



The Judiciary

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 344 OF 2018

Between

EMMA MUNIYA CLAIMANT

PRIME INSURANCE COMPANY LIMITED DEFENDANT

CORAM: Austin Jesse Banda, Assistant Registrar

Mr. Kalua, for the Claimant

None, for the Defendants

Ms. Madalitso Galafa, Clerk/ Official Interpreter

Banda, Assistant Registrar

ORDER ON ASSESSMENT OF DAMAGES

Background

The defendant having not entered a defence to the claimant’s claims, the claimant caused a default judgment to be entered on 18th September, 2018. The Honourable Justice Jack N’riva made an award of K13, 500.00 special damages and costs, and further directed that general damages be assessed by a registrar. The claimant obtained a date for the assessment of damages. The defendant did not appear in person or by counsel despite being served with the notice through their legal practitioners on record, Ritz Attorneys. I heard the claimant who had one witness only.

Evidence

The only witness in the assessment hearing was the claimant herself, Emma Muniya. She simply adopted her filed witness statement. In her statement, she said that she was walking along the Mulanje- Limbe road at Nkando Trading Centre when she was hit from behind by a motor vehicle insured by the defendant. She said the driver swerved from his lane to the dirty verge of the road where she was walking having lost control of the vehicle.

Emma Muniya said that as a result of the impact, she sustained a deep cut wound on the back of the head, had a swollen head, a dislocation of the backbone, a broken and swollen left foot that she could not walk. She said that the driver of the motor vehicle took her to Thuchila Health Centre where she was referred to Mulanje District Hospital.

The claimant further stated that at Mulanje District Hospital, she was treated by stitching of the wounds, and a dressing of the injured leg. She said that she should have had the leg cast in a plaster of paris if she had the money to pay for it. She further stated that by the 19th day of March, 2018 when she made the statement, she was still attending hospital as an out-patient.

She said that she was admitted later on 2nd July, 2018 and discharged on 20th July, 2018 at Mulanje District Hospital as she was still not healed. She said she was referred to Queen Elizabeth Central Hospital (QUECH), after another admission at the Mulanje District Hospital between 8th December, 2018 and 17th December, 2018. She said she was yet to obtain a report from QUECH. She tendered a police report and a medical report authored by a Clinical Officer based at Mulanje District Hospital, by the name of Bayill Chindungwa. Counsel for the claimant asked for the allowance to tender a report from QUECH by close of the day of the hearing which the court gave. A report authored by Chief Orthopaedic by the name of Wes Kamoto was given later.

The medical report from Mulanje District Hospital shows that the claimant sustained a deep cut wound measuring 2cm long on the occiput, a swelling above the eye, bruises on the left leg and an injury on the left ankle. It was stated that she was given intravenous fluids, analgesics and the wound was sutured. It was further stated that the claimant had an x-ray of the left ankle joint but there was no fracture seen.

The medical report further stated that the claimant is not able to stand or work for as long time as she could before the accident. It stated that she cannot do any kind of sports, cannot perform chores that require her to stand or walk for a long period of time as a result of the accident.

The report from QECH shows that the claimant was admitted at QECH on 31st December, 2017 and was discharged on 7th February 2018, then she was admitted again on 3rd July, 2018 and discharged on 9th July, 2018 due to spinal injuries. And she also had muscle spasms to the Thoraco lumbar spine and a fracture of the lateral malleolus on the left ankle with the result that the claimant has severe back ache, walking difficulties, slurred speech, loss of memory and that she cannot do her normal duties like farming or cooking.

Emma Muniya stated viva voce in the assessment hearing that she cannot talk properly after the accident, and the court observed that she was stuttering in speech. She said the accident left her with a loss of memory which was not the case before. Further, she said that she was not completely healed from the injuries as she still had problems to sit upright (she was not sitting up but leaning forward in a sitting position on the day of the hearing) and that she experiences a lot of pain when walking which makes her limp actually.

Issue

The only issue to be determined is the amount of general damages as pleaded, that the claimant should be compensated with for the personal damage she sustained as a result of the wrong by the defendant's insured.

Analysis

Damages are the remedy that is open to a victim of a wrongful act of another. With general damages courts do award them not 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 their 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.**

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 it is capable of limiting a person from doing certain things as was observed by the court in the case of **Austin Julius v. Rasika Gunawardena and General Alliance Limited, Personal Injury Cause Number 316 of 2014.** Potani, J, in the case of **Chingamba v. Deerless Logistics Limited Civil Cause No. 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 v. Dwangwa Sugar Corporation Civil Cause Number 345 of 1998, High Court, Principal Registry, per Chimasula, J**, it was held 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 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 Ed)., 1961, p.624.2***

Finding on the Injuries in this Matter

The medical reports tendered in this matter stated it all. The claimant sustained a deep cut wound on the back of the head, swelling above the eye, bruises on the left leg and an ankle injury. Mulanje District, as such it must have been an ankle sprain or perhaps a dislocation. It is difficult to believe the evidence of the claimant given viva voce on the later admissions at the Mulanje District Hospital including the after effects such as stuttering and loss of memory. Much as the claimant would indeed be suffering as she stated and as she could be seen, there is no linkage shown of the later lengthy hospital admissions and the accident here-in. It is

difficult especially without any medical evidence stating the link. The QUECH report was never tendered despite giving allowance of time for that. There is nothing from the Mulanje District Hospital on the admissions too.

It is clear though that the claimant cannot sit properly, stand for long and work or walk for a long period of time as before. These are documented in the report from Mulanje District Hospital as arising from the accident. Inability to sit up is a disfigurement as it is and a clear loss of comfort too. The claimant also has suffered in that she cannot speak normally and the spine is affected too. n the claimant has been left with scars above the eye and on the left leg. I am not so certain of the loss of memory without the backing of medical expertise in the area, but it would not be unusual to have such a result when the head is bumped and a cut and a swelling occurs. I take it that it is a possibility. In the end the court is left to sympathise with the claimant on her stuttering but fails to appreciate how this suffering is connected to the injuries sustained in this accident caused by the defendant's insured, to be fair to the defendant even in its absence.

Comparable Cases

In Wonderson Mbeta v. Steve Adam and Prime Insurance Company Limited Civil Cause 178 of 2011, a claimant who suffered a deep cut wound on the head, had a cut in the eye and a bruised left ear got K2,000, 000.00 damages for pain and suffering, and loss of amenities of life.

In Rose Chipala v. Prime Insurance Company Limited, Personal Injury Cause Number 472 of 2013, Principal Registry, the court made an award of K4, 950,000.00, on 13th October, 2015 as damages for loss of amenities of life and disfigurement for a fracture of the right femur, swollen right ankle and bruises on the face.

In Robert Piason and 3 Others v. Prime Insurance Co. Ltd Personal Injury Cause No. 413 of 2013 the 3rd 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 6th September, 2014, the claimant got K3,000,000.00 as general damages.

In Malisewo v. Charter Insurance Company Ltd, Civil Cause No. 915 of 2012, the claimant was awarded K1, 500,000.00 as damages for pain and suffering and K800,000.00 as damages for disfigurement. In that case the claimant suffered a wound on his head, fracture of the left tibia, soft tissue injuries, and bruises.

In an award made on 20th July, 2012, a claimant who suffered a sprained right ankle and had multiple bruises such that she was admitted in hospital for a day was awarded K2,000,000.00 for pain and suffering and loss of amenities of life- see **Patricia Demesani Bannet v. Isaac Lizimba and Another, Civil Cause No. 811 of 2011** (unreported).

In **Wisted Chaleka v. Dalitso Subaila and Prime Insurance Company Limited, Personal Injury Cause Number 247 of 2014** (unreported) the court on 26th June 2014 awarded a sum of K3, 800,000.00 as damages for pain and suffering and loss of amenities of life. In that case, the claimant had sustained soft tissue injuries, a painful neck, multiple bruises on the neck and had excessive body pain.

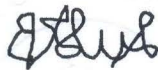
Determination

In light of the above comparable cases and facts of this instant case, I make an award of K2,850,000.00 for pain and suffering, K1,800,000 for loss of amenities of life and K1,500,000.00 for disfigurement. The Honourable Judge already awarded the sum of K13, 500.00 as special damages.

Conclusion

The claimant is hereby awarded a sum of **K6, 163,500.00** as damages for the personal injury that he suffered as a result of the negligence of the defendant's insured. The defendant should also pay costs of the assessment hearing.

Made this 21st day of January, 2019.



Austin Jesse Banda

ASSISTANT REGISTRAR