



The Judiciary

IN THE HIGH COURT OF MALAWI

CIVIL DIVISION

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 207 OF 2018

Between

LEKERENI MAKWASA (A minor suing through Magret Sitolo)CLAIMANT

-and-

SUGZO YIWOMBE1ST DEFENDANT

LIBERTY GENERAL INSURANCE COMPANY LIMITED..... 2ND DEFENDANT

CORAM: Austin Jesse Banda, Assistant Registrar

Mr. J. Suzi Banda, for the Claimant

Mr. J.D. Kandeya, for the Defendants

Ms. F. Makhambera, Clerk/ Official Interpreter

Banda

JUDGMENT ON ASSESSMENT OF DAMAGES

Background

Lekereni Makwasa ('Claimant'), a minor, brought this proceeding on 5th June, 2018 through her mother and litigation guardian, Margret Sitolo, claiming damages for pain and suffering, damages for loss of amenities of life, damages for disfigurement, special damages for police and medical reports, and costs of the action. The claims were made against Mr. Sugzo Yiwombe ('1st Defendant') and Liberty Insurance Company Limited ('2nd Defendant'). The 1st Defendant negligently drove a motor vehicle Toyota Corolla saloon registration number BQ 3581 on the 31st of January, 2018 along the Chiradzulu- Phalombe road which at the material time was insured by the 2nd Defendant.

The vehicle hit the minor Claimant as she crossed the road, injuring the minor Claimant, hence the suit against the Defendants. Judgment on liability was entered against the Defendants, as endorsed by the Court on 25th March, 2019. The Court ordered that damages be assessed by the Registrar. I heard the parties for assessment of damages on 19th November, 2019.

Evidence

The only witness in the assessment hearing was Margret Sitolo. Under oath, she adopted the witness statement that she had filed earlier. She stated that her daughter Lekereni Makwasa was hit by the motor vehicle that was negligently driven by the 1st Defendant. She tendered a police report ('Exhibit MS1') that blamed the 1st Defendant for causing the accident due to over speeding.

It was the evidence of Margret Sitolo that the accident left her daughter with a fracture of the left femur, mild head injuries and bruises on her head. She stated that the child was assessed to be at 50% degree of permanent incapacity. She said that her daughter experienced a lot of pain and suffering at the time of the accident and even after. She tendered a medical report from Chiradzulu District Hospital. ('Exhibit MS2').

In re-examination, she said that she was not at the scene of the accident. She said, however, that her daughter was mentally traumatised and she had a broken leg. She also said that her daughter was treated at Chiradzulu District Hospital and she was only referred to Queen Elizabeth Central Hospital ('QUECH') for a scan. She said her daughter was admitted in the hospital and had weights supporting her raised leg, and was only discharged on 19th February, 2018. She also said that a review at the hospital showed that her daughter had the broken leg shortened such that she walked with a limp.

The Defendants chose not to call any witnesses.

Issue

The only issue in this matter is the amount of damages that the Defendants should pay as compensation to the Claimant.

The Law and Discussion

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, 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 **Kalinda v. Attorney General [1992] 15 Malawi Law Reports 170 @ 172**. 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**.

Injury in This Case

The Claimant had a fracture of the left femur which necessitated a period of admission in the hospital for a period of about 3 weeks. The medical report buttresses the point raised by the Claimant's mother in cross examination. It shows that the Claimant was admitted in hospital from the 31st of January, 2018 to 19th of February, 2018. She had bruises that were surgically debrided, and had skin traction. As submitted by the Claimant these are painful procedures. The minor Claimant has had her left leg shortened as stated by the mother. The medical report corroborates her evidence on that aspect.

Comparable Cases

In **Rex Walala v. Davison Chikuta and Prime Insurance Co. Limited Civil Cause No. 461 of 2011**, the claimant sustained a fracture of the left tibia, bruises on the left arm and cuts on his face. He was awarded a sum of K 6, 500, 000.00 as damages for personal injuries on 17th July, 2012.

In a case submitted by the Claimant, **Kayira and Others v. Shaikh Personal Injury Cause No. 1160 of 2013 (unreported)**, the 1st Claimant sustained a fracture of the right tibia and fibula, among other injuries, and was hospitalized for 16 days. The Claimant was awarded K 7, 200,000.00 for pain and suffering and loss of amenities of life on 1st July, 2014.

The Claimant also provided the case of **Ronnex Fole v. Walisa Farm Personal Injury Cause No. 17 of 2015 (unreported)** where the Claimant had a crushed foot. He also had his leg deformed. He was awarded a lump sum of K10, 000,000.00 on 12th November, 2015.

There is also the case of **Christine Mande v Charter Insurance Company Personal Cause No. 329 of 2016** where the claimant was awarded MK 6,300,000.00 as damages for pain and suffering and loss of amenities of life after sustaining a fracture of the right femur, dislocation of the right hip joint, cuts on the head and loss of consciousness.

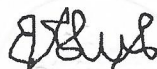
The Award

From the nature of injuries of the minor Claimant here-in, and the guidance from the comparable cases, I find the sum of **K5, 300,000.00** as adequate compensation for pain and suffering, **K1, 600,000.00** for loss of amenities of life, **K2, 500,000.00** for deformity. I further award the Claimant **K3, 000.00** cost of obtaining the police report paid for under General Receipt Number 4872471. I do not award any special damage for the medical report as there is no proof that it was paid for.

Conclusion

The Claimant is hereby awarded a total of **K 9, 403,000.00** as damages for the personal injuries. The Defendants are liable to pay costs of the assessment, which will be assessed by the Court if the parties do not agree.

Made this 20th day of January, 2019.



Austin Jesse Banda

ASSISTANT REGISTRAR