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REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 330 OF 2018

BETWEEN:

MABVUTO KOLOKO.....CLAIMANT

-AND-

THOMAS FELIAS.....1ST DEFENDANT

PRIME INSURANCE COMPANY LTD.....2ND DEFENDANT

CORAM: H/H MAKHALIRA

APPLICANT: REPRESENTED BY COUNSEL KUSIWA

RESPONDENTS: COUNSEL PHIRI

COURT CLERK: CHITSULO

JUDGMENT ON ASSESSMENT OF DAMAGES
(AS PER HIS HONOUR MANGAWA MAKHALIRA)

The Honourable Justice N'riva on the 29th day of November, 2018 entered judgment for the claimant with costs after the defendants did not attend a mediation conference on the appointed date.

The Honourable Judge then directed that the matter should proceed before the Registrar on the issue of assessment of damages.

The matter then came before me on the 9th July, 2019 for assessment.

During the assessment hearing one witness, the claimant gave evidence.

In his evidence under oath, the claimant identified himself as Mabvuto Koloko from Chinupule Village, T/A Machinjiri, Blantyre.

He told the court that he is a businessman person selling merchandise from South Africa.

He then identified his witness statement and tendered it as part of his evidence.

He went to tell the court that he has an injury on his head, that one of his legs, the right leg is shorter than the other, and also that he fractured his thigh bone. He also told the court that he lost four of his front upper teeth.

The claimant then tendered x-ray photos showing his injuries.

The witness statement tendered earlier and the x-ray photos were marked as EXPW1 and EXPW2 respectively.

In cross-examination by counsel for the defendants, the claimant told the court at the time of the accident, he was sitting on the front of the vehicle. He also told the court that he was admitted in hospital for six months.

This was the evidence given during the assessment hearing. Counsel for the respondent told the court that they would not call any witness but prayed for 7 days for him to file the respondent's final submissions.

I directed that counsel for the respondents should file their submissions by the 16th of July, 2019 and the claimant's counsel should file a response by the 23rd of July, 2019 and I set the 9th of August, 2019 for delivery of ruling.

Neither of the counsels did what the court directed and therefore I will proceed with the ruling without the submissions. Counsel for the claimant had also told the court that he would rely on the skeleton arguments filed in the assessment bundle.

In his witness statement which the claimant tendered during the assessment hearing, he deponed that on or about the 29th of April, 2018, the 1st defendant was driving a motor vehicle registration number BJ 9966 which was insured by the 2nd defendant, an insurance company duly

registered under the laws of Malawi, from the direction of Makhetha heading towards Limbe along the Machinjiri-Limbe road when upon reaching Peretia bus stage, he lost control of the vehicle and caused the same to hit a pavement and fall into a ditch.

The applicant further deponed that as a result of the accident, he sustained the following injuries:

- I. Sub trochanteric fracture of the right femur
- II. Dislocation of the right knee
- III. He had a skeletal traction applied
- IV. Suffered permanent in capacity of 35%

The claimant went on to depone that due to the injuries sustained, he was admitted in hospital from the 29th of April, 2018 to 14th May, 2018 and that he walked using clutches for a period of six months.

He further said following the accident his right leg has shortened and he walks with a pronounced gait and that he cannot do his previous job as a businessman and cannot play football or any sport as he is now crippled.

He referred the court to a medical report attached to his witness statement as well as the x-ray pictures which he tendered as part of his evidence, as proof of the injuries which he sustained.

The claimant is claiming damages for pain and suffering, damages for loss of amenities of life and damages for loss of earning capacity.

The only issue in this case at this stage is the amount of damages that the claimant must be awarded for the personal injury he suffered under the heads as pleaded.

The starting point is that assessment of damages presupposes that damages have been proved and what remains is the measure of the amount of the damages - see the case of ***Ngosi t/a Mzumbamzumba Enterprises v Amosi Transport Co Ltd*** (1992) 15 MLR 370 (HC).

Damages in a case like this one are not awarded to punish the defendant or tortfeasor, but to fully compensate the claimant of all the losses that he

has suffered as a direct or consequential result of the defendant's wrongful act or omission. In the case of **George Kankhuni V Shire Buslines Ltd**, Civil Case No. 1905 of 2002, Katsala J stated as follow:

"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 that 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 personal injuries. Courts as such 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 - see **Chipeta V Dwangwa Sugar Corporation**, Civil Cause No. 345 of 1998 High Court Principal Registry(unreported). The court will 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 – see **Hon Kennedy Kuntenga V Attorney General**, Civil Cause No. 2002 of 2002, High Court, Principal Registry(unreported).

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, 1979) p.8

The award of damages for pain and suffering depends upon the claimant's personal awareness of pain and his capacity for suffering – see **Limpan 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

the scalp, bruises on the face, swollen head and fracture of the left tibia. He had headaches and limped when walking. He was awarded K4,500,000.00 for pain and suffering and loss of amenities of life.

In ***Robert Piason and 3 Others V. Prime Insurance Co. Ltd***, Personal Injury Cause No. 413 of 2013, the claimant sustained a head injury; deep cut wound on the back near the shoulder multiple bruises on the knee and a cut on the pelvis. In an award made on the 6th of September, 2014, the claimant got K3,000,000.00 as general damages.

In ***Gedion Mhango V. Nico General Insurance Co. Ltd*** Personal Injury Cause No. 703 of 2016, the claimant sustained a fracture on his right leg, serious cuts on the backside. He was further admitted from the 15th January, 2016 to 13th April, 2016. A metal rod was inserted in the leg, the claimant was awarded K1,000,000.00 for loss of earning capacity on the 31st of January, 2017.

Looking at the time that has passed between the comparable awards and the present case and also the nature and circumstances of the injuries to the claimant in this matter, I make an award of K4,000,000 for pain and suffering K2,000,000.00 for loss of amenities of life and K3,500,000 for loss of earning capacity.

The claimant is therefore awarded the total sum of K9,500.000.00 for the injuries he sustained. The defendants must also meet the costs of the action. The costs shall be assessed by the Registrar if not agreed upon by the parties.

Made on this 21st day of January, 2020 at High Court, Principal Registry at Blantyre.



Edna Bodole (Mrs)

ASSISTANT REGISTRAR