



THE JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 179 OF 2018

Between

WEDISON SIBONI..... CLAIMANT

-and-

INNOCENT NGOLOMA 1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED..... 2ND DEFENDANT

CORAM: A.J. Banda, Assistant Registrar

Mr. M'bwana, for the Claimant

Ms. Banda, for the Defendants

Ms. Makhambera, Clerk/ Official Interpreter

Banda,

JUDGMENT ON ASSESSMENT OF DAMAGES

Background

Wedison Siboni (“the Claimant”) was hit by a motor vehicle driven by Innocent Ngoloma, (“the 1st Defendant”) along the Luchenza/Thyolo Road as the Claimant was cycling on his bicycle from Luchenza town. The 1st Defendant, driver of motor vehicle registration number TO 6294 Toyota Hiace Minibus, insured by Prime Insurance Company Limited (“the 2nd Defendant”), left his proper lane and hit the Claimant. The Claimant sustained several injuries and brought a claim against the Defendants, in the Magistrate Court claiming for damages under the following heads; pain and suffering, loss of amenities of life, and disfigurement. He also prayed for costs of the action. The parties entered a Consent Judgment in the Magistrate Court before the Claimant successfully applied to the High Court to have the matter transferred to the High Court.

The matter came before the Registrar, for assessment of damages through a notice. I heard the Claimant who was the only witness in the matter, and hence this Judgment follows.

Evidence

Wedison Siboni adopted his witness statement as evidence in this matter, including a police report and a medical report. In his witness statement and as evidenced by the medical report and two discharge forms marked 'WS1', 'WS2' and 'WS3' respectively, the claimant sustained injuries as follows: an open fracture of the right thigh bone; and a sprained his right hand. After being discharged from the hospital, he was later readmitted and went through several surgical operations where a metal rod was inserted in his thigh bone. As a result, his leg was shortened thus he limps when walking and thereby uses a clutch to aid in walking. The claimant further explained that he still experiences pain when he attempts to stand or walk.

As a result of the accident, his right hand was also affected and thus he cannot farm anymore nor do any manual work. He went on to say that as a result of the injuries he sustained, his sexual life has been affected. The Defendants did not cross examine him out of choice.

The Defendants did not call any witnesses. They only asked to make submissions. They did not file them within time, or at all.

Issue

The issue at this stage of the proceeding is the amount of damages that the Defendants must pay as compensation for the injuries caused to the Claimant.

Analysis of Law and Facts

Every victim of a tortious act is entitled to be compensated by the tortfeasor. The level of damages must be adequate enough to put the victim, as far as money can, in the same position that the victim would have been had the wrongful act not been done to him- **Namwiyo v. Semu and Others [1993] 16(1) MLR 369.**

It is impossible to come up with an amount of money that fully compensates a non-monetary loss, with mathematical precision, like is the case with personal injuries. As result, to achieve certainty and consistency of awards in like cases, Courts use awards in comparable cases as a guide, without losing sight of specific losses suffered by a particular Claimant. See **Chipeta v. Dwangwa Sugar Corporation, Civil Cause No. 345 of 1998, High Court, Principal Registry (unreported).**

Courts also take into account the rise or fall of value of the currency over the period of time that has passed between a comparable case and an instant one- **Paulo v. Mwakabanga [1991] 14 MLR 409**. The Claimant herein claims damages under the following heads of damages;

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

In **H.Q. Chidule v MEDI M.S.C.A Civil Appeal No.12 of 1993**, the court said that in assessing damages for pain and suffering, the Court must consider the pain which the particular plaintiff has suffered because the circumstances of the particular plaintiff are bound to have a decisive effect on the assessment of damages.

Disfigurement

The Claimant also prays for damages for disfigurement. Disfigurement refers to changes in the physical bodily frame that has been caused by the injuries in an accident. In the case of **Chingamba v. Deerless Logistics Limited Civil Cause No. 2888 of 2007**, Potani, J stated that disfigurement was not something to be taken lightly and casually as a person lives with the deformity for the rest of his life.

However, as was stated in the case of **Mary Kamwendo v Stage Coach Malawi Ltd, Civil Cause Number 840 of 1995**, damages for disfigurement are normally awarded as part of pain and suffering. They are awarded separately if the Claimant has been ridiculed, lost his social status or that he is in need of plastic surgery.

Loss of Amenities

Damages are paid under the head of loss of amenities of life to compensate a Claimant's deprivation of the pleasures of life, which amounts to substantial loss, whether the Claimant is aware or not of that loss. See **City of Blantyre v. Sagawa [1993] 16(1) MLR 67 (SCA)**.

It includes compensation for loss or impairment of any one or more of the five senses, besides loss resulting from interference with the Claimant's sexual life. **McGregor On Damages @ 834**

Special Damages

Special damages must be specifically pleaded and must also be strictly proved as was stated in the case of **Govati v Monica Freight Services (Mal) Limited 1993 16(2) MLR 521 (HC)**. A Claimant who claims special damages must therefore adduce evidence or facts which gives satisfactory proof of the actual loss he/she alleges to have incurred. The Claimant adduced

evidence on expenses on police and medical reports, herein marked 'WS4', 'WS5' and 'WS6', MK3, 000.00 and MK 21,000.00 respectively and herein the court awards the same for special damages.

Determination

In this case, the evidence of the Claimant is uncontroverted. The injuries, the suffering and degree of incapacitation and disfigurement as appears in the evidence of the Claimant in this case are taken for a fact. Taking into consideration the aforementioned factors, the following cases are as precedence to guide the Court in assessing the amount of damages to award the Claimant.

In the case of **Annie Juliere v. Peter Manyungwa & Waile Safari, Personal Injury Cause No. 313 of 2018**, where the claimant upon being hit by the defendant sustained a broken femur, open fracture on the leg and muscles which however healed, metals were also inserted in her legs to help the healing process. Taking into consideration the same and that her leg was still swelling and that she was still experiencing excruciating pain, the Claimant was awarded on 8th November, 2019, the sum of K3,800,00.00 for pain and suffering and K1,500,000.00 for loss of amenities of life.

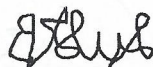
Gedion Mhango v Nico General Insurance, Personal Injury Cause Number 703 of 2016 HC Principal Registry(unreported), the Claimant sustained a fracture on his right leg, serious cuts on the head and cuts on the right hand side of the body and on the backside. The claimant was therein admitted from 15th January, 2016 to 13th April 2016. A metal rod was inserted in the leg. On 31st January, 2017, an award of K5, 000,000.00 was ordered as compensation for pain and suffering.

Having considered the evidence on assessment, and the comparable cases cited above, I award the Claimant the sum of **K4, 000,000.00** as damages for pain and suffering, **K1, 600,000.00** damages for loss of amenities of life and **K 1, 200,000.00** damages for disfigurement and Special damages at **K24,000.00** as already awarded earlier in this Judgment.

Conclusion

In conclusion, the Claimant is hereby awarded a total of **K6, 824,000.00** as compensation here-in. The Claimant is also awarded costs of the assessment which will be assessed by the Registrar if the parties will not agree on the amount.

Made this 5th day of February, 2020.



Austin Jesse Banda

ASSISTANT REGISTRAR