



Library



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 759 OF 2018

BETWEEN:

DICK WYSON.....CLAIMANT

AND

HENRY SATUMBA.....1st DEFENDANT

PRIME INSURANCE CO. LTD.....2ND DEFENDANT

CORAM: T. SOKO : Assistant Registrar

Mr Khan : Counsel for the claimant

Defendants : absent

Ms Kazembe : Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

BACKGROUND

This is an order on assessment of damages pursuant to a default Judgment against the defendants dated 23rd April 2019. The claimant's claim is for damages for pain and suffering, loss of amenities of life, disfigurement, cost for procuring the police and medical reports and costs of the action. The facts as stated in the statement of claim aver that on 11th November 2018 at around 10:30 hours, the claimant was riding his motor cycle from the direction of Zomba Air base heading towards Matawale Turn Off along Jali- Zomba road when upon arrival or near Matawale Health Centre a motor vehicle Registration Number BU 8796 Chevrolet Saloon driven by the 1st defendant hit the claimant as the vehicle was turning right to Matawale Health Centre. As a result of the said accident the claimant sustained personal injuries.

EVIDENCE

Hearing of assessment of damages was on 24th October 2019. The claimant appeared as a sole witness. He adopted his witness statement in full which he stated as follows:

I Dick Wyson of C/O Box 1000, Blantyre in the Republic of Malawi will say as follows:

1. Save as otherwise the information within this statement is from my personal knowledge and belief.
2. I am the claimant in this matter
3. On 11th November 2018 at around 10:30hours, I was hit by a Motor Vehicle Registration Number BU8796 Chevrolet Saloon which was being driven by the 1st defendant from the direction of Zomba Airbase heading towards Matawale turn off along Jali- Zomba road. The accident occurred at or near Matawale Health Centre. He produced and exhibited a copy of the police report
4. Because of the said accident, I sustained amputation of 5th finger, fracture of the 4th finger of the right hand and bruises on both knees. Consequently, I was taken to the hospital where I received treatment of analgesics, disarticulation of the remaining bone of the 5th finger and splinting of the fractured finger. He produced and exhibited a copy of medical report.
5. Because of these injuries, I have a possibility of developing arthritis, my ability to do sporting activities and household chores has been affected and I have suffered permanent incapacity 13%.
6. I was admitted to the hospital for a day and treated as an outpatient thereafter.
7. I am in this predicament because of the said accident and it is for that reason that I commenced these proceedings against the Defendants to be compensated for the injuries I sustained herein,
8. I humbly pray before this Honourable Court to award me damages as sought. I also pray for costs of these proceedings

I believe that the facts stated in this witness statement are true

The defendants did not appear on the date of hearing despite being served by the notice of adjournment.

GENERAL LAW ON DAMAGES

In assessing damages for personal injuries, the intention of the court is to compensate the injured party as nearly as possible as money can do. The principle is to put the plaintiff at the position he would have been in if it would have not been for the tort committed. See Namwiyo v Semu (1993) 16 (1) MLR 369.

In calculating damages, therefore, the Courts consider, in monetary terms, the sum which will make good to the sufferer, as far as money can do, the loss he has suffered as a result of the wrong done. See Admiralty Commissioners vs S.S Valeria (1992) 1 A.C. 242 at 248.

In Christina Mande vs Charter Insurance Co. Ltd Personal Injury Cause No. 329 of 2016 the Court quoting Wright vs British Railway Board 1938 AC 1173, 1177 stated that:

'Non-economic loss... is not susceptible of measurement in money. Any figure at which the assessor of damages arrives cannot be other than artificial and, if the aim is that Justice meted out to all litigation should be even handed instead of depending on idiosyncrasies of the assessor, whether Judge or Jury the figure must be basically a conventional figure derived from experience and from awards in comparable cases.'

In the case of City of Blantyre vs Sagawa the court said the following:

'It would appear to us that if the award is to be conventional, an award for a similar injury should be comparable and should, to some extent, be influenced by amounts awarded in the previous case, either in the same or neighboring jurisdictions. In citing previous awards the court should not lose sight of factors like devaluation of the currency since the awards were made.'

PAIN AND SUFFERING

In damages for pain and suffering, the court considers the physical experience of the nerves and mental anguish which comes as a result of the injury. See Lemon Banda and 19 others V Mota Engil Limited and General Alliance Insurance Limited, personal injury cause number 178 of 2012 (unreported).

In the City of Blantyre vs Sagawa 1993 16 (1) MLR 67 the court quoted Kemp and Kemp volume II paragraph 1007 where it was stated that;

Pain is, it is suggested, used to describe the physical pain caused by or consequent upon the injury, while suffering relates to the mental element of anxiety, fear, embarrassment and the like.

Page 831 of **Mc Gregor** on damages defines pain as the immediately felt effect on the nerves and brain of some lesion or injury to a part of the body, while suffering has been defined as the distress which is not felt as being directly connected with any bodily condition. Pain includes any pain caused by medical treatment or surgical operations rendered necessary by the injury inflicted by the defendant. Suffering includes fright at the time of the injury and fright reaction, fear of future incapacity, either as to health, sanity or the ability to

make a living, and humiliation, sadness and embarrassment caused by disfigurement. Also see Gedion Mhango vs Nico General Insurance Co. Ltd Personal Injury Cause No. 703 of 2016 (unreported).

LOSS OF AMENITIES OF LIFE

Loss of amenities is concerned with loss of enjoyment of life. This follows from the fact that human beings enjoy certain activities which may as a result of the injury be curtailed. See Lemon Banda and 19 others V Mota Engil Limited and General Alliance Insurance Limited, personal injury cause number 178 of 2012 (unreported).

Birkett L.J in Manley vs Rugby Portland Cement Co. (1951) C.A No. 286 stated that there is a head of damage which is sometimes called loss of amenities, the man made blind by the accident will no longer be able to see familiar things he has seen all his life, the man who had both legs removed and will never again go upon his walking excursions- things of that kind- loss of amenities. Mc Gregor on damages at Page 834 explains that loss of impairment of any one or more of the five senses is compensated under this head. Besides loss resulting from interference with the plaintiff's sexual life

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 Mota Engil Limited and General Alliance Insurance Limited, personal injury cause number 178 of 2012 (unreported). Damages for disfigurement are normally awarded as part of pain and suffering. They are awarded separately if the plaintiff has been ridiculed, lost his social status, or that his is in need of plastic surgery. See Mary Kamwendo vs Stage coach Malawi Limited Civil Cause No. 840 of 1995

SUBMISSIONS AND DETERMINATION

Counsel submitted that the claimant should be awarded a sum of K20, 000,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement. Counsel indicated that the Court has to consider the comparable cases and depreciation of the local currency. Counsel cited 17 comparable cases. Among the cases none is related to the amputation of the fingers. Those that are related to the fractures are excessive.

I have recourse to the decision of Alfonso Vincent vs TEM Ltd and General Alliance Insurance Co. Ltd Personal Injury Cause No. 804 of 2015 where the claimant suffered amputation of the ring and middle finger, a deformed nail, lack of motion and stiffness between fingers. The Court awarded a sum of K4,

000,000.00 damages for pain and suffering, disfigurement and loss of amenities of life. The award was made on 28th February 2019. In addition, in the case of **Charles Saidi Phiri vs J Kalinga and Trans Rukuru Bus Service Civil Cause No. 531 of 2007 (unreported) (Lilongwe District Registry)** the Court awarded the claimant a sum of K400,000.00 on 22nd November 2007 as damages for pain and suffering, loss of amenities of life and disfigurement following the amputation of 3 fingers.

Besides, Counsel for the claimant cited a case of **Albert Kambova vs Shadreck Shombe and Prime Insurance Co Ltd Personal Injury Cause No. 99 of 2016 (unreported) where the Court on 23rd July 2018** awarded the sum of K3,000,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement to the claimant. On the same note, I found a case of

In the present matter the medical report which was uncontroverted indicates that the claimant sustained amputation of the 5th finger, fracture of the 4th finger of the right hand and bruises on both knees. He was given bruffen, the fractured finger was splinted and the remaining bone finger was disarticulated. The nature of the injuries and the nature of the treatment reveals that the claimant suffered severe pain and suffering. Besides, the medical report shows that he will always have difficulties to perform his previous job and manual work. The report also states that the claimant will no longer enjoy sporting activities. The injuries in my mind have affected his life greatly. Coming to the cited authorities, I noted that in Alfonso case the claimant was amputated two fingers and in Phiri case the claimant was amputated three fingers. In both cases the claimants did not sustain fractures unlike in this case. Phiri case is old looking at the way our currency has depreciated. Alfonso case is recent. Considering the nature of the injuries that the claimant suffered, the comparable authorities cited and the depreciation of currency, I award the claimant a sum of K4, 200,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement. The claimant did not support the cost of police and medical report with sufficient evidence as such I decline awarding the cost of procuring such documents.

Costs are for the claimant

Made on this 16th day of December 2019



T. Soko

Assistant Registrar