



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 762 OF 2018

BETWEEN:

LUCIUS TAULO.....CLAIMANT

AND

WILSON MAILOSI.....1st DEFENDANT

MR CHIMOMBO.....2ND DEFENDANT

PRIME INSURANCE CO. LTD.....3RD DEFENDANT

CORAM: T. SOKO : Assistant Registrar

Mr Lihoma : Counsel for the claimant

Defendant : Absent

N. Munthali : Official Interpreter

BACKGROUND

This is an order on assessment of damages following a default judgment against the defendants dated 6th February 2019. The brief facts are that on 14th March 2017, the 1st defendant was driving a motor vehicle registration number LA 7963 Nissan Caravan from the direction of Blantyre heading towards Chikwawa along Blantyre Chikwawa road with passengers including the claimant. Upon arrival at Domasi Trading Centre, the 1st defendant lost control of the motor vehicle as he was trying to avoid a cyclist who was in front and the said vehicle overturned several times thereby causing injuries to the passengers including the claimant.

EVIDENCE

In evidence, the claimant stated that on 14th March 2017, at around 16:00 hours, the claimant was traveling in a minibus registration number LA 7963 Nissan Caravan from the direction of Blantyre heading towards Chikwawa along Blantyre Chikwawa road with other passengers. Upon arrival at Domasi Trading Centre, the driver of the said minibus lost control of the vehicle as he was trying to avoid a cyclist who was in front and the said vehicle overturned several times thereby causing injuries to the passengers including the claimant. The claimant produced and exhibited a police report. He further stated that due to the accident, he was referred to the Queen Elizabeth Central Hospital where he was admitted later and he was put some bandages to hold the fractured bones of the wrist and later he was put the other bandages. He said he sustained an open fracture of distal radius, ulna right wrist, and swollen tender of the left shoulder. The claimant produced and tendered a medical report as part of evidence. He added that he incurred the cost of procuring the medical and police reports. The claimant stated that he still experiences pain on his right arm and still goes to the hospital for checkups.

The claimant was in Plaster of Paris when he appeared in chambers for assessment.

SUBMISSIONS

Counsel for the claimant submitted that the claimant must be awarded a sum of K6, 500,000.00

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 Commisioners vs S.S Valeria (1992) 1 A.C. 242 at 248.**

In Christina Mande vs Charter Insurance Co. Ltd Personal Injury Cause No. 329of 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 neighboring 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 Enqil 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.**

DETERMINATION

In the present matter, the evidence that the claimant sustained an open fracture of distal radius and ulna right wrist is not controverted. The same is also confirmed with the medical report which states that the claimant sustained an open fracture of distal radius and ulna right wrist. Additionally the claimant had swollen tender on the left shoulder. The claimant underwent treatment which included debridement, open reduction and internal fixation, K- wiring and tendon repair. The nature of the injuries that the claimant suffered and the nature of the treatment that he received shows that the claimant sustained serious injuries. Besides, he was still in Plaster of Paris at the time of hearing of assessment of damages. He also complained of pains . Further, the medical report states that the claimant will no longer carry our heavy duties. His degree of incapacity was assessed at 25%. He complained that the injuries have affected his business of selling goats at Makhetha market and cannot perform most of the duties. Besides, the medical report indicates that the claimant will have difficulties to move the wrist as such he will have difficulties to perform sporting activities,

household chores and hold a ball point pen. In the case of **Harry Dyson and 6 others vs Auction Holdings Ltd Civil Cause No. 394 of 2012 (cited by counsel in submissions)** the 1st claimant suffered a fractured radius, fractured ulna, deep cut wound on the forehead, cheek and head injuries. The Court awarded a sum of K4, 000,000.00 for pain and suffering. Another claimant suffered an open fracture of the radius, ulna and mandible. The Court awarded a sum of K7, 000,000.00. The award was made on 2nd June 2014. In the light of the foregoing I award a sum of K4, 500,000.00 damages for pain and suffering and disfigurement and K800, 000.00 damages for loss of amenities of life. The cost of procuring a police and medical report was not proved so I decline awarding the same. I therefore make a total award of K5, 300,000.00

Costs are for the claimant.

Pronounced on this 8th day of May 2019.



T. SOKO
ASSISTANT REGISTRAR