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REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 616 OF 2018

BETWEEN

WIZAULI GONDWE CLAIMANT

-AND-

VIOLET KONDWANI DEFENDANT

CORAM: HER HONOUR MRS E BODOLE, ASSISTANT REGISTRAR
Ms. Mndolo, of Counsel for the Claimant
Defendant, absent, unrepresented
Chitsulo, Court Clerk/Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

Introduction

The Claimant brought proceedings against the Defendant claiming reimbursement of repair costs, costs of repairs for the remaining damage that was not repaired, damages for loss of use, K3,000.00 as damages for procuring a Police report, and costs of the action. This order on assessment of damages follows judgment on liability which was entered for the Claimant on 5th February, 2019.

The Evidence

The matter came for assessment of damages on 16th January, 2020 and the Claimant was the sole witness for his claim. There was no evidence from the Defendant. The Claimant submitted skeletal arguments while the Defendant did not submit any.

The evidence before this Court is that the Claimant is the owner of motor vehicle registration number RU 8125 Toyota Axio. On 17th March, 2018 at around 15:15 hours, he was driving the said motor vehicle from the direction of Dossani House heading towards Umoyo House. As he was passing the intersection at Saint David Street along Chilembwe road, the motor vehicle being driven by the Defendant collided with his motor vehicle. The Defendant was driving from the direction of Old DHL and the accident was solely caused by her negligence.

As a result of the accident, the Claimant's motor vehicle's near side fenders, front bumper, bonnet and grill were damaged. The Claimant engaged the Defendant on how she intended to repair the damage caused to his motor vehicle. She offered to repair it. The last time they met, the Defendant was complaining of the price quoted by the mechanics. The Claimant gave her the quotation to compare and for her to go and purchase the spare parts and give them to him. She failed to do so and refused to repair it and the Claimant decided to have it repaired partially for purposes of enabling him to use it whilst resolving the issue with the Defendant. The Defendant stopped attending to the Claimant which led him to eventually commence these proceedings.

The Claimant spent a total sum of K710,000.00 to partially repair the motor vehicle. He spent K350,000.00 in panel beating and spray painting. He tendered in evidence a receipt to that effect. He purchased some spare parts which are the bonnet, right fender, water bottle grill and two front stone guards at the price of K360,000.00. He also tendered a receipt.

The cost of repairing the remaining parts is about K2,100,000.000. The Claimant tendered in evidence two quotations he obtained from J.J. Workshop and Hot Spark Motors dated 14th June, 2018. He stated that the cost may have gone up between June, 2018 when he obtained the quotations and now.

During the time the motor vehicle was undergoing repairs, the Claimant lost use of his motor vehicle for 109 days. He is claiming a sum of K1,635,000.00 representing K15,000.00 per day as damages for loss of use. The Claimant stated that the motor vehicle will be undergoing remaining repairs and he will further lose use of the motor vehicle. He is claiming a sum of K315,000.00 based on an estimation that the motor vehicle may take up to 21 days to be fully repaired.

The Claimant is claiming a sum of K3,000.00 as costs for procuring the Police Report.

The Claimant stated that he bought his motor vehicle in October, 2017 as a second hand motor vehicle from Be Forward Japan. At the time of the accident in March, 2018, he has used it for less than 5 months. Before the accident, his motor vehicle did not have issues.

Applicable Law

A person who suffers damage due to the breach of another is entitled to the remedy of damages. Such damages are recoverable for both pecuniary and non-pecuniary losses. The principle underlying the award of the damages is to compensate the injured party as nearly as possible as money can do it and be put in the same position as if he has not suffered loss – *Elida Bello v Prime Insurance Co. Limited* Civil Cause No. 177 of 2012.

Damages cannot be quantified in monetary terms by use of mathematical formula but use of experience and looking at awards made in decided cases of similar nature - *Wright v British Railway Board* [1983]2 AC 773. In reaching the final award for damages through looking at similar awards made, the court considers the time the awards were made and currency devaluation - *Kuntenga and another v Attorney General* Civil Cause No 202 of 2002.

Damages for Loss of Use

A person whose goods have been damaged by another thereby being denied loss of the goods is entitled to general damages for loss of use – *Chikaoneka t/a Madalitso Clothing Factory v Indefund Limited* (2002-2003) MLR 10. On the claim for damages for loss of use of a motor vehicle the Court in *Chinema v World Vision International* Civil Cause No. 1097 of 1991 stated that:

“It is conceded that the courts are rather conservative in awarding damages for loss of use and the cases do not show a criteria for awarding damages for loss of use...I have pointed out that awards for loss of use are not consistent and they depend on the circumstances of each case.”

The Court also takes into account the value of the motor vehicle and period of loss – *Namandwa v Tennet (J) & Sons Limited* 10 MLR 383. The Claimant must prove that there was indeed use of the motor vehicle which eventually came to a halt by virtue of interference by the actions of the Defendant. In *Nchiza and Living Waters Church v Malawi Telecommunications Limited and CGU Insurance Limited* Civil cause number 1093 of 2002 the Claimant lost use of a motor vehicle for domestic purposes for a period of 8 months. The Court awarded him a sum of K40,000.00 on 19th May, 2003. In *James Rodger Kadango Simika v Prime Insurance Company Limited* Civil Cause No. 4087 of 2002 the Claimant lost use of his motor vehicle for 7 months. The Court awarded the Claimant a sum of K50,000.00 in February, 2004.

Chimbereko v Chigwe [2005] MWHC 95 The Court also considers whether or not the motor vehicle was for domestic or commercial use. In *Chimbereko v Chigwe* (supra) the Court stated that:

*“I must mention that difficulties arise in measuring damages for loss of use of damaged chattels used for utility and not profit earning. I am facing that difficulty here because no evidence has been given whether the vehicle in question was being used for earning profit and how much. In England damages would not be awarded under such circumstances until 1897 when the House of Lords in *The Greta Holme* [1897] AC 596 corrected the error and decided that in such a case general damages might be recovered. This decision was later followed and clarified by two further decisions of the House of Lords in *The Mediana* [1900] A.C. 113 and *The Marpessa* [1907] A.C. 241. Where there is no substitute vehicle hired and no stand-by vehicle kept available, the amount of damages is generally to be calculated on the basis of interest upon the capital value of the damaged vehicle at the time of the accident; this value being ascertained by taking the original costs and deducting depreciation. This is even difficult in the present case as no figures for depreciation have been given in evidence.”*

Mitigation of Damages

A person who has suffered damage must take reasonable steps to minimize the loss occasioned to him. A person is entitled to recover only those damages which he has incurred whilst acting reasonably, and if acting reasonably, he would have

minimized or reduced the damage that he sustained to a small amount he can recover – ***Kachingwe v Mangwiyo*** 11 MLR 362. Whether or not a party failed to mitigate his loss is judged by the facts of the case. Where a party that is liable in damages claims lack of mitigation and that wants damages otherwise due to be reduced, it is for such a party to bring evidence to justify reduction. In ***Phiri t/a Construction Service v Attorney General*** 12 MLR 112 the Court stated that:

“The burden of proving that a plaintiff should have taken steps in mitigation which he failed to do so is on the defendant, and whether the plaintiff has satisfied the duty to mitigate is a question of fact.”

A Claimant will be put under no further burden in the name of mitigating damages than that which is ordinary in the circumstances. In ***Hassen v SR Nicholas Limited*** 11 MLR 505 the Court stated that:

“The law is satisfied if the party placed in a difficult situation by reason of the breach of a duty owed to him had acted reasonably in the adoption of remedial measures, and he will not be held disentitled to recover the cost of such measures merely because the party in breach can suggest that other measures less burdensome to him might have been taken.”

Analysis

It is the Claimant’s evidence that although the Defendant offered to repair the motor vehicle following the accident, the Defendant never repaired the motor vehicle. His attempts to have the Defendant repair the motor vehicle proved futile. The Claimant made partial repairs of the motor vehicle to make it usable as a way of mitigating his loss. He spent K710,000.00 for those repairs as evidenced by the receipts he tendered in evidence. The Claimant is entitled to this amount. He is, therefore, awarded the sum of K710,000.00 he spent in partial repair of the motor vehicle.

The motor vehicle still has to go for repairs of the remaining damage which as of June, 2018 was estimated at K2,100,000.00. The Claimant is entitled to this sum in order to fully repair his motor vehicle. He is, therefore, awarded the sum of K2,100,000.00 as costs for the repairs for the remaining damage.

The Claimant’s motor vehicle was in good working condition before the occurrence of the accident. He was using it at the time of the accident and he was deprived the use of it during the period the motor vehicle was being repaired. The Claimant did

not have use of it for 109 days which is about 3 ½ months. He is claiming a sum of K1,635,000.00 as damages for loss of use of motor vehicle representing a loss of K15,000.00 per day. He is also claiming a sum of K315,000.00 for the further loss of use of his motor vehicle during the time the motor vehicle will be undergoing the remaining repairs which he estimates will take 21 days. The Claimant did not adduce evidence to justify the loss of K15,000.00 per day. He also did not adduce evidence to show what the motor vehicle was used for i.e. for private use or for business. With no evidence adduced to that effect, this Court is unable to accept the rate used by the Claimant representing the loss of use of the motor vehicle. This Court, therefore, awards the Claimant a sum of K850,000.00 as damages for loss of use of motor vehicle, and K200,000.00 as damages for further loss of use of motor vehicle.

The Claimant is awarded the sum of K3,000.00 as costs for procuring the Police report. He is further awarded costs of the proceedings to be taxed at a later date if not agreed by the parties.

Conclusion

The Claimant is awarded a total sum K3,863,000.00 as damages. Each party is at liberty to appeal to the Supreme Court of Appeal within the requisite time frames.

Pronounced in Court this 13th March, 2020 at Blantyre.



EDNA BODOLE (MRS.)

ASSISTANT REGISTRAR