



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY



PERSONAL INJURY CAUSE NUMBER 494 OF 2019

BETWEEN:

ENELESI JOSIYA ----- **CLAIMANT**

AND

THE ATTORNEY GENERAL (MALAWI POLICE SERVICE) ----- **DEFENDANT**

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

M Banda, Of Counsel for the Claimant

M Galafa, Official Court Interpreter

ASSESSMENT ORDER

1. The defendant was found liable, through a default judgment dated 28th November 2019, to a road accident based personal injury claim by the claimant concerning alleged bruises on her back, torn ligaments on her right leg, and a swollen hip. 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.'

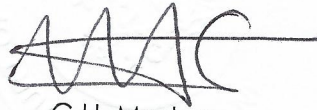
3. In addition, the position at law is that disfigurement is normally dealt with under the head of pain and suffering unless there is special need to handle it separately - see *Mwasinga v Stagecoach (Mal) Ltd* [1993] 16(1) MLR 363).
4. The burden of proof, in civil proceedings like the present one, 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 MK10 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. The substance of her testimony is on paragraphs 4 and 5 of her statement which is as follows:

'Due to the impact of the accident, I sustained torn ligament and haemarthrosis on the right knee. I also sustained multiple bruises at the back. Since the accident, I cannot walk without clutches. I also cannot do any manual labour. Attached marked EJ 1 is a copy of a medical report.'
6. My immediate reaction to the cited portion of the claimant's witness statement is that she is a lay person and cannot in any way be in a position to speak for the medical personnel who treated her. She ought to have paraded the author of her medical report if she wanted the contents of that document to be part of her evidence. Having not done that, I will completely ignore her statements which cite and attach the contents of the medical report. 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. Therefore, the claimant has only managed to prove, through her witness statement and her oral testimony, that the assessment of damages should be made considering only the following injuries: multiple bruises at the back and ongoing leg and head pains. Obviously, these injuries demonstrate pain and suffering. And there is further proof showing that the plaintiff is failing to enjoy life as she used to before the accident since she can hardly walk without using clutches. However, I see no cause in this matter for me to assess damages for disfigurement separately.
8. Fairness demands 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. Unfortunately, the cases which counsel has cited as comparable and justifying an award of MK10 000 000.00 deal with injuries concerning bone fractures and torn ligaments and tendons. No injuries to such degrees have been demonstrated in this matter.
9. I find the case of *Maganga v Prime Insurance Co. Ltd* (Personal Injury Cause Number 580 of 2011)¹ a good guide. In that matter, the court awarded aggregate damages for pain and suffering, loss of amenities of life, and special damages to the sum of MK4 700 000.00 on 3rd July 2019. The injuries in *Maganga* were severe head injury, cut wound on the scalp, bruises on the right hand, severe bruises on the chest and soft tissue injuries to the right hand and on the hip.
10. Given the nature of the injuries in the present action, I proceed to award the claimant damages amounting to the total sum of MK4 000 000.00.
11. Costs of these proceedings are for the claimants.
12. I so order.

Made this 5th day of May 2020 at Blantyre.

¹ <https://malawilii.org/mw/judgment/high-court-general-division/2019/119>, accessed on 4th April 2020.

A handwritten signature in dark ink, consisting of several loops and a long horizontal stroke extending to the right.

C.H. Msokera

Assistant Registrar
