



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 498 OF 2018

BETWEEN:

ASHAVIN MANUEL (a minor, suing through Victoria Ramzy Manuel, a litigation guardian).....CLAIMANT

AND

DERLIE MCHEKENI.....1st DEFENDANT

PRIME INSURANCE CO. LTD..... 2ND DEFENDANT

CORAM: Mrs T. SOKO : Assistant Registrar

Mr Jere : Counsel for the claimant

Miss Longwe : Counsel for the claimant

Miss Manjandimo : Counsel for the defendants

N. Munthali : Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

This is an order on assessment of damages following an order to enter judgment on liability against the defendants. The claimant claims damages for pain and suffering, loss of amenities of life, disfigurement, special damages and costs of the action.

The facts are that on 26th August 2017, the 1st defendant was driving a motor vehicle registration number NU 9606 Toyota Hiace insured by the 2nd defendant from the direction of Ntcheu heading towards Dedza. Upon arrival at Mlanda trading center, the 1st defendant hit the claimant. As a result of the accident, the claimant sustained personal injuries.

Hearing of assessment of damages took place on 27th June 2019. The claimant appeared through a next friend Emmanuel Chinseu. He adopted his witness statement where he stated that the claimant sustained a fractured tibia and fibula, open fracture of metatarsal and degloving wound on the right foot. He stated that the claimant was treated at Ntcheu District Hospital. He produced and exhibited a medical report to be part of evidence.

In cross examination, the witness confirmed that the claimant sustained a fracture. He said he had left the ex-ray report at home. He said the child was admitted for 3 months. Later, he said the claimant was admitted for a month. In reexamination the witness stated that the claimant was admitted for a month.

In submissions, Counsel for the claimant submitted that the claimant should be awarded a sum of K5, 000,000.00 in all heads of damages. The claimant cited a case of **Kearnzibel W.S. Fundi vs M. Nasawa t/a Matours and Prime Insurance Co Ltd Personal Injury Cause No. 143 of 2011** where the claimant suffered an open fracture of the medial malleolus (broken ankle). The Court awarded the claimant a sum of K5, 000,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement. The award was made on 29th March 2016. Further counsel cited a case of **Frank Vashco vs Farrok Haquin & Olympic Bakery, personal Injury Cause No. 1043 of 2015** where the claimant sustained a deep cut wound on the ehad, multiple facial bruises and a cut wound on the right palm. The court awarded the claimant a sum of K4, 100,000.00 as damages for pain and suffering and loss of amenities of life. The award was made on 10th March 2016.

On the other hand Counsel for the defendant submitted that the claimant should be awarded a sum of K1, 000,000.00 as damages for pain and suffering, K500, 000.00 as damages for loss of amenities of life, K350, 000.00 damages for disfigurement and K13, 500.00 for police and medical report. Counsel among other cases cited a case **Paul Chamaza (on his own behalf and on behalf of the dependants of Mrs Ivy Chamaza (deceased) and 2 others vs Edward Nyirenda and Prime Insurance Co. Ltd personal injury cause No. 383 of 2013** the 2nd plaintiff sustained soft tissue injuries namely a deep cut wound on the shoulder, multiple bruises on the left elbow and right arm and a cut wound on the left. He was treated as an outpatient. His incapacity was assessed at 15%. He was awarded a sum of K650, 000.00 damages for pain

and suffering. The third plaintiff in that case sustained multiple bruises on both knees and arms, contusions on the forehead, and sprained right shoulder. His incapacity was assessed at 13%. He was awarded a sum of K850, 000.00. Counsel also cited a case of **Lundu vs Prime Insurance Co Ltd Personal Injury Cause No. 903 of 2014** where the claimant was awarded a sum of K750, 000.00 as damages for loss of amenities of life and K350, 000.00 as damages for disfigurement.

In the present matter, the evidence states that the claimant was 4 years old at the time of the accident. At the age of 4 he suffered closed fracture of fibula and tibia, open fracture metatarsal and degloving wound on the right foot. He stayed in the hospital from 26th August 2017 to 20th October 2017. Thereafter he was treated as an outpatient from 20th October to 3rd November 2017. The claimant went through debridement and suturing of wounds. He was also put in plaster of paris and given analgesics. The nature of the injuries that the claimant suffered and the treatment that he went through shows that the claimant underwent severe pain and suffering. His degree of incapacity was assessed at 50% and the report shows that he will perform sporting activities with difficulties. I have considered the authorities cited by counsel for the claimant. I have also considered authorities cited by Counsel for the defendant and find that most of the cases cited by the defendant were not relevant. Considering the nature of the injuries and the circumstances of the case, I award the claimant a sum of K4, 800,000.00 in all heads of damages.

Costs are for the claimant.

Made on this 11th day of July 2019.



T. Soko

Assistant Registrar