



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 1085 OF 2013

BETWEEN

COSMASI BISIWASI CLAIMANT

AND

PRIME INSURANCE COMPANY LIMITED DEFENDANT

CORAM : HER HONOUR E. BODOLE, ASSISTANT REGISTRAR

Makwinja, of Counsel for the Claimant

Chikaonda, of Counsel for the Defendant

Ms. Kazembe, Court Clerk

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. Judgment on liability was entered for the claimant on 25th January, 2017. The matter has now come for assessment of damages.

The Evidence

On 26th January, 2013 at around 16:00 hours the claimant was hit by motor vehicle registration number BR 4338 Toyota Hiace minibus insured by the defendant. As a result of the accident the claimant sustained injuries. According to the medical report, the claimant sustained mild head injuries and bruises on the head, legs and arms. The treatment he received at the hospital was wound dressing with iodine. The claimant testified that since the occurrence of the accident, he often suffers from headaches and sometimes he loses memory, and feels dizzy. He also feels pain in his right knee and as a result he no longer enjoys playing football. What he is experiencing now has affected his education as he cannot read and listen to his teacher for a long time.

The claimant is also claiming K6,000.00 as costs for procuring Police and medical reports respectively.

Applicable Law and Analysis

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 Co. Ltd* Civil Cause No. 177 of 2012.

The damages cannot be quantified in monetary terms by use of a mathematical formula but by use of experience and guidance afforded 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 Co. Ltd* Civil Cause No. 279 of 1993.

Pain and Suffering

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 pain and suffered greatly and is still suffering. He sustained mild head injuries and bruises on the head, legs and arms. The treatment he received at the hospital was wound dressing with iodine. He often suffers from headaches and sometimes he loses memory, and feels dizzy. He also feels pain in his right knee.

Loss of Amenities of Life

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 he is incapable of performing some activities he used to do.

The feels pain in his right knee and as a result he no longer enjoys playing football. What he is experiencing now has affected his education as he cannot read and listen to his teacher for a long time. This shows that his education has been greatly affected.

Deformity/Disability

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.

There is no evidence to show that the claimant has been disfigured due to the injuries he sustained. No damages for disfigurement are, therefore, payable.

Award of Damages

In *Braidon Mayaka v NICO General Insurance Company Limited* Personal Injury Cause No. 882 of 2012 the claimant sustained multiple bruises, multiple cuts on the chest. He was admitted for 4 days. He had permanent scars on the left eye. The court awarded the claimant a sum of K800,000.00 as damages for pain and suffering, K400,000.00 as damages for loss of amenities of life, and K300,000.00 as damages for deformity on 27th April, 2017. In *Ellia Tembo v Nico General Insurance Compnay and Others* Personal Injury Cause No. 286 of 2016 the claimant sustained soft tissue injuries to the right leg and shoulder. The treatment he received was cold compress and bandaging. He still had pain in his shoulder and was unable to speak loudly due to pain in the chest. His leg would grow numb and he was unable to walk properly. He was awarded a sum of K1,300,000.00 as damages for pain and suffering and loss of amenities of life on 31st January, 2019.

I am of the view that the injuries sustained by the claimant in the above cited case is comparable to the injuries sustained by the claimant in the present case. I, therefore, award the claimant a sum of K800,000.00 as damages for pain and suffering, K700,000.00 as damages for loss of amenities of life.

Special Damages

Special damages are supposed to be pleaded and proved. The claimant proved that he had spent K6,000.00 in order to procure the Police and medical reports. I, therefore, award him this sum.

Conclusion

In conclusion, the claimant is hereby awarded total sum of K1,506,000.00. The claimant is awarded costs of this action.

Made in court this day of 27th June, 2019 at Blantyre.



EDNA BODOLE

ASSISTANT REGISTRAR