



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 13 OF 2018

BETWEEN

JESSE FELIX CLAIMANT

AND

DAVIE JUMA 1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED 2ND DEFENDANT

CORAM : HER HONOUR MRS. BODOLE, ASSISTANT REGISTRAR

Iman, of Counsel for the Claimant

Counsel for the Defendants, absent

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 3rd July, 2018. The matter has now come for assessment of damages.

The Evidence

On 14th October, 2017 the claimant was a passenger aboard motor vehicle registration number KA 8564 Mazda Bongo which was driving from the direction of Balaka heading towards Salima. When they reached Sanjani Village, the motor vehicle swerved to the far near side of the road where it overturned.

As a result of the accident, the claimant sustained injuries. According to the claimant's medical report, she sustained fracture of the right clavicle, dislocation of the right shoulder and tenderness of the left shoulder. She was referred from Balaka District Hospital to Queen Elizabeth Central Hospital for treatment. Her right hand was wrapped in bondage for three months before it was removed. It took her more than 3 months for recover from her injuries. During the recovery period, she could not eat using her right hand, bath on her own nor sleep on her right side. She could not do farming activities and household chores. She also could not do her business of selling 'mandasi'. At present she still struggles to do farming activities and is unable carry heavy objects using her right hand.

The claimant is also claiming special damages of K3,000.00 and K10,350.00 as costs for procuring Police and medical reports respectively.

Applicable Law and Analysis

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 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 - **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 her 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. The claimant sustained fracture of the right clavicle, dislocation of the right shoulder and tenderness of the left shoulder. Her right hand was wrapped in bondage for three months before it was removed. It took her more than 3 months for recover from her injuries. During the recovery period, she could not eat using her right hand, bath on her own nor sleep on her right side. She could not do farming activities and household chores. She also could not do her business of selling 'mandasi'. At present she still struggles to do farming activities and is unable carry heavy objects using her right hand.

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 she formerly enjoyed – **Kanyoni v Attorney General** [1990] 13 MLR 169. It means that he is incapable of performing some activities she used to do.

The claimant is unable to enjoy life as she used to as she struggles to do farming activities and is unable carry heavy objects using her right hand. This means that the injuries has affected her livelihood.

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.

No evidence was adduced by the claimant to show that she has been disfigured. I, therefore, would not make any assessment on this and stands dismissed.

Award of Damages

In ***Jinny Makungwa and 6 Others v Transibeiro Ltd and Prime Insurance Ltd*** Personal Injury Cause No. 119 of 2017 the 2nd claimant sustained multiple open fractures of 2nd, 3rd and 4th toes on the right foot, a deep cut on the face, fracture of the maxilla, basal skull fracture, and lost 6 teeth on the spot. He had a big scar he has running from the right side of the mouth to the cheek and under the lower lip and scars all over the right leg. This court awarded him a sum of K5,000,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement in February, 2018.

The injuries suffered by the claimant in the above cited case is more than the injuries suffered by the claimant in the present case. I, therefore, award the claimant a sum of K4,800,000.00 as damages for pain and suffering, and loss of amenities of life.

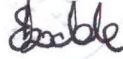
Special Damages

Special damages are supposed to be pleaded and proved. The claimant proved that he had spent K13,350.00 in order to procure the Police and medical reports. The claimant is, therefore, awarded a sum of K13,350.00.

Conclusion

In conclusion, the claimant is awarded total sum of K4,813,350.00. The claimant is also awarded costs of this action.

Pronounced in court this 16th day of January, 2019 at Blantyre.



EDNA BODOLE (MRS)

ASSISTANT REGISTRAR