

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 639 OF 2018

BETWEEN

SHADRECK FUDUWICK CLAIMANT

AND

JAMES BALALA KACHEPA 1ST DEFENDANT

NICO GENERAL INSURANCE COMPANY LIMITED ... 2ND DEFENDANT

CORAM : HER HONOUR E. BODOLE, ASSISTANT REGISTRAR

Master, of Counsel for the Claimant

Fraser, of Counsel for the Defendants

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, disfigurement, special damages, and costs of the action. Judgment on liability was entered for the claimant on 8th March, 2019. The matter has now come for assessment of damages.

The Evidence

On 13th September, 2018 the claimant was walking along Zalewa road. Upon arrival at Mbayani stage, he was hit by motor cycle registration number BT 9258 San LG Lifo which was being driven by the 1st defendant and insured by the 2nd defendant. The 1st defendant was driving the motor cycle from the direction of CSC House heading towards Kameza roundabout. Due to the impact, the claimant landed on an oncoming motor vehicle registration number BS 5363 Toyota Hilux Pick Up.

As a result of the accident the claimant sustained injuries. According to the medical report, the claimant sustained right segmental femur fracture with spiral ends 2 degrees, soft tissue injury, bruises, general body pains and headache. He was taken to Queen Elizabeth Central Hospital where he was admitted from 13th September, 2018 to 4th October, 2018. The treatment he received was open reduction and internal fixation and application of Plaster of Paris. He was given clutches to aid him whilst walking and analgesics. This court noted that the claimant is still using clutches to aid him to walk. He was treated as an outpatient from 5th October, 2018 to 10th October, 2018.

As a result of the injuries, the claimant is at high risk of developing arthritis. He is always in pain. His ability to do sporting activities, household chores, and walk long distances have been greatly affected. The steel rod that was inserted in his femur will be there for life.

The claimant is claiming a sum of K3,000.00 and K10,500.00 as costs for procuring the medical and Police reports respectively.

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 Company 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 affordable 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 Company 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 suffering and was in pain. He is still suffering. He sustained right segmental femur fracture with spiral ends 2 degrees, soft tissue injury, bruises, general body pains and headache. He underwent open reduction and internal fixation, application of Plaster of Paris, and clutches to aid him whilst walking. The claimant is still using clutches to aid him to walk. He is at high risk of developing arthritis. He is always in pain. He was admitted for 21 days and was treated as an out-patient for 6 days.

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 he used to. His ability to do sporting activities, household chores, and walk long distances have 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.

The claimant has been disfigured. He is going to have a steel rod in his body for life. His injuries have reduced his ability to do sporting activities, household chores, and walk long distances. These are things that any other person can easily do.

Award of Damages

In *Dankenii Kafa v G4S Security and NICO General Insurance Company Ltd* Personal Injury Cause No. 517 of 2016 the claimant sustained fracture of the left leg, dislocation of the right leg, a deep cut on the lower right leg and an open cut on the right leg, cuts on the head and cuts on both hands and general injuries. He was awarded a sum of K7,350,000.00 as damages for pain and suffering, loss of amenities of life, and disfigurement. The award was made on 30th April, 2018. In *Javious Enerst v Steven Levison and Prime Insurance Company Ltd* Personal Injury Cause No. 231 of 2015 the claimant sustained fractured tibia of the left leg, multiple bruises, multiple cuts on the upper and lower extremities and a dislocated shoulder. On 23rd March, 2018, he was awarded a sum of K6,000,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement.

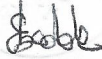
The injuries sustained by the claimants in the above-mentioned cases are comparable to the injuries sustained by the claimant in the present case. I, therefore, award the claimant a sum of K3,000,000.00 as damages for pain and suffering, K1,000,000.00 as damages for loss of amenities of life, and K2,000,000.00 as damages for disfigurement.

The claimant pleaded and proved to the court that he had spent K3,000.00 and K10,500.00 in order to procure the Police and medical reports respectively. The claimant is, therefore, awarded the sum of K13,500.00 as special damages.

Conclusion

In conclusion, the claimant is awarded total sum of K6,013,500.00. The claimant is also awarded costs of these proceedings.

Pronounced in court this 5th day of August, 2019 at Blantyre.



EDNA BODOLE

ASSISTANT REGISTRAR