



The Judiciary

IN THE HIGH COURT OF MALAWI

CIVIL DIVISION

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 718 OF 2019

Between

LYDIA PHIRICLAIMANT

-and-

ELIAS CHIKOPA1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED 2ND DEFENDANT

CORAM: Austin Jesse Banda, Assistant Registrar

Mr. L. Mickeus, for the Claimant

Counsel for the Defendants Absent

Mr. L. Chintengo, Clerk/ Official Interpreter

Banda

JUDGMENT ON ASSESSMENT OF DAMAGES

Background

Lydia Phiri ('Claimant') brought this matter against Elias Chikopa ('1st Defendant') and Prime Insurance Company Limited ('2nd Defendant') seeking damages for pain and suffering, damages for incapacity, damages for deformity and costs of the action. The claims arose from a road accident whereby the 1st Defendant's driven motor vehicle, a Nissan Pick Up, registration number ZA 8042, swerved to the far left of the road and hit the Claimant who was walking along the road, injuring the Claimant in the process. The 1st Defendant was sued for negligently driving the motor vehicle. The 2nd Defendant was sued as the insurer of the vehicle.

A Judgment in default of filing a defence was entered against the Defendants on 4th November, 2019. In the Judgment it was ordered that damages be assessed by the Registrar. The Claimant obtained a notice to assess damages scheduled for 22nd January, 2020. On the said date, the Defendants did not turn up and without any explanation, despite proof of service of the notice,

witness statement and skeletal argument, which were served on the Defendants personally through the 2nd Defendant and on their legal practitioners Ritz Attorneys. I therefore proceeded to hear the Claimant in the absence of the Defendants.

Evidence

The only witness in the hearing, Lydia Phiri stated in her witness statement, adopted in Court under oath, that she was hit by a motor vehicle driven by the 1st Defendant and insured by the 2nd Defendant as she was walking from Chitawira heading towards Kamba traffic lights. She tendered a police report ('Exhibit LP1') detailing the accident and the Defendants' liability.

It was the Claimant's evidence that she had cuts on her head, a pelvic fracture, and a ruptured bladder. She was taken to Queen Elizabeth Central Hospital ('QUECH') where she was subjected to painful medical and surgical procedures like wound suturing and fixing broken bones.

The Claimant told the Court that before her injuries, she used to walk without difficulties. She said that since she has modest means of earning a living she relies on walking to places of need. She said that it is difficult after the accident, for her to walk long distances as she feels pain. She said further, that she cannot longer enjoy performing household chores such as cooking, mopping, washing dishes and clothes, as well as doing manual work such as clearing grass at her home surroundings, harvesting maize in her village and carrying pales of water and maize floor. She said her degree of incapacity was assessed at 38%. She tendered a medical report ('Exhibit LP2'). She also said that as a woman she was very concerned with scars and the deformity. She prayed to be compensated for the personal injuries under heads as stated earlier in this Judgment.

Issue

The only issue that this Court has to resolve is the amount of damages that the Defendants ought to pay the Claimant as compensation.

Law and Fact

Damages are the remedy that is open to a victim of the wrongful act of another. Courts do award damages not to punish the defendant but to fully compensate the claimant of all the losses she has suffered. 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 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- **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, 1985) p8.*

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. See **City of Blantyre v. Sagawa [1993] 16(1) MLR 67 (SCA)**; *Kemp and Kemp, The Quantum of damages, Vol .1(2nd Ed)., 1961, p.624.2*

Deformity

The Claimant also prays for damages for deformity also known as 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.

Comparable Cases and This Instant Case

In **Kachaso v Kondowe & Others Civil Cause No. 320 of 2009**, the plaintiff sustained a big cut wound at the back of the head, closed fracture of right humerus, open fracture of right lower leg near ankle, closed fracture of pelvis. The Court awarded him MK5, 600,000.00 as damages for pain and suffering and loss of amenities of life. The award was made on 16th October, 2009.

In the case of **Foster Kasokota v Davis Simenti and Prime Insurance Company Limited**, the claimant sustained a fracture of the pelvis and a dislocated left shoulder. He was awarded a sum of K3, 900,000.00 as damages for pain and suffering and loss of amenities of life. The award was made on 11th December, 2012.

In the case of **Shadreck Mateyu v. Anderson Matache and Prime Insurance Company Limited, Personal Injury Number 324 of 2017**, the Court awarded the sum of K2, 500,000.00 as damages for pain and suffering, and K1, 000,000.00 as damages for loss of amenities of life, and K1, 000,000.00 as damages for disfigurement. The Claimant had sustained a fractured pelvis, had bruises over the face and hips, had bladder contusions which resulted in him passing out bloody urine, and he had a painful pelvis and a painful left eye, and was admitted at Queen Elizabeth Central Hospital for 8 days. This award was made on 27th June, 2018.

In the case of **Paul Mateyu v. Muntaz Hamdani & Prime Insurance Co. Limited, Miscellaneous Case No. 109 of 2016**, had a pelvic fracture, which made it impossible for him to walk or sit such that he could only sleep on one side of his body, and also had injury to the urethra such that a catheter had to be placed through his stomach to help him urinate. The Court awarded him **K3, 585, 000.00** damages for pain and suffering, **K1, 995,000.00** damages for loss of amenities of life, and **K1, 300,000.00** damages for disfigurement on 30th July, 2018.

Considering the above cited comparable cases, I find that the **Shadreck Mateyu** and **Paul Mateyu** the more relevant to this case. The two **Mateyu** cases have similar type of injuries to the ones suffered by the Claimant in this case, the Claimant's evidence taken wholesome as uncontroverted. I have considered that the Claimant herein is a woman who now has visible scars on her right hand side of the forehead, and she has lost capacity to do a lot of important household chores.

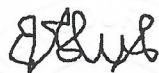
The Award

In light of the foregoing, I award the Claimant **K 4, 500, 000.00** damages for pain and suffering, **K2, 500,000.00** damages for loss of amenities of life, and **K2, 300,000.00** as damages for disfigurement.

Conclusion

The Defendants are hereby ordered to pay the sum of **K9, 300,000.00** as damages for personal injuries suffered by the Claimant. The Defendants are also ordered to pay costs for the assessment.

Made this 24th day of January, 2020.



Austin Jesse Banda

ASSISTANT REGISTRAR