

REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO.1041 OF 2015

BETWEEN

JAMES LITETE.....CLAIMANT

AND

JONATHAN FRED.....1ST DEFENDANT

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

CORAM

Mrs T. Soko	: Assistant Registrar
Mr Kalaya	: Counsel for the claimant
Defendant	: absent
Ms Munthali	: Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

BACKGROUND

The claimant herein commenced this action claiming damages for pain and suffering and disfigurement, loss of amenities of life, special damages for police and medical report and costs of the action. The statement of claim aver that on 2nd May 2015, the claimant was walking along Mbayani Gayesi road when he was hit by a motor vehicle registration number BN 6258 Toyota Hiace Mini bus driven by the 1st defendant. The accident occurred at Mbayani tarven after the 1st defendant lost control of the motor vehicle. As a result of the accident the claimant sustained a cut wound on the anterior aspect of the right leg.

ISSUE

Quantum of damages to be paid by the defendant

EVIDENCE

On the date of hearing of assessment the claimant adopted his witness statement where he stated that he sustained a cut wound on the anterior aspect of the right leg and soft tissue injuries. He said after the accident he was taken to Blantyre police from where he was referred to Queen Elizabeth Central Hospital for treatment. He tendered a police and medical report as part of evidence. The claimant further stated that he has difficulties to bend his right hand and even walk a long distance. The claimant showed the Court the scars that remained as a result of the injuries sustained.

SUBMISSIONS

In submissions the counsel for the claimant prays for a sum of K2, 000,000.00

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 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 neighbouring 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.

SPECIAL DAMAGES

The rule is well settled that special damages have to be specifically pleaded and strictly proved. See Phiri V Daudi 15 MLR 404. This means the plaintiff must produce evidence to prove the amount of special damages.

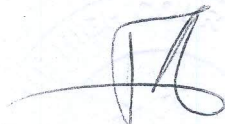
DETERMINATION

In the present matter, the medical report shows that the claimant suffered a cut wound on the anterior aspect of the right leg and soft tissue injuries. The wound was sutured. However the analysis by the medical personnel indicates that the injuries were not serious and pegged the degree of incapacitation at 9%. It means the claimant did not undergo severe pain and suffering. It also means that the claimant is able to do most of the manual work well. Counsel cited a case of Kafeleni Kazembe vs Charity Mseka and Nico General Insurance Company Limited PIC NO. 825 of 2011 where the plaintiff sustained cut wounds and bruises and permanent fears, pain in the right elbow and ankle and had limited motion of his right hand due to numbness. The plaintiff was awarded a sum of K1, 700,000.00 on 22nd May 2013.

Considering the comparable case above and the circumstances of the case I award a sum of K1, 500,000.00 in all heads of damages.

Costs are for the claimant.

Pronounced on this 8th day of January 2019.



T. SOKO

ASSISTANT REGISTRAR