



MALAWI JUDICIARY

IN THE HIGH COURT OF MALAWI

PERSONAL INJURY CASE NO. 73 OF 2019

BETWEEN

THOMAS MITEPA

PLAINTIFF

AND

GENERAL ALLIANCE COMPANY LIMITED.

DEFENDANT

CORAM:

H/H MAKHALIRA

ASSISTANT REGISTRAR

APPLICANT REPRESENTED BY

MR. ANUWA OF COUNSEL

RESPONDENT

ABSENT

COURT CLERK

MADALITSO GALAFA

**JUDGEMENT ON ASSESSMENT OF DAMAGES**

By a settlement agreement by the parties entered on the 20<sup>th</sup> of May, 2019, the defendant accepted liability for the personal injuries suffered by the claimant.

It was further agreed that damages and costs payable to the applicant shall be agreed by the parties within 14 days from the date of the agreement failing which they would be assessed by the Registrar.

It appears that the parties failed to agree on the damages and costs payable and a notice of appointment for assessment was then failed with court.

The matter was then set down for assessment hearing on the 12<sup>th</sup> of August, 2019.

The applicant and his counsel were present for the assessment hearing but the defendant despite the court being informed by counsel for the claimant that they were duly served with the notice of the assessment hearing were absent and no reasonable excuse for nonattendance was provided.

The court then proceeded with the hearing in the absence of the respondent.

Only one witness, the claimant himself, gave evidence.

In his oral evidence under oath, the claimant identified himself as Thomas Mitepa from Mtenje village, T/A Machinjiri, Blantyre.

He then identified his witness statement to which he said were attached a medical report, X-ray photos, health certificate and a police report.

The witness statement together with the attachments were tendered as evidence and these were marked as EXP.W1.

In his further oral evidence, the claimant, told the court that he suffered a fractured right arm, lost two teeth, injury to his neck and further injuries to his ribs and chest.

He further told the court that he was treated at Queens Elizabeth Central Hospital where his arm was put in a plaster of Paris and a neck brace was applied to his neck.

He said he was admitted at Queens Elizabeth Central Hospital from the 18<sup>th</sup> of December, 2018 up to the 26<sup>th</sup> of December, 2018.

In his witness statement the claimant deponed that he sustained these injuries on the 18<sup>th</sup> of December when as a lawful pedestrian, he was crossing the Limbe- Thyolo road at or near Chigumula church when he was negligently hit by a motor Vehicle Registration Number MC 1904, Toyota Estina.

He told the court that as a result of the accident he regularly feels pain in his right arm and is unable to do piece works which he used to do before the accident.

The applicant prays for damages for pain and suffering, loss of amenities of life and disfigurement.

The only issue in this case of this stage is the amount of damages that the claimant must be awarded for the personal injury he suffered under the heads as pleaded.

The starting point is that assessment of damages presupposes that damages have been proved and what remains is the measure of the amount of the damages – see the case of Ngosi T/A Mzumbamzumba Enterprises vs Amosi Transport Company Limited(1992)15MLR370(HC).

Damages in a case like this one are not awarded to punish the defendant or fortfeisor, but to fully compensate the claimant for all the losses that he has suffered as a direct or consequential result of the defendant's wrongful



act or omission. In the case of George Kankhuni Vs shire Buslines Limited 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 on applicable damages without losing sight of particularities in the individual case that the Court is dealing with- See Chipeta Vs Dwangwa Sugar Corporation, Civil Case Number 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 – see Honourable Kennedy Kuntenga vs Attorney General, Civil Case Number 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 (butterworms 1985) P 8. The award of damages for pain and suffering depends upon the Claimants personal awareness of pain and his capacity for suffering- see Limpoh Choo vs CAMDEN AND Lslington Area Health Authority (1980) ac 174 at 183.

## **DEFORMITY/ 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 is capable of limiting a person from doing certain things as was observed by the court in the case of Austin Julius Vs Rasika Gunawardena and General Alliance Limited, Personal Injury Cause Number 316 of 2014.

Potani J in the case of Ching'amba Vs Deerless Logistics Limited Civil Cause Number 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 Vs Dwangwa Sugar Corporation Civil Case Number 345 of 1998, High Court Principal Registry per Chimasula J, it was stated 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.

## **LOSS OF AMENITIES OF LIFE**

Damages are paid under the head of loss of amenities of life to compensate the Claimants deprivation of the pleasures of life which amounts to substantial loss whether the claimant is aware or not of that loss – see Sagawa vs City of Blantyre 919930 16 (1) MLR 67 (SCA)

The claimant in this case, as a result of the injury suffered a fracture of the right humerus, he lost two teeth, had bruises on his ribs and chest and also injured his neck which had to be put in a brace. His right arm had also to be put in a plaster of paris. He also spent 9 days in hospital. No doubt the



claimant was in great pain immediately after the accident and during medical and surgical treatment.

In *Malichi vs Prime Insurance Limited*, Civil Cause Number 2613 of 2009, High Court, Principal Registry (unreported) the claimant suffered a cut wound on the scalp, bruises on the face, swollen head and fracture of the left tibia. He had headaches and limped when walking. He was awarded K 4,500,000.00 for pain and suffering and loss of amenities of life, on 29<sup>th</sup> May 2012.

In *Robert Piason and 3 others Vs Prime Insurance Company Limited*, Personal Injury Cause Number 413 of 2013, the 3<sup>rd</sup> Claimant sustained a head injury, deep cut wound on the back near the shoulder, multiple bruises on the knee and a cut on the Pelvis. In an award made on 6<sup>th</sup> September, 2014, the claimant got K3,000,000.00 as general damages.

Looking at the time that has passed between the comparable awards and the present case and also the nature of the injuries for the claimant I make an award of K3,000,000.00 for pain and suffering, K2,500,000.00 for loss of amenities of life and K500,000.00 for disfigurement.

The claimant also prayed that the Court award him K3,000.00 as special damages for procuring a police report and K20,500.00 for procuring a medical report.

These being special damages the law requires that they be specifically proven either by producing a copy of a General receipt or other liable means.

The record shows that it is only the police report that was obtained through a receipt GR Number 5957884. There is no evidence on the medical report. I will not award the claim of K20,500.00 for the medical report.

of the action which will be assessed by the Registrar if not agreed by the parties.

Made at High Court Principal Registry this 21th day of August, 2019.



**HIS HONOUR MANGAWA MAKHALIRA**  
**ASSISTANT REGISTRAR**