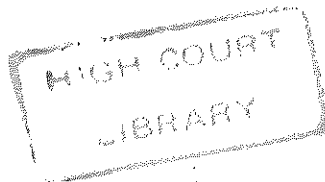


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REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 206 OF 2020

BETWEEN

MPHATSO PICKSON 1ST CLAIMANT

MAXWELL MPASO 2ND CLAIMANT

STEVEN KUZINJA 3RD CLAIMANT

-AND-

CHRISTOPHER PHWANDAPHWANDA 1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED 2ND DEFENDANT

CORAM: HER HONOUR MRS E BODOLE, ASSISTANT REGISTRAR
Chizimba, of Counsel for the Claimants
Counsel for the Defendants, absent
Chitsulo, Court Clerk/Official Interpreter

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 proceedings. This order on assessment of damages follows a Default Judgment which was entered for the Claimants on 28th April, 2020.

The Evidence

The matter came for assessment of damages on 22nd July, 2020 and the Claimants were the sole witnesses for their claims.

The evidence before this Court is that on 28th October, 2019 the Claimants were lawful passengers in motor vehicle registration number BLK 4453 Nissan Note which was being driven by the 1st Defendant. This motor vehicle was insured by the 2nd Defendant. He was driving from the direction of Blantyre Teachers Training College heading Chikwawa along Kapeni road. The 1st Defendant lost control of the motor vehicle at Mpitamadzi near ESCOM Faults and it swerved to the extreme left side. It then overturned and landed in a water canal.

As a result of the accident, the 1st Claimant sustained fracture of the left rib, facial bruises and multiple cuts on the head. He was in severe pain. The treatment he received at Queen Elizabeth Central Hospital was wound suturing and was given analgesics. As a result of the accident he suffers from memory loss and occasional chest pains. He cannot perform his normal duties as before. He has permanent scars.

The 2nd Claimant sustained fracture of 2 right side ribs and facial bruises. He suffered severe chest pains. He was not given any treatment at Queen Elizabeth Central Hospital. As a result of the accident he has developed scars, and has difficulties in sleeping.

The 3rd Claimant sustained soft tissue injuries on the left leg. He suffered severe pain. He was given analgesics at Queen Elizabeth Central Hospital. As a result of the accident, he has post-traumatic left leg pain. He has difficulties walking long distances due to leg pain.

Issue for Determination

The only issue in this matter is the appropriate measure of the quantum of damages that the Claimants 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).

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 Claimants went through a lot of suffering and were in pain. They are still suffering and in pain.

The 1st Claimant sustained fracture of the left rib, facial bruises and multiple cuts on the head. He was in severe pain. His wounds were sutured and he was given analgesics. As a result of the accident he suffers from memory loss and occasional chest pains. He cannot perform his normal duties as before. He has permanent scars.

The 2nd Claimant sustained fracture of 2 right side ribs and facial bruises. He suffered severe chest pains. As a result of the accident he has developed scars, and has difficulties in sleeping.

The 3rd Claimant sustained soft tissue injuries on the left leg. He suffered severe pain. He was given analgesics. As a result of the accident, he has post-traumatic left leg pain. He has difficulties walking long distances due to leg pain.

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 *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.

It is clear that the injuries sustained by the Claimants in the above-cited cases are more than the injuries sustained by the Claimants in the present case. This Court, therefore, awards the 1st Claimant a sum of K4,500,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement. This Court awards the 2nd Claimant a sum of K4,000,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement. This Court awards the 3rd Claimant a sum of K1,400,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement.

Conclusion

The Claimants are 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 3rd day of November, 2020 at Blantyre.



EDNA BODOLE

ASSISTANT REGISTRAR