



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
PERSONAL INJURY CAUSE NUMBER 453 of 2019

BETWEEN:
GIFT KANKHWANI.....**CLAIMANT**
AND
BLESSINGS BANDA.....**1ST DEFENDANT**
PETER HAMILTON BVALANI.....**2ND DEFENDANT**
LIBERTY GENERAL INSURANCE COMPANY LIMITED.....**3RD DEFENDANT**

CORAM: CM MANDALA: ASSISTANT REGISTRAR
Mtambo: Counsel for Claimant of Charlotte Ray & Associates
Defendants: Absent
C Zude: Court Clerk

ASSESSMENT OF DAMAGES

INTRODUCTION AND BACKGROUND

This is an order for assessment of damages pursuant to Default Judgment. The Defendants were ordered to pay the Claimant: damages for pain and suffering, damages for loss of amenities of life, and damages for disfigurement. The hearing on Assessment of Damages was conducted on 13th February 2020. This matter arose from a road accident that occurred on 9th May 2018 whereby the 1st Defendant was driving a vehicle that swerved and overturned several times causing injury to the Claimant.

EVIDENCE

Claimant's Evidence

Gift Kankhwani identified and adopted his signed witness statement as his evidence in chief. It states:
I, GIFT KANKHWANI, of Kambalame village, TA Kaphuka, Dedza, in the Republic of Malawi will say as follows:

- 1. Save as otherwise the information within this statement is from my personal knowledge and belief.*
- 2. I am the Claimant herein and I make this statement on my own behalf.*
- 3. I am an adult male of 30 years of age.*
- 4. I recall that on 9th May 2018 the 1st defendant was driving motor vehicle registration number ZA 634r Toyota Hiace roof minibus from the direction of Dedza heading towards Lilongwe along Dedza-Lilongwe road with over 16 passengers on board.*
- 5. I was a passenger in the said motor vehicle registration number ZA 634 Toyota Hiace Minibus.*
- 6. Upon arrival at Double Vision Private Secondary School, soon after overtaking a certain unknown truck as he was descending, his rear offside tyre burst and the car swerved and overturned several times.*
- 7. I recall that the 1st defendant was driving at an excessive speed.*
- 8. As a result of the accident, I sustained severe head injury, tension pneumothorax, multiple rib fracture, multiple cuts on face and back clavicle fracture, cuts on the head and legs. I exhibit hereto a copy of medical report marked "GK1".*

9. *The said accident happened as a result of the negligence of the 1st defendant's insured driver of the motor vehicle registration number ZA 643 Toyota Hiace high roof minibus for driving at excess speed without due care and attention to his passengers, details on the accident are in the copy of the police report exhibited hereto and marked "GK 2".*
10. *It is against this background that I commenced the present proceedings against the Defendant claiming compensation for personal injury that I sustained herein and I had to incur the sum of MK10,000.00 for procuring the police report and medical report.*
11. *I want to be compensated for the injuries I suffered.*
12. *I believe that the facts stated in this witness statement are true.*

In his oral testimony, the Claimant told the court that he was injured on his right ribs, they were broken, and blood had to be drained. The Claimant also sustained a broken shoulder which affects the functioning of his hand. The Claimant also sustained injuries on his knee and toes. There were injuries on the right side of his face and a deep cut wound on his head.

SUBMISSIONS BY COUNSEL FOR THE CLAIMANT

Counsel for the Claimant filed written submissions in support of the application. Counsel avers that the extremity of the Claimant's injury and the devaluation of the Kwacha would attract a global award of K8,000,000.00 as compensation. Counsel for the Claimant cited the following comparable awards in support of her prayer:

- ***Ethel Duncan v Joseph Kamadzi et al v Prime Insurance Limited and WB Mtupa*** - Civil Cause Number 2016 of 2010 where the Claimant sustained a fractured right humerus, traverse mid shaft with radical palsy, mild head injuries and multiple bruises. The Claimant's permanent incapacity was pegged at 30%. On 28th July 2012 the Claimant was awarded K3,000,000.00 for pain and suffering, and loss of amenities of life, and K700,000 for disfigurement.
- ***Alex Hussein v Prime Insurance Company Limited*** – Personal Injury Cause Number 2441 of 2010 where the Claimant sustained head injuries and soft tissue injuries. On 13th March 2014 the Claimant was awarded K7,500,000.00 for pain and suffering and loss of amenities of life.
- ***Lucius v Mkandawire and another*** – Civil Cause Number 2442 of 2010 where the Claimant sustained a fractured right humerus and tibia, and severe head injuries. On 17th May 2011, the Claimant was awarded K6,000,000.00 for pain and suffering and loss of amenities of life.

ASSESSMENT GUIDELINES

Damages for personal injuries are awarded for a Claimant's pecuniary and non-pecuniary losses. The pecuniary losses include the loss of earnings and other gains, which the Claimant would have made had they not been injured, and the medical and other expenses which accrue from care and after-care of the injury. The non-pecuniary losses include pain and suffering, loss of amenities of life and loss of expectation of life. The principle underlining the award of damages is to compensate the injured party as nearly as possible as money can do it.¹

Perfect compensation for a Claimant is unlikely. The Claimant, however, is entitled to fair and adequate compensation.² 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*³ by stating: '*money cannot renew a physical frame*

¹ See *Cassel and Co v Broom* [1972] AC 1027. See also *Tembo v City of Blantyre and The National Insurance Co Ltd* – Civil Cause No. 1355 of 1994 (unreported).

² *British Commission v Gourley* (1956) AC 185.

³ *West v Shepherd* (1964) AC 326 at 346.

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.'

The mode of assessment of damages requires the court to consider comparative awards of a similar nature. In doing so, regard must be had for fluctuations in the value of the currency. The court should make an award that is commensurate with the value of the currency at the time the award is made. In *Malamulo Hospital (The Registered Trustees) v Mangani*⁴, the Supreme Court states: "It is, therefore, recognised by the courts that awards of comparable injuries should be comparable. This is done by looking at previous awards of similar cases and adjusting the award according to the fall of the value of the money." In *Tionge Zuze (a minor, through A.S. Zuze) v Mrs Hilda Chingwalu*,⁵ the Court states: "Where a claim relates to non-monetary loss in respect of which general damages are recoverable it is not possible to quantify the loss in monetary terms with mathematical precision. In such cases courts use decided cases of a comparable nature to arrive at an award." In *Steve Kasambwe v SRK Consulting (BT) Limited* Personal Injury Cause Number 322 of 2014 (unreported), the High Court states thus: 'At times the court is faced with situations where the comparative cases have been rendered obsolete because of the devaluation of currency and inflation. It would not achieve justice if the court insisted on the same level of award as was obtaining in the previous cases. In such situation, when deciding the new cases, the court must take into account the life index, i.e. cost of living and the rate of inflation and the drop-in value of the currency. The court must therefore not necessarily follow the previous awards but award a higher sum than the previous cases.'

COMPENSATION

The Claimant sustained the following injuries: sustained severe head injury, tension pneumothorax, multiple rib fracture, multiple cuts on face and back clavicle fracture, cuts on the head and legs.

Pain and Suffering

The word 'pain' connotes that which is immediately felt upon the nerves and brain, be it directly related to the accident or resulting from medical treatment necessitated by the accident while 'suffering' includes fright, fear of future disability, humiliation, embarrassment and sickness. See: *Ian Goldrein et al, Personal Injury Litigation, Practice and Precedents* (Butterworths, 1985) 8 and *City of Blantyre v Sagawa* [1993] 16(1) MLR 67 (SCA).

Through the witness statement and the Claimant's oral testimony, the Claimant was able to explain the extent of his injuries. The Claimant sustained numerous injuries, including multiple fractures, wounds and cuts. None of the defence offered mentions what kind of treatment the Claimant received when he attended the hospital and unfortunately there is no medical report attached to the witness statement nor is there any trace of a witness statement on the file at all. This makes it difficult for the court to fully comprehend the full extent of the Claimant's injuries and treatment. Nonetheless, it is clear that the Claimant's injuries were serious based on which, this Court awards the Claimant the sum of K2,00,000 as damages for pain and suffering.

Loss of Amenities of Life

The expression 'loss of amenities of life' simply means loss of faculties of pleasures of life resulting from one's injuries. Damages for loss of amenities of life are awarded for the fact that the plaintiff is simply deprived of the pleasures of life, which amounts to a substantial loss, whether the plaintiff is aware of the loss or not. See:

⁴ [1996] MLR 486.

⁵ Quoting from *HQ Chidule v Medi* MSCA 12 of 1993.

Poh Choo v Camden and Islington Area Health Authority [1979] 2 All ER 910 and *City of Blantyre v Sagawa* [1993] 16(1) MLR 67 (SCA) at 72.

As a result of the accident, the Claimant states that his shoulder injury, the back-clavicle fracture, affects the functionality of his hand. The Claimant is fairly young, 30 years old at the time the statement was recorded, which means he will have to live with the effects of minimised functions of his hand. Based on this, this court awards the sum of K500,000.00 as damages for loss of amenities of life.

Disfigurement

In the matter of *James Chaika v NICO General Insurance Co Ltd* the High Court stated that '*Disfigurement is not a matter to be taken lightly and casually as it is something that one has to permanently live with.*' In the *Nyirenda v Moyo and others Case*, the claimant was awarded the sum of K500,000.00 as damages for disfigurement in 2018. Following that award and considering the devaluation of the Kwacha since 2018, the Claimant is hereby awarded K750,000.00 as damages for disfigurement.

DISPOSAL

The Claimant is therefore awarded K2,000,000 .00 for pain and suffering; K500,000.00 for loss of amenities of life; K750,000.00 for disfigurement; and costs of the action (to be taxed by the court).

Compensation totals of K3,250,000.00 (three million, two hundred and fifty thousand kwacha).

Each party is at liberty to appeal to the Supreme Court of Appeal within the requisite time frames.

Ordered in Chambers on the 1st day of June 2020 at the High Court, Lilongwe.



C Mandala

ASSISTANT REGISTRAR

Poh Choo v Camden and Islington Area Health Authority [1979] 2 All ER 910 and *City of Blantyre v Sagawa* [1993] 16(1) MLR 67 (SCA) at 72.

As a result of the accident, the Claimant states that his shoulder injury, the back-clavicle fracture, affects the functionality of his hand. The Claimant is fairly young, 30 years old at the time the statement was recorded, which means he will have to live with the effects of minimised functions of his hand. Based on this, this court awards the sum of K500,000.00 as damages for loss of amenities of life.

Disfigurement

In the matter of *James Chaika v NICO General Insurance Co Ltd* the High Court stated that '*Disfigurement is not a matter to be taken lightly and casually as it is something that one has to permanently live with.*' In the *Nyirenda v Moyo and others Case*, the claimant was awarded the sum of K500,000.00 as damages for disfigurement in 2018. Following that award and considering the devaluation of the Kwacha since 2018, the Claimant is hereby awarded K750,000.00 as damages for disfigurement.

DISPOSAL

The Claimant is therefore awarded K2,000,000 .00 for pain and suffering; K500,000.00 for loss of amenities of life; K750,000.00 for disfigurement; and costs of the action (to be taxed by the court).

Compensation totals of K3,250,000.00 (three million, two hundred and fifty thousand kwacha).

Each party is at liberty to appeal to the Supreme Court of Appeal within the requisite time frames.

Ordered in Chambers on the 1st day of June 2020 at the High Court, Lilongwe.



C Mandala

ASSISTANT REGISTRAR