



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 643 OF 2015

BETWEEN

JANET LIMBANI CLAIMANT

-AND

PRIME INSURANCE COMPANY LIMITED DEFENDANT

CORAM: HER HONOUR E.BODOLE, ASSISTANT REGISTRAR

Suzi, of Counsel for the Claimant

Ms. Banda, of Counsel for the Defendant

Chitsulo, Court Clerk/ Official Court Interpreter

ORDER ON ASSESSMENT OF DAMAGES

Introduction

The claimant brought proceedings against the defendant claiming damages for pain and suffering, loss of amenities of life, disfigurement, special damages and costs of the action. Consent order on liability was entered by Honourable Justice Potani in favour of the claimant on 13th February, 2019. The matter has now come for assessment of damages.

The Evidence

The facts derived from the statement of claim and aver that the defendant was at all material times, owner of motor vehicle registration number BM 8412 Toyota Hiace Minibus and was the insurer of the motor vehicle aforesaid.

On or about the 6th May, 2015 at about 06:30 hours the defendant was driving the motor vehicle aforesaid from the direction of Blantyre heading towards Chikwawa with passengers on board. Upon arrival at bend number 24, as the driver was descending the escarpments, he failed to negotiate a bend due to overloading of passengers and goods that he lost control of the vehicle. Consequently, it went to the right side embankment area while overturning then stopped upside down when it hit a tree thereby injuring the claimant who was at all material times a lawful passenger on board motor vehicle aforesaid.

Due to the accident, the claimant sustained a deep cut wound on the head and face and fracture of pelvis. Due to the injuries she sustained, she was using clutches to aid her when walking. On the day of assessment hearing, she was walking without the aid of clutches. She is unable to walk long distances and to run. She is unable to work as she used to because she is unable to stand for a long time. She sometimes experiences numbness of the feet and chest pains.

Issue

The only issue in this matter is the appropriate measure of the quantum of damages that the claimant ought to be awarded in the circumstances.

Applicable Law

A person who suffers bodily injuries due to the negligence of another is entitled to the remedy of damages. Such damages are recoverable for both pecuniary and non-pecuniary losses. The principle underlying the award of the damages is to

compensate the injured party as nearly as possible as money can do it - *Elida Bello v Prime Insurance Company Ltd* Civil Cause No.177n of 2012.

The damages cannot be quantified in monetary terms by use of a mathematical formula but by use of experience and guidance affordable by awards made in decided cases of a broadly similar nature - *Wright v British Railway Board* [1983] 2 AC 773. The court, however, considers the time the awards were made and currency devaluation - *Kuntenga and Another v Attorney General* Civil Cause No.202 of 2002.

The non-pecuniary head of damages include pain and suffering, loss of amenities of life and disfigurement. These are assessed by the court. Pecuniary loss must be pleaded and proved. Where a party has not proved special damages reasonable compensation in the circumstances can be awarded- *Renzo Benetollo v Attorney General and National Insurance Company Ltd* Civil Cause No. 279 of 1993.

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

Pain and suffering is attributable to the claimant's injury or to any necessary surgical operations and mental anguish such as that suffered by a person who knows that his expectation of life has been reduced or who being severely incapacitated, realizes the condition to which he has been reduced - *Sakonda v S.R. Nicholas* Civil Appeal Cause No. 67 of 2013.

It is clear from the evidence that the claimant went through a lot of suffering and was in pain. She is still suffering and in pain. She sustained a deep cut wound on

the head and face and fracture of pelvis. She had to use clutches to aid her when walking. Nevertheless, on the day of assessment hearing, she was walking without the aid of clutches which shows that her condition has improved. She sometimes experiences numbness of the feet and chest pains.

Loss of Amenities of Life

The expression 'loss of amenities of life' simply means loss of faculties or pleasures of life resulting from one's injuries. Damages for loss of amenities of life are awarded for the fact that the claimant is simply deprived of the pleasure of life, which amounts to a substantial loss, whether the claimant is aware of the loss or not - *City of Blantyre v Sagawa* [1993]16 (1) MLR 67(SCA).

Loss of amenities is attributable to deprivation of the claimant's capacity to engage in some sport or past-time which he formerly enjoyed - *Kanyoni v Attorney General* [1990]13 MLR 169. It means that she is incapable of performing some activities she used to do.

The claimant is unable to enjoy life as she used to. She struggles to walk long distances and is unable to run. She cannot stand for a long time and she experience numbness of the feet and chest pains.

Disfigurement

Disability is a limitation either physically or mentally for someone to do what any other person can do without reasonable accommodation. In *Ching'amba v Deerless Logistics Ltd* Civil Cause No. 2888 of 2007 the court stated that disfigurement is not a matter to be taken lightly and casually. It is something that one has to live with permanently.

The claimant has been disfigured. He is unable to run, walk long distances and stand for a long time.

Award of Damages

In the case of *Annie Vitalio Keliassi (Female) vs. Richard Kapinga and General Alliance Insurance Company Ltd* Personal Injury Cause Number 137 of 2013, the plaintiff suffered moderate head injury, lost two upper teeth, oblique fracture of proximal tibia and fibula of the right leg, bruises of the knee joint and left elbow joint; facial swelling as well as severe deformation of the right leg. The court awarded her MK 4,000,000.00 as damages for pain and suffering and loss of amenities of life and also disfigurement. The award was made on 19th March 2014.

In the case of *Luciano Chipapi vs. Jimmy Napulu & Prime Insurance Company Ltd* Personal Injuries Cause number 117 of 2014, the plaintiff suffered fractured left shoulder, fractured ribs, dislocated arm, painful leg, soft tissue injuries and loss of memory as damages for pain and suffering and disfigurement. The court awarded him the sum of MK 3,213,500.00

In the case of *Peter Mkandawire vs. Prime Insurance Company Ltd*, Personal Injuries Cause Number 180 of 2014, the plaintiff suffered a fracture on the left knee, multiple bruises on the face and three teeth on the upper side were loosened. The court awarded him the sum of MK 2,500,000 as damages for pain and suffering and loss of amenities of life. The award was made on 11th August 2015.

This court bears in mind the fact that the award in the above cases was made in 2014 and 2015 respectively and the Kwacha has lost value since that time. This court also bears in mind the fact that these were global sums under all heads awarded to the claimants, and the injuries sustained by the claimants in the above cases are more severe than the ones sustained by the claimant herein.

For these reasons, this court will award the claimant a sum of K5,000,000.00 as damages for pain and suffering and disfigurement, damages for loss of amenities of life.

Special Damages

Cost of police and medical reports are special damages and must be specifically pleaded and proved as required by law - *Govati v Manica Freight Services Mal. Ltd* [1993]16(2) MLR 521(HC). A claimant who claims special damages must, therefore, adduce evidence or facts which give satisfactory proof of the actual loss he or she alleges to have incurred. The claimant did not specifically plead nor prove the special damages in statement of claim and the claimant herein provided no evidence of the medical report so no award will be made under this head. The court only make an award a sum of K5,000.00 as cost for a police report which was paid under GR No. 1370904.

Conclusion

Considering to the nature of the claimant's injuries, the claimant is awarded a total sum of K5,005,000.00 in damages. He is also awarded costs of the action to be taxed at a later date if not agreed by the parties. Each party is at liberty to appeal to the Supreme Court of Appeal within the requisite time frames.

Pronounced in court this 16th day of December, 2019.



EDNA BODOLE (MRS.)

ASSISTANT REGISTRAR