



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 191 OF 2019

BETWEEN

JAMSON MAKWINJA CLAIMANT

-AND-

MR. EDWARD BASIKOLO 1st DEFENDANT

PRIME INSURANCE COMPANY LIMITED 2ND DEFENDANT

CORAM: HER HONOUR MRS E BODOLE, ASSISTANT REGISTRAR
Khan, of Counsel for the Claimant
Phiri, 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 the proceedings. This order on assessment of damages follows a Settlement Agreement by the parties on judgment on liability which was entered for the Claimant on 30th May, 2019.

The Evidence

The matter came for assessment of damages on 17th December, 2019 and the Claimant was the sole witness for his claim. The Defendants did not produce any witness.

The evidence before this Court is that on 3rd September, 2018 the 1st Defendant was driving motor vehicle registration number ZA 751 Toyota Hilux Pick Up which was insured by the 2nd Defendant. He was driving along the Chingale-Machinga earth road from the direction of Chinseu towards Chingale Turn-off. Upon arrival at Dissi village soon after Chinseu Trading Centre, he hit the Claimant who was a pedal cyclist.

As a result of the accident, the Claimant sustained an open fracture of the right tibia and fibula. He was taken to the hospital where he was given analgesics and application of external fixators. The fixators were removed after 2 months and a plaster of Paris was put on which was removed 1 ½ months later. He was admitted in hospital from 3rd September, 2018 to 11th September, 2018. As a result of the injuries he sustained, there is a possibility of him developing arthritis on the right leg. His leg has shortened by 0.5 centimetres. His ability to perform household chores and sporting activities have been affected. He is required to periodically go to the hospital for examination and he has been treated as out-patient from 18th October, 2018.

The Claimant is claiming special damages in the sum of K13,500.00 for procuring 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."

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 an open fracture of the right tibia and fibula. He was in fixators for 2 months and plaster of Paris for 1 ½ months. He was admitted in hospital from 3rd September, 2018 to 11th September, 2018. There is a possibility of him developing arthritis on the right leg. His leg has shortened by 0.5 centimetres. He is required to periodically go to the hospital for examination.

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).

The Claimant is unable to enjoy life as he used to. His ability to perform household chores and sporting activities have been affected.

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.

The Claimant has been disfigured. His leg has shortened by 0.5 centimetre. As a result of this, his ability to perform household chores and sporting activities have been affected.

Award of Damages

In *Javious Enerst v Steven Levison and Prime Insurance Company Ltd* Personal Injury Cause No. 231 of 2015 the Claimant sustained fractured tibia of the left leg, multiple bruises, multiple cuts on the upper and lower extremities and a dislocated shoulder. On 23rd March, 2018, he was awarded a sum of K6,000,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement. 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 more than the injuries sustained by the Claimant in the present case. I, therefore, award the claimant a sum of K5,800,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement.

Special Damages

Special damages are supposed to be pleaded and proved. There is no evidence to show that the claimant expended the amount he is claiming for obtaining the medical report. If some money had been spent, that should have been shown to the court. However, this court is mindful of the fact that the claimant had to travel to the hospital from home in order to obtain the medical report. Reasonable compensation for that is fair and just.

He is, therefore, award the claimant a sum of K4,000.00 as costs for obtaining the medical report and K3,000.00 as costs for obtaining the Police report.

Conclusion

The Claimant is awarded a total sum K5,807,000.00 as damages. He is further awarded costs of the 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 28th day of February, 2020 at Blantyre.

Edna

EDNA BODOLE (MRS.)

ASSISTANT REGISTRAR