



REPUBLIC OF MALAWI  
 IN THE HIGH COURT OF MALAWI  
 PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 714 OF 2014

BETWEEN

FRANCIS MATENJE.....CLAIMANT

AND

JOHN TAMBULA.....1<sup>st</sup> DEFENDANT

PRIME INSURANCE COMPANY LIMITED.....2<sup>nd</sup> DEFENDANT

Coram: WYSON CHAMDIMBA NKHATA (AR)

- Mr. Kanyika - of Counsel for the Claimant
- Mr. Kalua - of Counsel for the Defendants
- Mr. Chimtengo - Court Clerk and Official Interpreter

**ORDER ON ASSESSMENT OF DAMAGES**

The claimant in this matter took out a writ of summons which was issued on the 16<sup>th</sup> of July 2014 against the defendants claiming damages for pain and suffering, loss of amenities of life, disfigurement, special damages and costs of the action. Apparently, the action emanates from an accident which took place on the 20<sup>th</sup> of April 2014 at or near Kasinje turn-off along the Ntcheu-Dedza road. The Statement of Claim indicates that the 1<sup>st</sup> defendant who was driving motor vehicle registration NU 7838 HINO 3 Tonner negligently hit the claimant who was walking at the nearside dirt verge heading the same direction. The claimant sues the 1<sup>st</sup> defendant as the driver of the vehicle in question and the 2<sup>nd</sup> defendant as the insurer of the said motor vehicle. The issue of liability was settled in favour of the claimant upon by consent

executed by the parties on the 17<sup>th</sup> of May 2019. Subsequently, the matter was referred to this court for assessment of damages. This is the court's order on assessment of damages thereto.

The matter came for a hearing on assessment of damages on the 19<sup>th</sup> of March 2020. The claimant was the sole witness for his case. He adopted his witness statement in which he averred that on or about the 20<sup>th</sup> of April 2014, he was involved in a road accident at or near Kasinje turn-off. He further averred that he suffered chest pains, a deep cut wound on the occipital and a painful right shoulder. He was attended to and treated at Ntcheu District Hospital. He tendered a Medical Report marked "FM2". He further stated that as a result of the said injuries, he suffered excessive pain and suffering and 10% permanent incapacity. He also indicated that he has developed arthritis of the right shoulder.

In cross-examination, he stated that he did not read the witness statement. He confirmed the injuries as listed on his witness statement. He further stated that as part of his treatment he was given amoxylin, bufen and a tetanus vaccine. There was nothing in re-examination.

Counsel for the claimants closed the claimant's case by adopting his skeleton arguments on assessment of damages as his final submissions. On the other hand, Counsel for the defendants put before the court that they did not intend to parade any witnesses but sought 14 days to file submissions which was done. I am grateful to both Counsel for the illuminating submissions that have gone a long way in informing the court in arriving at the decision herein.

On applicable law and principles guiding assessment of damages, I must state that it is trite that a person who suffers bodily injuries or losses due to the negligence of another is entitled to recover damages. The fundamental principle which underlies the whole law of damages is that the damages to be recovered must, in money terms, be no more and no less than the claimant's actual loss. The principle was laid down in numerous case authorities more particularly by **Lord Blackburn** in the case of *Livingstone v. Rawyards Coal Company (1880) 4 AC 25* in the following terms:

where any injury or loss is to be compensated by damages, in settling a sum of money to be given as damages, you should as nearly as possible get at the sum of money which will put the party who has been injured, or who has suffered loss, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.

However, it ought to be borne in mind that it is not possible to quantify damages for pain and suffering, loss of amenities and deformity as claimed in this matter with mathematical precision. As a result, courts use decided cases of comparable nature to arrive at awards. That ensures some degree of consistency and uniformity in cases of a broadly similar nature: See **Wright -vs- British Railways Board** [1983] 2 A.C.

773, and **Kalinda -vs- Attorney General** [1992] 15 M.L.R. 170 at p.172. As such this court will have recourse to comparable cases to arrive at the appropriate quantum of damages for the claimant.

In this case, I hold the view that it has been well established that the claimant suffered chest pains, a deep cut wound on the occipital and painful right shoulder. During cross-examination, the claimant confirmed the listed injuries. Counsel for the claimant called upon the court to consider the following cases:

**Lovemore Mathemba vs. Prime Insurance Company Limited Personal Injuries Cause Number 358 of 2013** where the claimant suffered a deep cut wound at the back of the head, chest injuries and multiple bruises on the legs. The court awarded him the sum of K4,450,000.00 as damages for pain and suffering and loss of amenities of life. The award was made on 10<sup>th</sup> March, 2016.

**Frank Vashco vs. Farook Haquin and Olympic Bakery, Personal Injury Cause Number 1043 of 2015** where the claimant sustained a deep cut wound on the head, multiple facial bruises and a cut wound on the right palm. The court awarded him MK3,700,000.00 as damages for pain and suffering and loss of amenities of life as well. The award was made on 10<sup>th</sup> March 2016.

**Grey Aidini v Blessings Kapenda and Prime Insurance Company Limited Personal Injury cause No. 362 of 2012** in which the claimant sustained severe head injuries, deep cut wound on the occipital, dislocated left shoulder and bruises on the left forearm. The court awarded her the sum of K3,700,000.00. The award made on the 4<sup>th</sup> of November 2014.

**Gift Maulidi v Chikondi Kuwani and General Alliance Insurance Limited Civil Cause No. 247 of 2015** in which the plaintiff suffered multiple bruises, painful arm, chest pain, painful back head injuries, big cut wound on the right shoulder. He was awarded a sum of K2,000,000.00 as damages for personal injuries on the 30<sup>th</sup> of June 2015.

It was therefore Counsel's submission that in the present case the injuries sustained by the claimant are more extensive than those suffered by the claimants in the cases above. He further submits that the Malawi currency has depreciated from the date of the awards. It is his suggestion that the reasonable compensation in this case would be K6,500,000.00 for pain and suffering, loss of amenities and disfigurement.

On the other hand, Counsel for the defendants called upon the court to consider the following cases:

**Owen Kayira and 2 others v Unusu Shaikh** Personal Injury Cause Number 1160 of 2013 where the Plaintiff was awarded K2, 500,000.00 on 1<sup>st</sup> July 2014 being damages for a head injury, multiple soft tissue injuries over the head and lost consciousness on the spot.

**Robert Piason & Others v Prime Insurance Company Limited** Personal Injury Cause No 413 of 2013 where the 3<sup>rd</sup> Plaintiff sustained a painful left side of the Head, painful left shoulder and painful left leg and she was awarded MK3,000,000.00. These awards were made on the 6<sup>th</sup> of September 2014.

In addition to the above cases, Counsel for the defendants also cites the case of **Frank Vashco vs. Farook Haquin and Olympic Bakery and Grey Aidini v Blessings Kapenda and Prime Insurance Company Limited** cited above. It is his submission that the injuries were not as serious in nature being a cut on the occipital and soft tissue injuries on the chest area and shoulder. He further calls upon the court to take note that the treatment accorded to the claimant being brufen, amoxyl and tetanus vaccine suggests that the injuries were not that serious. It his submission therefore that K1,800,000.00 would be a reasonable and fair compensation in this matter.

I have considered the evidence as to the injuries proffered by the claimant. I had the opportunity to observe the aftermath of the injuries sustained by the claimant and his present physical condition. I gave meticulous thought to the written submissions filed by both counsel. I considered the relevant aspects of some of the precedents cited by counsel in relation to the injuries sustained by the claimant. There is no doubt that he suffered a deep cut wound on the occipital. I believe the same must have exposed him to a lot of pain and suffering. Further to that, he suffered chest pains and a painful right shoulder presumably from the impact during the accident. In court, he lamented that he was still experiencing chest pains. This has come about but for the conduct of the defendants.

From the skeleton arguments, with guidance from the cited comparable case authorities, I have seen that counsel for the claimant has submitted that the appropriate quantum would be K6,500,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement. Much as I am agreeable with the claimant's assertion that the value of the kwacha has greatly lost value for the past years, however the proposed quantum is on the higher side taking into consideration all the circumstances of the case, and awarding such would be, in my view, awarding the claimant with more than he actually lost and this will be unfair to the defendant and again contrary to the principle of *restituto intergrum*. On the other hand, I am of the view that the K1,800,000.00 suggested by the defendants is on the lower side. I take note that in the **Grey Aidi** case cited above, the claimant suffered a deep cut wound on the occipital as well and he

was awarded K3,700,000.00. I am alive to the fact that the case also involves a dislocation and that the case was decided in the year 2014.

Thus, upon a thorough consideration of facts and circumstances of this case, and upon an exhaustive consideration of the submissions by the claimant in the light of the relevant and applicable law regarding damages for the claimed heads herein, having also considered the fact that the devaluation of the kwacha, and further upon considering the degree of permanent incapacity of the claimant, this court is of the view that the appropriate and reasonable damages should be the sum of **K3,500,000.00** under all heads claimed and proved.

As the claimant was already awarded costs of the action by the consent judgment on liability, the court also awards the claimant costs of the assessment proceedings herein.

DELIVERED IN CHAMBERS THIS 9<sup>th</sup> DAY OF APRIL 2020

  
WYSON CHAMDEMBA NKHATA

ASSISTANT REGISTRAR