



THE JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY



PERSONAL INJURY CAUSE NUMBER 502 OF 2017

Between:

CHIKUMBUTSO CHIBADE..... CLAIMANT

-and-

LAWRENCE MWAMONDWE..... 1ST DEFENDANT

CORAM: Texious Masoamphambe, Deputy Registrar

Mr. Kambalametole, for the Claimant

Counsel for the Defendants, not present

Ms. M. Galafa, Clerk/ Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

Background

On 11th September, 2016, the claimant was involved in an accident caused by the negligent driving of the defendant, the driver of a motor vehicle registration number BL 8990, a Toyota Surf Saloon. The defendant was driving from the direction of Chinsewu heading Magalasi. He brought the present action against the defendant on 25th August, 2017. He was claiming damages under three heads, and these are: Pain and Suffering, Loss of Amenities of Life, Disfigurement and Costs of the action. On 8th November, 2017, the claimant obtained a default judgment against the claimant.

The matter came before this court on 24th January, 2020 for assessment of damages and was adjourned to 30th January, 2020, with direction that the claimant serves the defendants with a notice of adjournment. However, on the set date, the defendants did not avail themselves for the hearing and did not give any reason for the same. There being evidence that they were properly served with a notice of adjournment, the court proceeded to hear the case as presented by the claimant.

Evidence

Counsel for the claimant presented one witness, the claimant himself. The claimant adopted his witness statement and as tendered to be used as evidence in this matter, including a police report and a medical report.

In his witness statement, the claimant states that he suffered a fracture of the ulna of the right forearm, multiple bruises on the right elbow, post-traumatic arthritis of the right knee and a wound on the left ankle, causing the ankle to swell. The medical report tendered herein indicates that the claimant can perform manual work however to a certain extent due to the injuries he sustained. This supports the statement by the claimant that he cannot carry out certain activities such as driving a manual car and walk long distances.

Issue

The issue in this proceeding is the quantum of damages that the defendants must pay as compensation for the injuries caused to the claimant.

Analysis of Law and Facts

Every victim of a tortious act is entitled to be compensated by the tortfeasor. The level of damages must be adequate enough to put the victim, as far as money can, in the same position that the victim would have been had the wrongful act not been done to him- **Namwiyo v. Semu and Others [1993] 16(1) MLR 369.**

It is impossible to quantify damages for pain and suffering, loss of amenities of life and disfigurement as claimed in the case herein by mathematical precision. This was as stated in the case of **Wright v British Railways Board (1998) 2 AC 773**, that non-monetary loss, unlike monetary loss, cannot be quantified using mathematical precision to fully compensate the claimant.

In order to achieve certainty and consistency of awards in like cases, courts use awards in comparable cases as a guide, without losing sight of specific losses suffered by a particular claimant. See **Chipeta v. Dwangwa Sugar Corporation, Civil Cause No. 345 of 1998, High Court, Principal Registry (unreported)**. In which case, the Courts also take into account the rise or fall of value of the currency over the period of time that has passed between a comparable case and an instant one- **Paulo v. Mwakabanga [1991] 14 MLR 409.**

Pain and Suffering

The claimant in this case claims for damages for pain and suffering. 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.

In order to achieve the same, the words pain and suffering need to be understood in their entirety. As described in Ian Goldrein et al, *Personal Injury Litigation, Practice and Precedents* (Butterworths, 1985) p8, 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.

Disfigurement

The claimant also prays for damages for disfigurement. Disfigurement refers to changes in the physical bodily frame that has been caused by the injuries in an accident. In the case of **Chingámba 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.

Loss of Amenities

Damages are paid under the head of loss of amenities of life to compensate a 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)**.

McGregor on damages at page 834 explains that loss of impairment of any one or more of the five senses is compensated under this head, besides loss resulting from interference with the plaintiff's sexual life.

Determination

In this case, the evidence of the claimant is uncontroverted. The injuries, the suffering and disfigurement as appears in the evidence of the claimant in this case are taken for a fact. Taking

into consideration the aforementioned factors, the following comparable cases are used as guide in assessing the quantum of damages to award the claimant.


Nellie Manda v Nico General Insurance Company Limited, Civil Cause No. 619 of 2009, where the court awarded the claimant the sum of MK6,500,000.00 damages on 25th April 2012, for Pain and Suffering and Loss of Amenities of Life. The claimant in the case suffered a fracture of the left upper arm, deep wound on the thigh bruises on the lower leg, deep cut wounds on the left thumb and finger. The same was cited by the claimant as authority.

Clement Bello v Prime Insurance Company Limited Civil Cause Number 611 of 2013, where plaintiff suffered a fracture of the left arm, deep cut on the left leg, traumatic wound on the frontal head and severe chest pains, the claimant was awarded MK4,000,000.00, for pain and suffering and loss of amenities. The award was made by the court on 25th April, 2012.

Conclusion

Having considered the evidence on assessment, and the comparable cases presented herein, I award the claimant the total sum of **K5,500,000.00** as damages for pain and suffering, damages for loss of amenities of life and damages for disfigurement. Further, the claimant is also awarded **K3,000.00** being cost of the Police report, **K3,000.00** being the cost of vehicle records search and **K10,500.00** being cost of the medical report. Costs are for the claimant.

Made in chambers this Monday, the 23rd day of March, 2020 in Blantyre.


Texious Masoamphambe
DEPUTY REGISTRAR