



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO.523 OF 2013

BETWEEN

REGINA MLONGOTI CLAIMANT

AND

JACK ALI NAMATE DEFENDANT

CORAM : HER HONOUR MRS. E. BODOLE, ASSISTANT REGISTRAR

Kalua, of Counsel for the Claimant

Jack Ali Namate, Defendant

Ms. Kazembe, Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

Introduction

The claimant brought proceedings against the defendants claiming damages for pain and suffering, loss of amenities of life, costs for procuring police and medical reports, and costs of the action. Judgment on liability was entered for the claimant on 7th September, 2016. The matter has now come for assessment of damages.

The Evidence

On 3rd February, 2013 the claimant was a passenger in motor vehicle registration number BR 8266 Hino Ranger which was being driven by the defendant. The motor vehicle was coming from Phalombe going to Blantyre. As a result of the negligence

of the defendant the motor vehicle went to the offside of the road where it fell on its side.

As a result of the accident, the claimant sustained injuries. She sustained painful right shoulder and bruises on the lower back. The treatment she received was iodine dressing. At present, the claimant is unable to wash clothes and cook nsima for a group of people as her shoulder hurts and swells. The court noticed that the shoulder is protruding.

The claimant is also claiming a sum of K5,500.00 as costs for procuring police and medical reports.

Applicable Law

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 - *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 she 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 suffering and was in great pain and is still suffering. She sustained painful right shoulder and bruises on the lower back. She has a protruding shoulder. She suffers from a painful and swelling shoulder whenever she performs household chores.

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 claimant is unable to enjoy life as she used to as she is unable to do household chores like washing clothes and cooking nsima for a group of people.

Award of Damages

In *Magalasi v United General Insurance Company Ltd* Personal Injury Cause No. 701 of 2012 the claimant sustained multiple cuts on the face, hip and bruises on the arm. He was awarded K350,000.00 for pain and suffering and loss of amenities of life on 16th April, 2013. In *Aisha Nicks (a minor through her mother and next friend , Mary Misomali v General Alliance Insurance Ltd* Personal Injury Cause No. 540 of 2013 the claimant sustained deep cut wound on the head, right shoulder, lacerations on the face, bruises on both hands, soft tissue injuries on the wrist joint and painful ankle joint. She was awarded K650,000.00 as damages on 31st July, 2014.

The injuries sustained by the claimants in the above-mentioned cases are more than those sustained by the claimant in the present case. However, I would take into account the fact that the claimant has a protruding shoulder and also that the awards were made some time back. I, therefore, award the claimant a sum of K1,500,000.00 as damages for pain and suffering and loss of amenities of life.

Special damages are supposed to be pleaded and proved. The claimant proved that she had spent K5,500.00 in order to procure the Police and medical reports. I, therefore, award her this sum.

Conclusion

In conclusion, the claimant is awarded total sum of K1,505,500.00. She is also awarded costs of this action.

Pronounced in court this 11th April, 2019 at Blantyre.



EDNA BODOLE (MRS.)

ASSISTANT REGISTRAR