



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 18 OF 2016

BETWEEN

LASTON SUKALI CLAIMANT

AND

DAVIE SAIZI 1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED 2ND DEFENDANT

E.P. NAMANJA 3RD DEFENDANT

CORAM : HER HONOUR MRS. BODOLE, ASSISTANT REGISTRAR

Kalanda, of Counsel for the Claimant

Stenala, 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, and costs of the action. Judgment on liability was entered for the claimant on 18th January, 2017. The matter has now come for assessment of damages.

The Evidence

The claimant does piece work of carrying luggage for passengers at Limbe minibus stage. On 12th August, 2016 the claimant was hit by motor vehicle registration number TO 4983 which was being driven by the 1st defendant.

As a result of the accident, the claimant sustained injuries. He sustained multiple fractures of metatarsal on the left foot and chest injuries. He was in plaster of Paris for over 6 weeks. He stayed for over a month using the right side only when sleeping. He had difficulties in walking. As of now, he is unable to walk long distances as the foot swells whenever he does so.

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 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 great pain and is still suffering. He sustained multiple fractures of metatarsal on the left foot and chest injuries. He was in plaster of Paris for over 6 weeks. He stayed for over a month using the right side only when sleeping. He had difficulties in walking. At present, the claimant is unable to walk long distances as the foot swells whenever he does so.

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 as he is unable to walk long distances.

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 in that he his left foot always swells whenever he walks long distances.

Award of Damages

In ***Nelson Mandala v Plem Construction Ltd and General Alliance Insurance Company Ltd*** Civil Cause No. 283 of 2011 the claimant sustained fracture of the right leg, multiple cuts and bruises. He was awarded a sum of K4,500,000.00 as damages on 21st August, 2016. In ***Robert Mose (suing as administrator of the***

Estate of Zakaria Robert (Deceased) and 5 Others v Lyson Benjamin Chapo, Prime Insurance Company Ltd and Symon Door Personal Injury Cause No. 350 of 2015 the claimant sustained fracture of the tibia of the left leg, bruises on the lower right leg, cut on the lower chin and leg. He was awarded a sum of K3,300,000.00 on 21st August, 2016.

The injuries suffered by the claimants in the above-cited cases are more or less the same as the injuries suffered by the claimant in the present case. I, therefore, award the claimant a sum of K4,500,000.00 as damages for pain and suffering, loss of amenities of life, and disfigurement.

Conclusion

In conclusion, the claimant is awarded total sum of K4,500,000.00. 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