



The Judiciary

IN THE HIGH COURT OF MALAWI

CIVIL DIVISION

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 427 OF 2019

Between

ALFRED MALUMO.....CLAIMANTS

-and-

BONFACE JEREMIAH1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED..... 2ND DEFENDANT

CORAM: Austin Jesse Banda, Assistant Registrar

Mr. S. Khan, for the Claimant

Mr. G. Phiri, for the Defendants

Ms. F. Makhambera, Clerk/ Official Interpreter

Banda

JUDGMENT ON ASSESSMENT OF DAMAGES

Background

The Claimant commenced the present proceeding against the two Defendants, being a driver and insurer respectively, of motor vehicle registration number BV 6509 Nissan Vanette minibus, claiming for damages for; pain and suffering, loss of amenities of life, and disfigurement. He also claimed for costs incurred to procure a police report and a medical report, and costs of the action. These claims arose from a motor vehicle accident where the 1st Defendant negligently drove the stated vehicle and collided with the Claimant who was cycling.

In a Judgment by Honourable Justice Mbvundula dated 22nd July, 2019, the Defendants were found liable for all the claims. The Honourable Judge directed that the damages be assessed by the Registrar. The matter came before me for assessment of damages and hence this Judgment.

Evidence

The Claimant was the only witness in the assessment hearing. The Defendants did not call any witnesses and chose not to cross examine the Claimant. Through Counsel, they only asked for fourteen days to make written submissions which were never filed thereafter, or at all.

Alfred Malumo told the Court that from the collision with the 1st Defendant driven motor vehicle; he sustained a sprained left hip that also had a dislocation. He sustained a painful hip on the left, and calf, contusion of the legs, bruises on the legs, cut wound on the ankle and back.

It was the Claimant's evidence that he was taken to Zomba Central Hospital for the relocation of the hip. He was also given analgesics. He referred the Court to a medical report that he tendered alongside a police report detailing issues about the accident.

The Claimant further said that he has a possibility of developing arthritis and that ability to do chores and sporting activities has been reduced, a with 11% assessed as level of permanent incapacity due to the injuries sustained in the accident. He prayed for compensation and costs incurred for the reports he tendered and costs of the action.

Issue

The only issue to be determined at this step of the proceeding is the quantum of damages that the Defendants ought to pay the Claimant under the heads as claimed.

The Law and Facts

The starting point is that assessment of damages presupposes that damages have been proved and the business that remains is the measure of the amount of the damages- see the case of **Ngosi t/a Mzumbamzumba Enterprises v. Amosi Transport Co Ltd [1992] 15 MLR 370(HC)**. The rule is that the injured party has provided proof of the damage sustained prior to the assessment hearing- **Yanu Yanu Co v. Ltd v. Mbewe 11 MLR 405 (SCA)**. Damages in a case like this one, are not awarded to punish the defendant or tortfeasor, but to fully compensate the claimant of 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 v. Shire Buslines Ltd, 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 of applicable damages, without losing sight of particularities in the individual case that the court is dealing with. See **Chipeta v. Dwangwa Sugar Corporation, Civil Cause No. 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- **Hon. Kennedy Kuntenga v. Attorney General, Civil Cause No. 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 (Butterworths, 1985) p8. The award of damages for pain and suffering depends upon the claimant's personal awareness of pain, and his capacity for suffering- see **Limpoh Choo v. Camden and Islington Area Health Authority [1980] AC 174 @ 183.**

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 Edition), 1961, p. 624.**

Disfigurement

Disfigurement is concerned with change of looks of the individual. This may be scars, amputations and postures. See **Lemon Banda and 19 others v Motal Engil Limited and General Alliance Insurance Limited, personal injury cause number 178 of 2012 (unreported)**. Damages for disfigurement are awarded separately if the Claimant has been ridiculed, lost his social status, or that he is in need of plastic surgery. See **Mary Kamwendo v Stage Coach Malawi Limited Civil Cause Number 840 of 1995.**

This Case

The evidence of the Claimant being uncontroverted, the injuries that he sustained, the treatment he underwent, and his wellbeing afterwards is taken for a fact, as is in his evidence.

Comparable Cases

In **Dankeni Kafa v. G4S Security and Nico General Insurance Co Ltd, Personal Injury Cause No. 517 of 2016** a sum of K7, 350,000.00 was awarded for pain and suffering, loss of amenities of life and disfigurement to a Claimant who sustained a fracture of the left leg, a dislocation of the right leg, a deep cut on the lower right leg and an open cut on the right leg. The award was made on 30th April, 2018.

In **Issa Idrissah v. Daniel Ndawala & Prime Insurance Co Ltd, Personal Injury Cause No. 67 of 2017**, a Claimant who suffered a dislocation of the left hip, a cut on the forehead and another cut on the eye lid and multiple bruises on the left leg was awarded the sum of **K2,400,000.00** for pain and suffering, **K1, 500,000.00** for loss of amenities of life, and **K 1,000,000.00** for disfigurement in March, 2019.

In **Christina Mande vs Charter Insurance Company Limited**, Personal Injury Cause no.329 of 2016, the plaintiff was awarded a total of MK6, 300,000.00 damages for personal injuries, inclusive of K5,500,000.00 for pain, suffering and loss of amenities of life and K800,000.00 as damages for disfigurement. The plaintiff sustained fracture of the right hip joint, cuts on the head and lost consciousness on the spot. The award was made on 11th January 2017.

In the case of **Foster Kasokota vs. Davis Simenti and Prime Insurance Co. Ltd Personal Injury Cause Number 371 of 2011**, the court made an award of K3, 900,000.00 as damages for pain and suffering and loss of amenities of life in respect of a claimant who sustained a fracture of the pelvis and a dislocated shoulder.

In **Madalitso Nyambo v. Prime Insurance Co. Limited Personal Injury Cause Number 176 of 2015** the claimant was awarded a sum of K 5, 800,000.00 as damages for pain, suffering, loss of amenities of life and disfigurement where the claimant sustained a dislocation of both knees.

In **Joseph Manyumba v. Kondwani Phiri and General Alliance Insurance Ltd, Personal Injury Cause No. 533 of 2013**, the court awarded a sum of K3, 500,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement to the Claimant who sustained a dislocation of the right elbow joint.

The Award

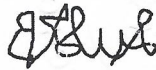
Considering the above cited comparable cases, and the circumstances prevalent in this case, I award the Claimant, Alfred Malumo, the sum of K2, 800,000.00 for pain and suffering, and

K1, 500,000.00 for loss of amenities of life, and K1, 300,000.00 for disfigurement. He is also awarded K13, 500.00 as costs he spent to obtain the police and medical reports as already awarded by the Honourable Judge.

Conclusion

The Claimant is awarded a total of **K5, 613,500.00** for the personal injuries he sustained in the road accident caused by the 1st Defendant, with both Defendants jointly and severally liable. The Claimant is further awarded costs of assessment to be assessed by the Registrar if the parties cannot agree.

Made this 21st day of November, 2019.



Austin Jesse Banda

ASSISTANT REGISTRAR