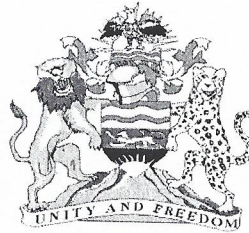


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REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY NO. 475 OF 2015

BETWEEN:

TOBIASI MATOLA CLAIMANT

AND

PRIME INSURANCE CO. LTD.....1ST DEFENDANT

FAHAD MUSSA.....2ND DEFENDANT

CORAM: Texious Masoamphambe, Deputy Registrar

Mr P. Ndebwe, of Counsel for the claimant

Mr Phiri, of Counsel for the defendant

Miss Mada Galafa, Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

Background

This is an order on assessment of damages following an order dated 12th July 2019 to strike out the defence. The claimant's claim is for damages for pain and suffering, loss of bicycle valued at K25,000.00 and costs of the action.

Evidence

The facts are that on 26th April 2015, the claimant was lawfully cycling his bicycle along Chilembwe Highway from the direction of Limbe heading towards Kachere Trading Centre. While the claimant was cycling the bicycle at Maone, the 2nd defendant who was driving a motor vehicle registration No. CZ 3990 Toyota Dyna Pickup hit the claimant and his bicycle. As a result of the accident, he sustained injuries which included contusion of eye, chest and the right side of the back, bruises on the right elbow, right side of the face and right knee. By the time he was giving evidence on assessment of damages, he was still experiences pain when flexing his shoulder and elbow, residual scar tissue and 50% permanent incapacity. The claimant further stated that he was admitted for one night at the hospital. He tendered a medical report as part of evidence. He added that since the accident occurred, he fails to do some of the work he used to do because the eye and the shoulder were affected. He said he does not see. He also said that his backbone is very painful to the extent that he can't bend it.

During cross examination, the claimant told the court that he got injured on the shoulder, right eye and he doesn't see anymore. He stated that he visits the hospital for checkups.

Submissions

Counsel for the claimant prayed that the Court should award the claimant a sum of **K4,500,000.00** as damages for all heads. Counsel cited a case of **Keneth Katunga (A minor by his father and next friend, Christopher Katunga) vs Arthur Chipunga and Citizens Insurance Co Ltd Civil Cause No.1922 of 2010** where the claimant suffered soft tissue injury in form of a swollen left knee, friction wound on left leg and bruises on the left leg. The Court awarded the claimant a sum of **K800,000.00** as damages for pain and suffering. Counsel also cited a case of **Mac Tony Naitha vs Citizen Insurance Co Ltd Civil Cause No. 2041 of 2011** where the Court awarded the claimant a sum of **K800,000.00** as damages for pain and suffering in circumstances where the claimant sustained a soft tissue injury in form of swollen right ankle, painful back and legs. Counsel cited a case of **Wisdom Sendeza vs Citizen Insurance Co Ltd Civi; Cause No.1166 of 2010** where the claimant suffered soft tissue injury in form of bruises to his face, head and hands which led to bleeding. The Court awarded him **K700,000.00** damages for pain and suffering. The award was made in July 2011.

On the other hand, counsel for the defendant submitted that the claimant should be awarded a sum of **K2,000,000.00** as damages for pain and suffering. The defendant stated that the claimant neither proved that he lost sight to his right eye nor that he has difficulties bending his back. Further, the defendant submitted that he did not produce receipts nor quotations for the bicycle nor did he produce receipts for procuring the police report and medical report. Counsel cited a case of **Wonderson Mbeta vs Steve Adam and Prime insurance Co Ltd** where the claimant who suffered a deep cut wound on the head, a cut in the eye and a bruised left ear got **K2,000,000.00** as damages for pain and suffering and loss of amenities of life.

The Law

In the present matter, it is a trite law that damages due either for breach of contract or tort are damages which, so far as money can compensate, will give the injured party reparation for the wrong fact. The case in point is **Admiralty Commissioners vs S.S. Susquehanna (1926) AC 655**.

The High Court in **Ngosi t/a Mzumbazumba Enterprises vs. H. Amosi Transport Co. Ltd (1992) 15 MLR 370 (HC)** set the basis for assessment of damages:

*“Assessment of damages... presupposes that damages have been proved.
The only matter that remains is the amount or value of the damages.”*

It was observed in **Yanu- Yanu Co. Ltd vs. Mbewe (SCA) 11 MLR 405** that the rule is that prior to assessment, the injured party has provided proof of damage sustained. It was further propounded in the case of **Mkumuka vs. Mphande (HC) 7 MLR 425** that even in the face of difficulties in assessing damages, the Plaintiff is not disentitled to compensation.

The cardinal principle in awarding damages is ‘*restitution in integrum*’ which means, in so far as money can do it, the law will endeavour to place the injured person in the same situation as he was before the injury was sustained-**Halsbury’s Laws of England 3rd Ed.Vol.II p.233 para 400**. This principle was further enunciated in **Livingstone v Raywards Caol Co. (1880)5 App Cas 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 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.’

Although perfect compensation is impossible, what the claimant should get is fair and adequate compensation. This was held in the case of **British Commission v Gourley(1956) AC 185**. 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 (1964) AC 326 at 346** where he states:

*“....money cannot renew a physical frame 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.”*

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. This was enunciated in the case of **Lemon Banda and 19 others v Motta Engil Limited and General Alliance Insurance Limited, Personal Injury Case Number 178 of 2012** (unreported).

In **Patricia Damasani Bannet v Isaac Lizimba and Barton Painda Jereman, Civil Cause Number 811 of 2011**, where the claimant suffered a sprained ankle, multiple bruises over the body and face, the court awarded **K2,000,000** for the injuries suffered. This award was made in July 2012. The injuries were severe and more serious just like in the present case.

In the case of **Zuze Bonjesi v Prime Insurance Co. Ltd, Civil Cause N. 488 of 2011**, the Plaintiff suffered a fracture of the left tibia, a big wound exposing the bone and tendons and a deep wound on the right leg. She was awarded the sum of **K 7, 000,000.00** for the pain and suffering. This award was made way back in 17th July, 2012. The injuries were severe and more serious than in the present case. In the recent case of **Elsie Deris Davies vs Mr Simon Nakoma and United General Insurance Company Limited, Personal injury Number 108 of 2018**, the claimant sustained a fracture of the leg, cut on the head and painful neck. She said she was taken to Queen Elizabeth Central Hospital where she was admitted from 17th December to 19th December 2017. She said her leg was put in plaster of Paris and the cut wound on her head was sutured. The court, taking into account all the relevant factors, awarded **K3, 200, 000.00** under all heads of damages. This decision was made in January of 2018.


Conclusion

The claimant in his witness statement explained that he sustained a contused to the eye, chest and the right side of the back, bruises on the right elbow, right side of the face and knee. The medical report that was tendered before this Court confirms the injuries that the claimant suffered. The medical report also states that the wounds healed with scars. The report further indicates that the claimant still feels pain when flexing the shoulder and right elbow. The report also states that the claimant will perform his work with difficulties. In his evidence, the claimant lamented that he has difficulties to work as the backbone pains. In **Issa Idrissa vs Daniel Kennedy Ndawala and Prime Insurance Co Ltd PI Cause No. 67 of 2017** the claimant sustained a dislocation of the left hip, cut on the forehead and another cut on the eyelid, and multiple bruises. The Court on 11th March 2019 awarded the claimant a sum of **K2, 400,000.00**. In **Patson Jawadi and another vs Jafali Phiri and Prime Insurance Co Ltd** the claimant sustained dislocation of the left shoulder, deep cuts on both knees and below lip, generalized bruises on the head down to shoulders and chest he underwent debridement and suturing. The Court on 28th April 2020 awarded the 2nd claimant a sum of **K2, 700,000.00** as damages for pain and suffering, loss of amenities of life and disfigurement.

Award

Considering the nature of the injuries herein, the comparable authorities cited herein and devaluation of currency, I award the claimant a sum of **K2, 500,000.00** as damages for pain and suffering. The claimant did not produce enough evidence to prove that the bicycle was valued at **K25, 000.00** so I will award a nominal sum of **K15,000.00** for the same. Costs are for the claimant.

Made this Wednesday, the 6th day of May, 2020 in Blantyre.


Texious Masoamphambe
DEPUTY REGISTRAR