



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 388 OF 2018

BETWEEN

MACKENZIE MASAMBA CLAIMANT

-AND-

MR. KELVIN MESSA 1st DEFENDANT

BRITAM INSURANCE COMPANY LIMITED 2ND DEFENDANT

CORAM: HER HONOUR MRS E BODOLE, ASSISTANT REGISTRAR
Master, of Counsel for the Claimant
Kumpita, of Counsel for the Defendants
Chitsulo, Court Clerk/Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

Introduction

The Claimant brought proceedings against the Defendants for pain and suffering, loss of amenities of life, disfigurement, special damages, and costs of proceedings. This order on assessment of damages follows a judgment on liability which was entered for the Claimant on 23rd April, 2019.

The Evidence

The matter came for assessment of damages on 2nd July, 2019 and the Claimant was the sole witness for his claim. The Defendants were supposed to call a witness but they did not file any witness statement and did not appear when the case came for defence hearing on 19th December, 2019. As such, the Court decided to proceed to deliver the judgment as it appeared to the Court that the Defendants were not interested to defend the matter. Both parties filed skeletal arguments.

The evidence before this court is that on 27th May 2018 at around 11:00 hours, the 1st defendant was driving motor vehicle registration number TO 5797 Tata Tipper from the direction of Borrow pit to the dumping area. On arrival at Sande village, the steering apparatus stopped functioning and thereafter the motor vehicle went to the extreme right side of the road. It then hit motor vehicle registration number KK 5569 Volkswagen pick-up which was being driven by the Claimant.

As a result of the accident, the Claimant sustained fracture of the left rib, multiple cuts on the head, painful right leg and severe soft tissue injury. He was taken to the hospital where he received treatment like analgesics, wound debridement and dressing. As a result of the injuries he sustained, the Claimant has difficulties in doing household work and sporting activities.

The claimant is also claiming a sum of K13,500.00 as costs for procuring the Police and medical reports.

Issue for Determination

The only issue in this matter is the appropriate measure of the quantum of damages that the claimant ought to be awarded in the circumstances.

Applicable Law

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 Claimant in the position he would have been if he did not suffer the injuries he is claiming damages for - *Halsbury's Laws of England* 3rd Ed. Vol. II p.233 para 400. This principle was further enunciated in *Livingstone v Raywards Coal* [1880] AC 25 at 39 where Lord Blackburn said:

'...where any injury is to be compensated by damages, in settling the sum to be given for reparation you should as nearly as possible get at the sum of money which will put the party who has been injured or who has suffered, in the same position as he would have been in had he not sustained the wrong for which he is now getting his compensation or reparation.'

Such damages are recoverable for both pecuniary and non-pecuniary losses. Pecuniary losses must be specially pleaded and proved while non pecuniary losses are assessed by the court - ***Mary Ntulungwa & 9 Others v Makandi Tea Estate*** Personal Injury Cause No 844 of 2012

Damages cannot be quantified in monetary terms by use of mathematical formula but use of experience and looking at awards made in decided cases of similar nature - ***Wright v British Railway Board*** [1983]2 AC 773. In reaching the final award for damages through looking at similar awards made, the Court considers the time the awards were made and currency devaluation - ***Kuntenga and another v Attorney General*** Civil Cause No 202 of 2002.

As to claims for personal injuries, damages are always awarded under the headings of pain and suffering, loss of amenities of life and disfigurement.

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 - ***Lemon Banda and 19 others v Mota Engil Limited and General Alliance Insurance Limited*** Personal Injury Cause Number 178 of 2012. In the ***City of Blantyre v Sagawa*** 16(1) MLR the court 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."

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 - ***Lemon Banda and 19 Others V Mota Engil Limited and General***

Alliance Insurance Limited (supra). It is attributed to the deprivation of the Claimant's capacity to engage in any pastime activities which he formerly enjoyed – *Kanyoni v Attorney General* [1990] 13 MLR 169.

Disfigurement

Disfigurement is a limitation either physically or mentally for someone to do what any other person can do without reasonable accommodation. It is concerned with change of looks of the individual. This may be scars, amputations and postures - **Lemon Banda and 19 Others V Mota Engil Limited and General Alliance Insurance Limited** (supra). 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.

Analysis

It is clear from the evidence that the Claimant went through a lot of suffering and was in pain. He is still suffering and in pain. He sustained fracture of the left rib, multiple cuts on the head, painful right leg and severe soft tissue injury. He was taken to the hospital where he received treatment like analgesics, wound debridement and dressing.

The Claimant is unable to enjoy life as he used to and has been disfigured in that he has difficulties in doing household work and sporting activities.

As regards comparable cases on award of damages, the Defendants submitted cases. This Court has looked at the cases. The cases are irrelevant and of no assistance to this Court. The injuries sustained by the Claimants in those cases are different from the injuries sustained by the Claimant in this case. The Defendants submitted cases are, therefore, disregarded.

In *Mr. Albert Kambowa v Shadreck Shombe and Prime Insurance Company Ltd* Personal Injury Cause No. 99 of 2016 the Claimant sustained bruises and wounds on the left arm, right elbow, both knees and on the head. He was awarded a sum of K3,313,500.00 as damages for pain and suffering, loss of amenities of life on 21st December, 2018. In *Shadreck Fuduwick v James Balala Kachepa and NICO General Insurance Company Ltd* Personal Injury Cause No. 639 of 2018 the Claimant sustained right segmental femur fracture with spiral ends 2 degrees, soft tissue injury, bruises, general body pains and headache. He underwent open

reduction and internal fixation, application of Plaster of Paris, and clutches to aid him whilst walking. The Claimant was still using clutches to aid him to walk. He was at high risk of developing arthritis. He was always in pain. He was admitted for 21 days and was treated as an out-patient for 6 days. He was awarded a sum of K6,000,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement on 5th August, 2019.

It is clear that the injuries sustained by the Claimants in the above-cited cases are just in between the injuries sustained by the Claimant in the present case.

This Court, therefore, awards the claimant a sum of K4,000,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement.

Special Damages

Special damages are supposed to be pleaded and proved. The claimant proved that he had spent K13,500.00 in order to procure the Police and medical reports. He is, therefore, awarded this sum.

Conclusion

The Claimant is awarded a total sum K4,013,500.00 as damages. He is further awarded costs of proceedings to be taxed at a later date if not agreed by the parties. Each party is at liberty to appeal to the Supreme Court of Appeal within the requisite time frames.

Pronounced in Court this 26th day of February, 2020 at Blantyre.



EDNA BODOLE (MRS.)

ASSISTANT REGISTRAR