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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 713 OF 2012

Between

WITNESS CHANZA CLAIMANT

-and-

BODZA MANDOTA 1ST DEFENDANT

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

CORAM: A.J. Banda, Assistant Registrar

Mr. Khondiwa, for the Claimant

None, for the Defendants

Ms. Makhambera, Clerk/ Official Interpreter

JUDGMENT ON ASSESSMENT OF DAMAGES

Banda

Background

Witness Chanza, (“the Claimant”) was involved in an accident as he was travelling from Fatima to Thyolo. He boarded a vehicle driven and owned by Bodza Mandota (“the 1st Defendant”), a Toyota Hilux Pickup, of registration number MN 2402, insured by Prime Insurance Company Limited (“the 2nd Defendant”) under certificate of insurance number 1040650. The motor vehicle overturned three times. The Claimant was seated at the back of the vehicle along with his fish basket and his bicycle.

The parties caused a Consent Judgment to be entered which was endorsed by the Court on 30th November, 2015 in favour of the Claimant, as against the 1st Defendant. It was stated in the Judgment that liability of the 2nd Defendant would be determined by the Court as the Claimant was a fee paying passenger. It was not stated clearly at what point the Court would make that determination. The Judgment ordered the parties to appear before the Registrar for the purposes of assessment of damages and this is the Judgment following the assessment hearing. I heard

the evidence of the Claimant only as the Defendants did not appear, without excuse, despite being served with a notice of the hearing.

Evidence

Witness Chanza, the only witness in the assessment hearing adopted his witness statement under oath, together with pictures that were taken at the scene of the accident herein marked “WC 1”, “WC 6” and “WC 7” and the medical report marked “WC 11”.

From the documents tendered in evidence and the injuries the Claimant showed the court, he sustained a crushed right arm with tissue, vascular and neurological injury that led to amputation of the right arm and a wound in his right leg which was evidenced by scars below and above the knee. In addition, the witness statement by the Claimant states that the Claimant needs further treatment and a prosthetic arm but fails to get the same due to lack of funds.

In addition, the bicycle the Claimant used for business was also loaded on the vehicle and it was destroyed during the accident. He obtained two quotations from different shops for its replacement which per the attached documents marked “WC 15” and “WC 16”, which were obtained in January 2012, amounted to MK18,950.00 and MK 49,500.00 respectively.

Furthermore, in his witness statement, the Claimant stated that in the course of receiving treatment he incurred several costs such as the cost for wound dressing, check-ups and transport costs which amounted to about K111, 400.00 as per fuel receipts attached herein, marked “WC 12” and hospital expense amounting to about K19, 591.00 as per attached receipts marked “WC 13”.

Issue

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.

Analysis of Law and Fact; and Determination

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)**. The rule is that the injured party has provided proof of the damage sustained prior to the assessment hearing- **Yanu Yanu Co v. Ltd v. Mbewe 11 MLR 405 (SCA)**.

According to **Livingstone v Raynards Coal Co. (1880) 5 App Ca 25 at 39**, the measure of damages, however, is that sum of money that will put the party which has been injured in the same position he/she would have been in if they had not sustained the wrong for which he/she is now getting his/her compensation or reparation

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 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, Suffering, Loss of Amenities of Life and Disfigurement/ Deformity

The word ‘pain’ in ‘pain and suffering’ 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, as was stated in **Blantyre City v Sagawa [1993] 16 (1) MLR 67 (SCA)**, and as defined in Ian Goldrein et al, Personal Injury Litigation, Practice and Precedents (Butterworths, 1985) p8

The award of damages for pain and suffering depends upon the claimant’s personal awareness of pain, and his capacity for suffering- see **Limpoh Choo v. Camden and Islington Area Health Authority [1980] AC 174 @ 183**.

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 in the assessment of damages.

Damages are paid under the head of disfigurement for the change in the physical form of a person injured either as a result of the impact of the injury or its treatment, such as a scar, amputations and postures, coming in as a result of surgical operation necessitated by the injury, as was observed in **Lemon Banda & 19 others v Mota Engil Ltd & General Alliance Insurance Ltd, Personal Injury Cause number 178 of 2012**.

In **Austin Julius v. Rasika Gunawardena and General Alliance Limited, Personal Injury Cause Number 316 of 2014**, it was stated that disfigurement is a change in appearance which is capable of limiting a person from doing certain things and should therefore not be taken lightly and casually as a person lives with the deformity for the rest of his life.

In **Zaina Chipala v. Dwangwa Sugar Corporation Civil Cause Number 345 of 1998, High Court, Principal Registry, per Chimasula, J**, it was held that money cannot renew a physical

frame that has been battered and shattered. The courts must therefore award a sum that is regarded as reasonable compensation.

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 Edition), 1961, p. 624.**

Comparable Cases

In **Peter Nsona v. Lujeri Tea Estate Limited, Civil Cause No. 857 of 2015, Principal Registry**, a Claimant who had an arm amputated for the negligence attributed to the Defendant was awarded K19, 000,000.00 damages for pain, suffering, disfigurement and loss of amenities of life. The award was made on 26th May, 2018.

In the case of **Richard Chinsinga v Electricity Supply Corporation of Malawi, Personal Injury Cause Number 59 of 2018, Principal Registry**, the Claimant was awarded damages of K20, 000,000.00 for pain and suffering, K 5,000,000.00 for loss of amenities of life and K5, 000,000.00 for deformity and disfigurement. The Claimant had severe burns from electrocution that led to an amputation of his arm among other injuries.

It is my finding that the claimant sustained a serious fracture of the right arm and deep cut wounds of the right lower leg. The right arm was crushed with tissue, vascular and neurological injury that led to its amputation. In the foregoing, I award the Claimant the sum of **K19,000,000.00** for pain, suffering, disfigurement and loss of amenities of life.

Loss of Earnings/ Earning Capacity

Loss of earning capacity concerns one's ability to earn income. The court awards damages where a Claimant is unable to earn the same rate of earnings as he previously could before the occurrence of the accident. **Tembo v City of Blantyre Civil Cause No.1355 of 1994.**

The award is calculated using the multiplier and multiplicand formula. As already stated, the Claimant worked as a businessman who sold fish. In estimation, the Claimant made an average of K50, 000.00 per trip making about four trips per month, making an average of K200, 000.00 per month.

Due to the injuries sustained and the amputation of the arm, the Claimant cannot conduct his fish business as he did before. That loss must be compensated by a global figure, taking into consideration that he may invest it.

For loss of earning capacity, I am mindful that the claimant was a businessman in an informal sector. He was not amenable to a mandatory retirement age. He would have, however, still slowed down his business operations with age, mostly from around 55 years. He was 48 years old at the time of making his statement in 2018. For the next 7 years he would have actively have the earning capacity he had before the injury. I have also considered contingencies and life misfortunes apart from the injury, coming from the action of the defendants' insured

negligent driver and also the fact that the sum granted here-in will be a lump sum that would be invested and earn more.

I will use 3 years as such as the multiplier. His known average monthly income is a non-taxable K200, 000.00. There is nothing to take away from the known income as he is not currently earning anything since the injury- **Manda v. Malawi Social Action Fund, High Court Principal Registry, and Civil Cause No. 756 of 2003 (unreported)**. The formula being a multiplicand of K200,000.00 (average monthly income) times 12 months (the annual income) times the multiplier of 3 (years), the claimant is therefore awarded **K7,200,000.00**, representing loss of earnings from the time of accident to now and loss of earning capacity to the time he would have naturally slowed or retire.

Special Damages

Special damages must be specifically pleaded and must also be strictly proved as was stated in the case of **Jinny Makungwa & Others v Transribeiro Ltd & Prime Insurance Company Ltd, Personal Injury Cause Number 119 of 2017**. A claimant who claims special damages must therefore evidence of facts which give satisfactory proof of the actual loss he or she alleges to have incurred as held in **Phiri v Daudi 15 MLR 404**.

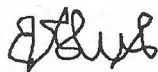
The Claimant lost a bicycle in the accident. He pleaded for its replacement. I award the same at highest quoted price of **K49, 000.00**. In the present case, the Claimant has proved the same by attaching receipts of fuel costs, costs of medical and police reports therein satisfying the burden of proof for special damages. The Claimant will be awarded special damages of **K 2,000.00** police report as indicated on the attached receipt marked "CK 17". I do not award him anything for cost of medical report as alleged by the Claimant as a receipt or any other proof on the same was not provided in evidence.

In addition, for special damages, the court awards the sum of **K111, 400.00** as per fuel receipts attached thereto and marked "WC 12" and hospital expenses which amounted to **K12, 591.00** as per attached receipts marked "WC 13".

Conclusion

In conclusion, the Claimant is awarded a total of **K26, 374,991.00**. The 1st Defendant is liable to pay that sum of money plus costs of the assessment hearing, until and unless the Court, on an application by any party orders that the 2nd Defendant is equally or otherwise liable.

Made this 24th day of March, 2020.



Austin Jesse Banda

ASSISTANT REGISTRAR