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REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY NO 60 OF 2019

BETWEEN

MATHEWS BANDAWE.....CLAIMANT

-AND-

WATSON MALUMBE.....1st RESPONDENT
PRIME INSURANCE COMPANY LIMITED.....2nd RESPONDENT

Coram: Texious Masoamphambe, Deputy Registrar
Khan for the Claimant
Chisale for the Respondent
Nkangala, court Interpreter

ORDER ON ASSESSMENT OF DAMAGES

Background

This order of assessment follows default judgement entered against Respondent on 26th April 2019. The facts of the case are that on 14th October 2018, the Claimant was a passenger in motor vehicle registration number BM 9977 Toyota Hilux pick up which was being driven by the 1st Respondent and insured by the 2nd Respondent. The 1st Respondent lost control of the vehicle near Mpheta village along Jali-Matiya road in Zomba due to over-speeding. As a result, the vehicle overturned and the Claimant sustained fractures in both hands. He was taken to the Hospital where he received treatment of analgesics and application of plaster of Paris. The Claimant seeks damages for pain and suffering, loss of amenities and disfigurement, costs for procuring police and medical reports and costs of proceedings.

Issue(s)

The amount of damages to be awarded to the Claimant

Evidence

The Claimant was sole witness of his claim. In examination in chief he stated that he was from Mandala Village, T/A Mwambo in Zomba. As part of his evidence, he rendered his written witness statement, police and medical reports marked **Exh MB1.I**

In cross examination, he stated that he sustained broken right arm and he had a metal inserted. He mentioned that he still experience pain and the hand been rendered less useful. There was no re-examination.

The Law

The law provides that a person who suffers body injuries or losses due to the negligence of another is entitled to recover damages. As to the measure of damages, the general rule is highlighted in the speech of Lord Blackburn in **Livingstone v Raywards Coal Co (1880) 5 App Case 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 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”

There is no specific mathematical formulae for determining the amount of damages to be awarded, as a result it is always difficult to compensate the Claimant in a manner that matches the injuries suffered: see **Elida Bello v Prime Insurance Company Limited, Civil Cause No 177 of 2012(unreported)**. The Court always aims at awarding the Claimant fairly and adequately. This was the holding of the Court in **west v sharped** in which Lord Morris stated

“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”

As it is difficult to ascertain the extent of damages to be awarded in each and every case, the Court is guided by the figures awarded in similar cases: **Wright v British Railway Board [1983]2 AC 773**. However, in new cases the court needs to consider currency devaluation and inflation. This was observed in **Steve Kasambwe v SRK Consulting (BT) Limited, Personal Injury Cause Number 322 of 2014(unreported)**

“at times the court is faced with situations where comparative cases have been rendered obsolete because of the devaluation of currency and inflation. it would not achieve justice if the court insisted on the same level of award as was obtaining in the previous cases. in such situation, when deciding the new cases, the court must take account into account the life index i.e. cost of living and the rate of inflation and the drop in value of the currency. The court must therefore not necessarily follow the previous awards but award a higher sum than the previous cases”

In order to provide a comparative basis, I looked at a number of cases of similar nature. in **Niva Musa Kokombo and two others v Masauko Chikwanje, Personal Injury Cause Number 371 of 2013** where a Claimant was awarded MK7,000,000 for pain and suffering as a result of multiple fractures.

Similarly, he cited **Zuze Bonjesi v Prime Insurance Company Limited, Civil Cause Number 488 of 2011**, the Claimant sustained severe open fracture of the tibia, massive wound exposing the bones and tendons and a deep cut on the right leg. Court awarded him the sum of MK7,000,000.

He further cited **Chilembwe Phiri v General Alliance Insurance Company Limited, Civil Cause Number 350 of 2012**, the Claimant sustained fractures on both legs and was admitted at Kasungu District Hospital for a month and was awarded damages in excess of MK7,000,000

In **Nellie Manda v Nico General Insurance Company limited civil cause 619 of 2009** where the Claimant suffered a fracture of the left arm, deep cut wound on the right thigh, bruises on the leg and cut wounds on the left thumb and finger. The court awarded K6,500,000.

In **Red Lucia v James Mkandawire and Citizen Insurance Company Limited, Civil cause 2442 of 2010** the Claimant was awarded a sum of K6,000,000 for fractured tibia and head injuries

The Award

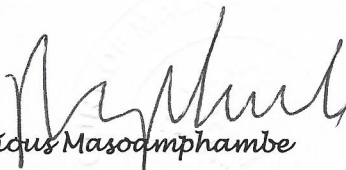
The cases looked in above are similar to the case at hand as fractures were sustained. I have considered the time the awards were made and devaluation of our currency. I therefore award the Claimant K7,000,000 for pain and suffering, loss of amenities and disfigurement.

The claimant is further awarded K3000 being cost of procuring police report as indicated on the report itself. I'm not in position to award the Claimant the cost of procuring medical as there is evidence to support the cost of its procurement.

In total the Claimant is awarded K7,003,000.

I further award the Claimant costs of proceedings to be taxed at a later date.

Made this Thursday, 19th March of 2020.


Texicus Masodamphambe
DEPUTY REGISTRAR