



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

Civil Cause No. 178 of 2018

Between:-

CHARLES KAMBENDERA.....CLAIMANT

-AND-

DANISO QONGWANI.....1ST DEFENDANT
PRIME INSURANCE COMPANY.....2ND DEFENDANT

CORAM

Brian Sambo, Assistant Registrar

Counsel Mdazizila, of counsel for the Claimant
Defendants, absent and unrepresented
Dorica Mhone, Official Interpreter

ASSESSMENT OF DAMAGES

INTRODUCTION

This assessment follows a default judgment obtained by the Claimant, Charles Kambendera on the 7th of January, 2019 for the following;

- i. Cost of repairing the Claimant's motor vehicle
- ii. Damages for pain and suffering
- iii. Damages for loss of amenities of life
- iv. Damages for inconvenience
- v. Damages for disfigurement
- vi. Cost of Police Report
- vii. Damages for loss of use of motor vehicle
- viii. Cost of this action.

On Thursday, February 28, 2019, I received evidence and heard the Claimant's submissions on assessment of damages for pain and suffering, loss of amenities

of life, disfigurement, loss of use of the motor vehicle, inconvenience, cost of repairing the Claimant's motor vehicle, and special damages for costs of a police Report plus costs of this litigation.

Brief facts of the matter are that the Claimant, Charles Kambendera, on the 1st of July, 2018 was driving motor vehicle Registration Number MZ 4048, Mitsubishi Delica Pick-Up and was travelling from Lubinga heading towards Chibanja in the city of Mzuzu while the 1st Defendant, Daniso Qongwani was driving motor vehicle registration number BQ 4926, Toyota Fielder insured by the 2nd Defendant, Prime Insurance Company, travelling from Chibanja heading towards Lubinga in the city of Mzuzu. The 1st Defendant drove his motor vehicle in the road lane meant for on-coming motor vehicles, and in the process collided with the Claimant's motor vehicle stated above. Following the collision, the Claimant sustained bodily injuries and his motor vehicle stated above also got damaged.

The findings by the police established that the accident was influenced by the 1st Defendant's careless and negligent driving of the said motor vehicle as he was driving his motor vehicle on the right hand side lane, meant to be for the oncoming motor vehicles.

The 1st Defendant was charged with a criminal offence of inconsiderate driving. He was convicted and sentenced on his own admission of the charge, and he paid a fine.

Issue

The only issue for the court to resolve is the quantum of damages payable to the claimant, in the circumstances, under the heads of; damages for pain and suffering, loss of amenities of life, disfigurement, loss of use of the motor vehicle, inconvenience, cost of repairing the Claimant's motor vehicle, and special damages for costs of a police Report.

Determination

Damages are the remedy for a victim of a wrong, and the wrongful party has to compensate the victim, in as far as money can, to be put back in the same position that the victim would have been if not for the wrong- **Elida Bello v. Prime Insurance Company Limited**, Civil Cause No177 of 2012 (unreported). In the instant matter, the 1st defendant is the one responsible for the damage to the claimant's vehicle. He should pay back the cost of repairing the motor vehicle

back to its re-useable state. Counsel for the Claimant tendered two quotations for the repairs (Marked CK 3 and CK 4); one of MK2, 521,875.50 and another of MK3, 494,417.50. These quotations were not supported through the production of the motor vehicle in question in order to demonstrate to the court the damages captured in them. Therefore, it would be wrong for me to accept them as gospel truth. The weight that I have attached to these quotations requires that the repairs cost should not go beyond MK2, 000,000.00. This is what the 1st Defendant is going to pay as cost of repairs of the motor vehicle.

The claimant further claims damages for loss of use of the motor vehicle. He quantifies the loss at K500, 000.00 in his submission. It must be stated that the claimant did not explain his quantification of the loss. There is no evidence of an alternative car being in use. His lawyer only managed to cite case law without discussing the effect of the same upon this case. Till now, it is not known for how long he was without the car, as it underwent repairs. This however, does not mean that he did not suffer loss of use of the motor vehicle. In **Renzo Benetollo v. Attorney General and National Insurance Company Limited**, Civil Cause No. 279 of 1993, High Court Principal Registry (unreported) the court held that where a party has not proved damages, reasonable compensation in the circumstances can be awarded. It is my considered view that **K200, 000.00** is reasonable compensation for loss of use of the motor vehicle in the circumstances. I so award the claimant.

The claimant further prayed for the award of damages for inconvenience. Damages for inconvenience are awarded where substantial physical inconvenience and discomfort was caused or effected by the negligent or otherwise unlawful action or omission of the defendant. The discomfort should not just be psychological or emotional- **Hobbs v. L.S.W. Ry**, [1885] 10 QB 111 per Mellor, J. In this case, the claimant had to walk on foot, where he would have used his vehicle, abandoned his routine in pursuit of having his car repaired by towing it to the garage but also ensuring the driver who was authorized to drive his vehicle had been attended to at the hospital; and also for this matter when the defendants denied liability. He prayed for damages in the region of K1, 000,000.00 under this head. In this case, I find the sum of **K500, 000.00** as adequate compensation under this head.

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. See also **City of Blantyre v. Sagawa**, [1993] 16(1) MLR 67 (SCA).

The Claimant said he felt pain on his right wrist joint, after the accident. It is obvious that where a person receives an impact which results into a fracture, pain and suffering are synonymous.

In the premises I award the claimant damages of **K1, 500, 000.00** 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 testified that, as a result of the accident, he can no longer do sporting exercises such as jogging in order to maintain fitness for his mechanic work. I had difficulties to accept this bit of evidence, especially with regard to the nature of injury inflicted upon him. The Medical Report emphasised on the right wrist injury, and, in my view, this cannot stop someone from jogging or conducting other forms of physical body exercises. I also doubt if failure by the Claimant to discharge his motor vehicle mechanic job, properly should really be considered as an amenity of life. This does not mean that this claim is irrelevant; considering the fact that his hand was affected by the accident. Hands are salient when doing physical exercises. Considering all circumstances, I award the Claimant the sum of **MK250, 000.00**.

Disfigurement

Damages are paid under the head of disfigurement for the change in the physical form of a person injured either as a result of the impact of the injury or its treatment, such as a scar coming in as a result of surgical operation necessitated by the injury. It is a change in appearance but it is capable of limiting a person from doing certain things as was observed by the court in the case of **Austin Julius v. Rasika Gunawardena and General Alliance Limited**, Personal Injury Cause Number 316 of 2014.

Potani, J, in the case of **Chingamba v. Deerless Logistics Limited**, Civil Cause No. 2888 of 2007, stated that disfigurement was not something to be taken

lightly and casually as a person lives with the deformity for the rest of his life. In **Zaina Chipala v. Dwangwa Sugar Corporation**, Civil Cause Number 345 of 1998, High Court, Principal Registry, per Chimasula, J, it was held that money cannot renew a physical frame that has been battered and shattered. The courts must therefore award a sum that is regarded as reasonable compensation.

Charles Kambendera sustained a fracture on his hand's wrist joint. He complained that he still felt some pain, and cannot use his hand fully as before. Nevertheless, this is still a minor case of disfigurement. I therefore make an award of **K1, 250, 000.00**.

Special Damages

Generally, special damages are specifically pleaded and strictly proven. See **General Farming Limited v Chombo**, (1996) MLR 16. The defendants, with their negligence, necessitated a police report which comes at a cost. It was recorded on the report, which was exhibited as 'DM 1' that the report was paid for at a cost of K3, 000.00 and the General Receipt given was numbered 1457817. The claimant should recover this sum of **K3, 000.00**.

Conclusion

The claimant should recover **K2, 000, 000.00** as repair costs of his motor vehicle. He should also recover **K3, 000.00** as cost of the report that he obtained from the police. He is further awarded the sums of **K200, 000.00** and **K500, 000.00** as damages for loss of use of motor vehicle and inconvenience, respectively. He should further get **MK2, 500,000.00** being damages for pain and suffering, loss of amenities of life and disfigurement. In total the claimant gets an award of **K5, 203,000.00**. I also award the claimant cost of the assessment hearing which will be assessed by the registrar if not agreeable by the parties. All damages are payable within 14 days from today.

Made in chambers today the 6th of March, 2019.

MZUZU DISTRICT REGISTRY
HIGH COURT OF MALAWI
06 MAR 2019
P.O. BOX 12, MZUZU

Brian Sambo
Assistant Registrar