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The Judiciary

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CASE NUMBER 498 OF 2017

Between

JOHN MATEMBA CLAIMANT

-and-

TISUNGE ZUZE 1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED..... 2nd DEFENDANT

CORAM: A.J. Banda, Assistant Registrar

Ms. Lapozo, for the Claimant

Mr. Stenala Chisale, for the Defendants

Ms. Galafa, Clerk/ Official Interpreter

Banda

ASSESSMENT ORDER

Background

The claimant commenced this proceeding against the defendants, who are driver and insurer of the motor vehicle registration number BT 771 that hit him and caused him injuries. He claimed damages for pain and suffering, damages for loss of amenities of life, damages for disfigurement and costs of this action. The Honourable Justice Healey Potani on 27th November, 2018 ordered that summary judgment on liability be entered for the claimant and that damages be assessed by the Registrar. I heard the parties on 6th day of February, 2019 for the purpose of assessment of damages.

Evidence

The claimant was the only witness in the hearing. He called no further witnesses. The defendants informed the court that they would not parade any witnesses for assessment.

John Matemba told the court that as a result of being hit by the car driven by the first defendant, he sustained the following injuries, fracture of the right clavicle, a sprain on his right foot, bleeding from the ears and mild head injuries. He stated further that as a result of the injuries he was admitted in the hospital for one day. He said he has headaches, walks with a limp, has memory loss and he cannot lift heavy objects using the right arm. He said that the degree of permanent incapacity was assessed at 25%. He said that he used to work at Bakhresa before the accident but he was fired because of the injuries.

The claimant exhibited a medical report authored at Queen Elizabeth Central Hospital (QUECH) and also showed the court photostat copies of x-rays.

In cross examination, John Matemba told the court that he was 63 years old at the time of giving his testimony. He said that he used to work at Bakhresa where he would repair machines. He further said that he did not know whether the medical report was paid for or not as the report was taken from the hospital by an agent. He said that he had been to the hospital for treatment before the medical report was produced. He said that he was examined by Dr. Kim who made the report.

Issue

The only issue in this case is the quantum of damages that the defendants must pay as compensation to the claimant for the injuries sustained because of the 1st defendant's negligence.

Law and Fact

Damages are the remedy that is open to a victim of the wrongful act of another. Courts do award damages not to punish the defendant but to fully compensate the claimant of all the losses she has suffered. 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 [now called the Claimant], 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.

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

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 **Chingámba 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.

Comparable Cases

The claimant through counsel cited three cases as comparable cases to this one, touching on the three noticeable injuries that he suffered. I must hasten to state from the onset that the cases cited involved other major injuries other than those highlighted by the claimant in his submission. I have referred to one in this order. This is the case of **Vincent Kumbuyo v. Prime Insurance Company Limited, Personal Injuries Cause Number 2007 of 2010**. In this case, His Honour M.A. Tembo, as he then was a Deputy Registrar of the High Court awarded the sum of K3,500,000.00 as damages for pain, suffering and loss of amenities of life. In this case the injuries were fracture of the clavicle (shoulder), fracture the left humerus (arm), fracture of the pelvis (hip) and a fracture of the left tibia (leg). The claimant in that case was knocked down was rendered unconscious. He was admitted in the hospital for about two months. The award was made on 3rd May, 2012.

In the case of **Noah Makina v. Sammy's Transport Limited and United General Insurance Limited** where the claimant was awarded the sum of K2, 500, 000.00 as damages for pain and suffering and loss of amenities of life and disfigurement when he suffered a fracture of the clavicle, was hospitalised for a month and had some ugly scars. The award was made on 3rd November 2011.

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).

The Instant Case

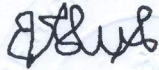
The **Vincent Kumbuyo** case cited by the claimant involved very serious injuries to this instant one. The claimant in this case had a clavicle fracture as a major injury, and mild head injuries and a sprained foot as the other noticeable injuries. In light of the comparable cases and general principles on damages, and the circumstances, prevalent in this case, I make an award of **K2,000,000.00** for pain and suffering.

It is not specifically stated what pleasures of life the claimant would no longer enjoy from his injuries. He had a sprained foot. It was said he is forced to limp as a result. Perhaps that would impinge his enjoyment of a jolly walk. The limping is not buttressed by the medical report though. A sprain and not a fracture should heal. The claimant still has headaches from time to time. I award him **K300,000.00** for loss of amenities of life. I award the claimant **K250,000.00** as damages for disfigurement for the scars he is left with after the injury.

Conclusion

The claimant should recover a total sum of **K2, 550,000.00** (Two million, five hundred and fifty thousand Kwacha) as damages for the personal injury he suffered. The defendants are further ordered to pay costs of the assessment, which will be assessed by the registrar if the parties will not agree.

Made this 5th day of March, 2019.



Austin Jesse Banda

ASSISTANT REGISTRAR