



The Judiciary

REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

Personal Injury No 415 of 2015

Between:

ISAAC JIMU.....CLAIMANT

-AND-

PRIME INSURANCE COMPANY LIMITED.....DEFENDANT

CORAM: Texious Masoamphambe, Deputy Registrar

M'bwana, Counsel for the Claimant

Counsel for the Defendant, Not present

Mkangala, Official Court Interpreter

ORDER ON ASSESSMENT OF DAMAGES

Background and Evidence

This is the Court's order on assessment of damages following the judgement of Honourable Justice Mike Tembo made on 7th November 2017. The facts were that on 26th January 2015, the Claimant was walking to work along the old Chileka road in Blantyre. He then wanted to cross the road from left to right near the traffic lights at H.H.I. The Claimant attempted to cross the road between two stationary vehicles when the Defendants insured motor vehicle registration number BQ 1046 Toyota Hiace Minibus which was coming from the direction of Nyambadwe filling station, and going towards clock tower direction, hit one of the stationary vehicles from behind forcing the stationary vehicle to roll forward and violently hit the Claimant against the other stationary vehicle in front. As a result, the Claimant suffered a fractured left femur. He was taken to Queen Elizabeth Central Hospital where he remained for one and half months. In the course of hospitalisation, a rod was inserted into his leg. The

Claimant claims damages against the Defendants for pain and suffering, loss of amenities of life, disfigurement and cost for procuring police and medical reports.

The Claimant filed a witness statement marked as **Exh IJ1** which he adopted in its entirety together with police and medical reports. From the medical report, it is clear that the Claimant suffered fractured left femur and had to be operated on to insert a rod in his leg to facilitate healing. As a result of the operation, his left leg was shortened and permanent incapacitation was pegged at 15%. The Claimant is now having problems performing certain tasks at work.

Counsel for the claimant asked the court to award the claimant **K8,500,000.00** for pain and suffering, loss of amenities of life and disfigurement.

Issue

The only issue for determination at this stage of the proceeding is the amount of damages that must be paid to the claimants as compensation for the injuries they suffered.

Analysis of Fact, Law and Determination

Damages are a remedy that is given to victims of a tortious is open to a victim of a wrongful act of another. However, courts award damages not necessarily to punish the defendant, but to fully compensate the claimant for all the losses that he has suffered as a direct or consequential result of the wrongful act or omission by the defendant. In the case of **George Kankhuni v. Shire Buslines Ltd, Civil Case Number 1905 of 2002**, Katsala, J stated as follows:

“The law demands that the plaintiff, as far as money can do it, be put in the same position as if he has not suffered the loss. This is what is referred to as restitution in intergrum.”

It is not easy to quantify damages for losses that are not monetary in nature such as personal injuries. Courts, therefore, use comparable cases as a guide to the quantification of applicable damages, without losing sight of particularities in the individual case that the court is dealing with. This was propounded in the case of **Chipeta v. Dwangwa Sugar Corporation, Civil Cause No. 345 of 1998, High Court, Principal Registry (unreported)**.

The courts also consider factors such as passage of time since a particular comparable award was made, as well as currency fluctuations within the period between the case at hand and the comparable one. The case in point is **Hon. Kennedy Kuntenga v. Attorney General, Civil Cause No. 2002 of 2002, High Court, Principal Registry, (unreported)**.

In the present case, the claimants prayed for compensation for damages for pain and suffering, loss of amenities of life, disfigurement, and special damages.

Pain and Suffering

According to **Ian Goldrein et al, Personal Injury Litigation, Practice and Precedents (Butterworths, 1985) p8**, 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.*

The award of damages for pain and suffering depends upon the claimant's personal awareness of pain, and his capacity for suffering. This was said in the case of **Limpoh Choo v. Camden and Islington Area Health Authority [1980] AC 174 at 183.**

Loss of Amenities of Life

Damages are paid under the head of loss of amenities of life to compensate the claimant's deprivation of the pleasures of life, which amounts to substantial loss, whether the claimant is aware or not of that loss. The case in point is **City of Blantyre v. Sagawa [1993] 16(1) MLR 67 (SCA)**. You may also look at **Kemp and Kemp, The Quantum of Damages, Vol .1(2nd Ed). 1961, p.624.2.**

Disfigurement

Damages are paid under the head of disfigurement for the change in the physical form of a person injured either as a result of the impact of the injury or its treatment, such as a scar coming in as a result of surgical operation necessitated by the injury. It is a change in appearance but it is capable of limiting a person from doing certain things that he did before. This was observed by the court in the case of **Austin Julius v. Rasika Gunawardena and General Alliance Limited, Personal Injury Cause Number 316 of 2014.**

In addition, courts state that disfigurement is not something to be taken lightly and casually as a person lives with the deformity for the rest of his life, as per Potani, J in the case of **Chingámba v. Deerless Logistics Limited Civil Cause No. 2888 of 2007.**

In **Zaina Chipala v. Dwangwa Sugar Corporation Civil Cause Number 345 of 1998, High Court, Principal Registry, Chimasula, J**, held that money cannot renew a physical frame that has been battered and shattered. The courts must therefore award a sum that is regarded as reasonable compensation.

Special Damages

The claimants also pray for special damages. According to the case of **Govati v Manica Freight Services (Mal) Limited [1993] 16 (2) MLR 521 (HC)**, these are losses that a claimant

undergoes in the course or incidental to the wrongful action or omission of the defendant and are only recoverable when the claimant specifically pleaded for them and actually proved them. This includes attaching receipts of costs incurred while procuring a medical or/and police report.

I award the claimant the sum of **MK 13,000.00** each, as special damages for the procurement of a police report and a medical report.

Comparable Cases

In the case of **Harold Andsen v Rodrick Alumenda & Prime Insurance Company Limited, Civil Cause Number 211 of 2015**, the plaintiff suffered multiple cuts on his right knee, left foot and back and the court awarded him the sum of **K 2,000,000.00** for pain and suffering, loss of amenities of life and disfigurement. The award was made on 24th April, 2015.

In the case of **Gift Maulidi v Chikondi Kuwani and General Alliance Insurance Limited Civil Cause Number 247 of 2015**, the court on 30th June, 2015, awarded the plaintiff the sum of **K2,000,000.00** as damages for pain and suffering and loss of amenities of life. In that case, the plaintiff sustained multiple bruises on the right and left knee joint, painful right arm, chest pains, painful back, as well as a deep cut wound on the right shoulder.

In the case of **Ethel Duncan and Joseph Kamadzi & Others v Prime Insurance Company Limited and W.B Mputa Civil Cause Number 2016 of 2010**, where the plaintiff suffered a fractured humerus, mild head injury and mild head Injury and multiple bruises, the court awarded him **K4,784,500.00** as damages for pain and suffering and loss of amenities of life. The award was made on 28th July 2012.

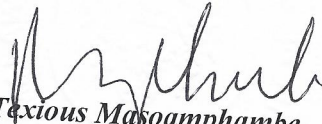
Determination

In the present case, the Claimant suffered a fracture of a left femur. He was admitted into hospital for one and half months. A metal rod was inserted into her bone. Permanent incapacity was assessed at 15%. For this reason, taking into consideration the time factor and devaluation, the facts of the case at hand I award **K5,000,000.00**. These sums cover all three heads of damages in respect of each claimant. As I said above, I also award **K13,000.00** special damages.

Conclusion

The claimants are hereby awarded a total sum of **K5,013,000.00**. This is inclusive of special damages.

Made in chambers this Monday, the 21st day of April, 2020 at Blantyre.


Texious Masoamphambe
DEPUTY REGISTRAR