical examination, he was confused, below were the examination findings:

- Glasgow coma score 14/15 E4 V5 M5
- Had massive bruises on his scalp - oozing bleeding with a cut wound in the scalp
- Bruises on his face
- Bruises on his back and posterior chest
- Diagnosis of mild head injury and soft tissue injury was made
- The cut wounds were satured and was admitted.....he was discharged on 20th August, 2012 and has been having headache since then until this month but currently he is doing fine".

A person who suffers bodily injures due to the negligence of another, such as the Defendants herein, is entitled to the remedy of damages. Indeed the principle guiding the award of damages is to compensate the injured party as nearly as possible as money can do. However, the court is guided by the merit of each case as stated in *D Kwataine Malombe et al v GH Chikho, t/a Bec Line Minibus*, Civil Cause No. 3687 of 2001. Merit is considered when granting damages in order to achieve

consistency and uniformity in cases of broadly similar nature. See **Kwataine** case above.

I had time to go through comparative judicial precedents and I have noted that in **Saidi v Prime Insurance Company**, personal Injury cause No. 402 of 2012, the plaintiff was awarded K5,000,000.00 disfigurement, after he had suffered a fracture of the 4th figure and 5th metacarpal, deep cut wound on his forehead and a wound on his right hand. This award was made in his favour on the 26th of October, 2015; just a year ago.

In **Black Luwayo v Adam Msumuko**, Pangani Sambo and Prime insurance Company, Civil Cause No. 1262 of 2009, the plaintiff who suffered a fracture of his left tibia, crushed nose, cut on left hand and dislocated of the right able was awarded K5, 104,500.00 as damages two years ago.

In another similar circumstance; in **Akimu Chingamba v Prime Insurance Company Limited**, Civil Cause No. 574 of 2011, the plaintiff was awarded damages to the tune of K3, 000,000.00, three years ago, after he had sustained multiple tissue injuries on his hip, a fracture of radius and ulna, dislocation of metacarpal bones, painful back and left shoulder, was in plaster of paris for two months, incapacity of 20% and reduced mobility of the arm.

Admittedly, the precedents above are quite relevant to the matter at hand. In the instant case, the Plaintiff, Mica Banda is claiming damages for pain and suffering, loss of amenities of life, disfigurement, and special damages for costs of a police Report and Medical Report let alone costs of his litigation.

It is trite law that when a driver of a motor vehicle, who owes different duties of care to different roads users, the questions of foreseeability, causation and remoteness would always arise in respect of different roads users affected by his negligence. See **Wright v Lodge and another Kerek v Lodge and others** [1993] 4 All ER 299. Thus, if his vehicle is involved in an accident as a results of his own negligence, he is responsible for personal injuries as well as for subsequent events which would occur incidental thereto; arising from his negligence when driving his motor vehicle. See **Bradford v Robinson Rentals Ltd** [1967]1 All ER 276. This entails that all expenses incurred by the plaintiff as a result of the accident; liability is still shouldered by the negligent driver.

In this matter, admittedly, the injuries were more seriously. I had physically seen the disfigurement on the Applicant. He is no longer strong to work and fend for his family. Being a family man this condition is heartrending. The Medical Report itself proves how grievously was the Applicant injured. He deserves a substantial compensation.

I noted that the Applicant demands a total of MK6,006,000.00; covering everything. Considering the facts before me and the present condition of the Applicant, Mica Banda, my assessment is this:

- i. MK3,500,000.000 being damages for pain and suffering and loss of amenities of life
- ii. MK600,000.00 being damages for disfigurement
- iii. MK6000.00 being refunds for costs of Police Report and Medical Report

iv. MK1,200,000.00 being Party-and-Party costs

The sum of the above is MK5,306,000.00 which is payable within 7 days from today.

Made in chambers today the 4th of May, 2018.

Brian Sambo

Assistant Registrar (Ag)
