



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NUMBER 1039 OF 2019

BETWEEN:

GRACE SUNGUMA **CLAIMANT**

AND

BENSON CHANDILE **1ST DEFENDANT**

AND

PRIME INSURANCE COMPANY LIMITED **2ND DEFENDANT**

CORAM: **C. H. Msokera, Assistant Registrar**

Z Khan, Of Counsel for the Claimant

Chitsulo, Official Court Interpreter

ASSESSMENT ORDER

1. The defendants were found liable, through a default judgement dated 13th March 2020, to a road accident based personal injury claim by the claimant concerning fracture of the pubic bone, haematoma on the left thigh, and multiple bruises. Following the default judgment, my role is to assess the quantum of damages payable for pain and suffering, loss of amenities of life and disfigurement.
2. Let me make clear what the categories of damages being sought after herein refer to. I will do so by borrowing from the words of the High Court, in *Mtika v US Chagomerana t/a Trans Usher (Zebra Transport)* [1997] 2 MLR 123, when it observed as follows:

‘There are also losses, not monetary, recognised by the courts. These attend any personal injury. These are pain and suffering. Then there is what is

known as the loss of amenities. This covers the loss caused by the injury in that the plaintiff will be unable to pursue the leisure and pleasures of life that he used to enjoy but for the injury.'

3. In addition, the position at law is that disfigurement is normally dealt with under the head of pain and suffering unless there is special need to handle it separately - see *Mwasinga v Stagecoach (Mal) Ltd* [1993] 16(1) MLR 363).
4. In civil proceedings, of which this is one, the burden of proof rests upon a party who asserts the affirmative of an issue – see *Isaac Chiwale (suing as administrator of the estate of Lazalo Chiwale) v Real Insurance Company Limited* [2012] MLR 195 (HC). The claimant submits that she should be awarded aggregate damages to the tune of MK15 000 000.00. As such, it is necessary that I should look at the evidence to see whether there is basis to make such an award.
5. To prove the purported injuries, the claimant testified on her own behalf. In her witness statement, she told the court that she sustained a fracture of the pubic bone, haematoa on the left thigh, and multiple bruises. She added that she has developed scars on the affected areas. According to her, she can hardly do sporting activities and household chores as before. She further cited her medical report as pegging her permanent incapacity at 20%. In her oral testimony, she also explained that because of the injuries, coital exercise with her husband is painful.
6. I am surprised that the claimant decided not to call the medical personnel to come and testify of the injuries which could only be verified medically. Simply citing and attaching a medical report authored by the medical practitioner is not enough. As such, I will completely ignore her statements which cite and attach the contents of the medical report, a document which she did not author. The law is now settled that such documents, unless tendered by the author, cannot be relied upon as proof of what they say but rather only as proof that they were obtained – see *Anita Nanchinga v*

Reunion Insurance Company Limited MSCA Civil Appeal Number 5 of 2016.
This is the essence of the rule against hearsay evidence.

7. Nevertheless, her evidence still confirms that she sustained injuries, observable to the naked eye, such as bruises and scars, and excruciating pain which she is still experiencing. Therefore, I shall make my assessment strictly based on these injuries.
8. Obviously, the injuries proved herein demonstrate pain and suffering. There is also further proof showing that the plaintiff is failing to enjoy life as she used to before the accident. Therefore, she has managed to show sufficient ground upon which this court should assess her claim for damages on both pain and suffering and loss of amenities of life. Nevertheless, I see no need of making a separate assessment for disfigurement (scars) as the same can be included under the head of pain and suffering.
9. I am alive to the basic principle of fairness that comparable injuries should be compensated with comparable awards - *Malamulo Hospital (The Registered Trustees) v Mangani* [1996] MLR 486 (SCA). The comparability of cases must be both in time and injuries involved. Counsel has cited sixteen cases to support the submission that this court should award damages amounting to MK15 000 000.00. Unfortunately, all these sixteen cases have to do with injuries of bone fractures and dislocations. As I have already highlighted, such kind of injuries have not been demonstrated in the present proceedings. That notwithstanding, I take the excruciating pain the claimant has testified to be experiencing up to date as a clear sign that her injuries are not minor ones but truly severe.
10. As to the particular award I should make in this matter, I find the case of *Mateyu v Hamdani and Another* (Miscellaneous Case Number 109 of 2016)¹ a good guide. In that case, the claimant had a pelvic fracture which made it impossible for him to walk or sit such that he could only sleep on one side of his body. He also had injury to the urethra and metal rods were inserted

¹ <https://malawilii.org/mw/judgment/high-court-general-division/2018/821>, accessed on 4th May 2020.

in his pelvic area to help the bones get back to their normal position. In addition, a catheter was inserted below his stomach to aid his urinary system. Although he was given clutches to support his mobility, he was still experiencing pain in the pelvic region whenever walking. Not only could he not enjoy sexual intercourse with his wife but he was also unable to play football as he used to. He was awarded the sum of MK6 880 000.00 as total damages (being MK3 585 000.00 damages for pain and suffering, MK1 995 000.00 damages for loss of amenities of life, and MK1 300 000.00 damages for disfigurement). The award was made on 30th July 2018.

11. Given the nature of the injuries in the present action which are less severe than the ones in *Mateyu* but also not losing sight to the lapse of time and changing economic forces affecting the value of the Kwacha, I proceed to award the claimant total damages to the total sum of MK4 500 000.00.

12. The defendants will bear the costs of these proceedings

13. I so order.

Made this 5th day of May 2020 at Blantyre.



C.H. Msokera

Assistant Registrar
