



THE JUDICIARY

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 926 OF 2015

Between:

BIZIWICK MLELEMBA..... CLAIMANT

-and-

PRIME INSURANCE..... 1ST DEFENDANT

CORAM: Texious Masoamphambe, Deputy Registrar

Mr. Kumitengo, for the Claimant

MR Dikiya for the Defendants, not present

Ms. Doreen Mkangala, Clerk/ Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

Background

This assessment of damages follows the judgment entered in favour of the claimant by Honourable justice Madise on 20th March, 2018. The claimant prays for damages for pain and suffering, loss of amenities of life, disfigurement and special damages.

Evidence

The claimant invited one witness, the claimant himself. His testimony was that on 6th August, 2015, he was a passenger in motor vehicle registration number **NB 2335** Toyota Hiace minibus when motor vehicle registration number **CK 129** Nissan Vanette minibus suddenly turned to the other lane to drop off passengers and collided with the motor vehicle in which he was a passenger. This was at Lunzu Secondary School junction. Due to the impact, motor vehicle registration number **NB 2335** Toyota Hiace minibus overturned to the extreme nearside dirty verge and caught fire. Following the impact, he sustained head injuries (multiple lacerations on the head, face and scalp), right eye perforation, fracture of the right tibia plateau and bruises on the right knee and right wrist. He tendered in evidence the medical report which was attached to his witness statement.

He was admitted at the hospital from 6th August, 2015 to 17th August, 2015 and underwent surgical operations on his eye and the leg. He underwent a lot of pain at the time of the accident, in the

hospital and even after his discharge. The accident left him with permanent scars on his head, right leg and right arm. At the time he was giving evidence in court, he was still feeling pain of his right leg when he walked for a long distance and when he stood or sit for a long time.

He paid **K3, 000.00** to obtain the police report and **K 3,000.00** to obtain the medical report.

Issues

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.

The Law

The High Court in **Ngosi t/a Mzumbazumba Enterprises vs. H. Amosi Transport Co. Ltd** (1992) 15 MLR 370 (HC) set the basis for assessment of damages:

***“Assessment of damages... presupposes that damages have been proved.
The only matter that remains is the amount or value of the damages.”***

It was observed in **Yanu- Yanu Co. Ltd vs. Mbewe (SCA) 11 MLR 405** that the rule is that prior to assessment, the injured party has provided proof of damage sustained. It was further propounded in the case of **Mkumuka vs. Mphande (HC) 7 MLR 425** that even in the face of difficulties in assessing damages, the Plaintiff is not disentitled to compensation.

The cardinal principle in awarding damages is *‘restitution in integrum’* which means, in so far as money can do it, the law will endeavour to place the injured person in the same situation as he was before the injury was sustained-**Halsbury’s Laws of England 3rd Ed.Vol.II p.233 para 400**. This principle was further enunciated in **Livingstone v Raywards Caol Co. (1880)5 App Cas 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 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.’

Although perfect compensation is impossible, what the claimant should get is fair and adequate compensation. This was held in the case of **British Commission v Gourley(1956) AC 185**. Since it is difficult to assess damages involving monetary loss, courts resort to awarding conventional figures guided by awards made in similar cases and also taking into account the money value. Lord Morris buttresses this contention in **West v Shepherd (1964) AC 326 at 346** where he states:

“...money cannot renew a physical frame that has been battered and shattered. All judges and courts can do is to award a sum which must be regarded as giving reasonable compensation.”

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. This was enunciated in the case of **Lemon Banda and 19 others v Motta Engil Limited and General Alliance Insurance Limited, Personal Injury Case Number 178 of 2012** (unreported).

The claimant went through a lot of pain and suffered physically and emotionally, respectively at the spot with the fracture of the right tibia and bruises and was in hospital from 6th to 17th of August, 2015. In **Patricia Damasani Bannet v Isaac Lizimba and Barton Painda Jereman, Civil Cause Number 811 of 2011**, where the claimant suffered a sprained ankle, multiple bruises over the body and face, the court awarded **MK2,000,000** for the injuries suffered. This award was made in July 2012. The injuries were severe and more serious just like in the present case.

In the case of **Zuze Bonjesi v Prime Insurance Co. ltd, Civil Cause N. 488 of 2011**, the Plaintiff suffered a fracture of the left tibia, a big wound exposing the bone and tendons and a deep wound on the right leg. She was awarded the sum of **MK 7, 000,000.00** for the pain and suffering. This award was made way back in 17th July, 2012. The injuries were severe and more serious than in the present case. In the recent case of **Elsie Deris Davies vs Mr Simon Nakoma and United General Insurance Company Limited, Personal injury Number 108 of 2018**, the claimant sustained a fracture of the leg, cut on the head and painful neck. She said she was taken to Queen Elizabeth Central Hospital where she was admitted from 17th December to 19th December 2017. She said her leg was put in plaster of Paris and the cut wound on her head was sutured. The court, taking into account all the relevant factors, awarded **K3, 200, 000.00** under all heads of damages. This decision was made in January of 2018. In the case at hand I opine that **MK 2,000,000.00** will adequately compensate the claimant for pain and suffering.

Disfigurement

It was observed in the case of **Lemon Banda and 19 others V Mota Engil Limited and General Alliance Insurance Limited, Personal injury Cause Number 178 of 2012 (unreported.)** that disfigurement is concerned with change of looks of the individual. This may be scars, amputations and postures. 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. This was stated in the case of **Mary Kamwendo vs Stage coach Malawi Limited Civil Cause No. 840 of 1995.**

The claimant herein sustained a fracture of the right tibia plateau. He also sustained bruises on the right knee and right wrist. He suffered pain at the spot and in the hospital as he was being treated. In light of the foregoing authorities and the nature of the injuries suffered by the claimant, the award of **MK1, 500,000. 00** is reasonably adequate for disfigurement.

Loss of amenities of life

Damages are paid under this strand 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).**

In Lundu v Prime Insurance Co Ltd, Civil Cause Number 903 of 2014, the court awarded the sum of MK 750,000.00 on 22nd May 2017 as the damages for loss of amenities of life. The court in that case appreciated that the fact that injuries are capable of limiting the pleasures of life that would be enjoyed before, and in future, if not for the injuries. In **Louise Chakwantha v Prime Insurance Company Limited, Civil Cause No.2195 of 2010,** the claimant stated that as a result of injuries he suffered he was unable to jog, which was his sport. The Court awarded him the sum of **MK 1,200,000.00** for loss of amenities.

In this present case, the claimant still feels pain on his right leg when he walks for a long distance or when he stands or sit for a long time. I therefore, the award of **MK 600,000.00** is adequate for loss of amenities of life.

I further award **MK6,000.00** being cost for obtaining police and medical reports. In total, the claimant is awarded **MK4,106,000.00**. Costs are for the claimant.

Made in chambers this Friday, the 3rd day of April, 2020 at Blantyre.



Texious Masqampahmbe

DEPUTY REGISTRAR