



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NUMBER 902 OF 2020

BETWEEN:

JACKSON NAMAONA.....CLAIMANT

AND

WILLIAM NAMOWA.....1ST DEFENDANT

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

CORAM: WYSON CHAMDIMBA NKHATA (AR)

Mr. Ngunga- of Counsel for the Claimant

Mr. Amos- Court Clerk and Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

INTRODUCTION

Through a writ of summons, the Claimant commenced this action claiming damages for pain and suffering, loss of amenities of life, disfigurement and costs of the action. Basically, the action emanates from a road accident which occurred on 5th September, 2020 in which the 1st defendant's insured who was driving motor vehicle registration number PE2066 Toyota Hiace Minibus from the direction of Limbe heading towards Mulanje along the Robert Mugabe road hit the claimant who was crossing the road at Mkando Trading Centre. The issue of liability was settled in favour of the claimant through a consent judgment executed before Honourable Justice Tembo. Subsequently, the matter was referred to this court to determine the quantum of damages that would adequately compensate the claimant for the losses he suffered which I must now consider.

THE EVIDENCE

When the matter came for hearing on assessment of damages, the Claimant testified that due to the accident he suffered serious injuries such as a fracture of the malleolus bone (right ankle), multiple bruises on the right foot, soft tissue injuries and excessive body pains. His leg was cast on Plaster of Paris. His wound was sutured and dressed and was given antibiotics and diclofenac to ease the pain. He was admitted on 5th September, 2020 and was discharged on 9th September, 2020. He further testified that he is having difficulties in walking and that his leg is hugely deformed. He stated that the range of motion of his ankle was reduced that he can no longer stretch his leg as before. Every time he tries to do exercises like jogging, he feels excessive pain that he has to stop. He lamented that his life since the accident has completely changed. He tendered a Medical Report marked "DK1" to substantiate the injuries. He has developed residual scars on the affected area and that since the accident, he still feels severe pain on his ankle. He cannot walk for long distances due to the severe pain that he feels on his ankle. He proceeded to show the court the places where he sustained the injuries. On one place there were multiple scars and on another there was a long scar. He lamented that he can no longer perform manual work as he used to do. He is unable to use the right hand as it is stiff.

Such was the evidence on assessment of damages. I would like to thank Counsel for the guidance as evidenced by the well-researched submissions filed in support of the assessment of damages herein in which several authorities have been cited. This court has given the submissions and the authorities counsels cited the most anxious consideration.

THE LAW AND APPLICABLE LEGAL PRINCIPLES

On the law and principles governing assessment of damages, it is trite that the purpose of awarding damages is to compensate the injured party as nearly as possible as money can do. That is to say, to place the claimant in a position he would be had he not suffered the damage or loss. This is what is termed the principle of *restitutio intergrum*. It is not possible to quantify damages with exactitude. However, courts use comparable cases as a guide in coming up with a reasonable quantum of damages. See the case of **Kalinda –vs- Attorney General (1992) 15 MLR 170 at p 172**. The Court will also consider factors like passage of time when the award was made, as well as the value of the kwacha at the time of making the award.

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. See: **Ian Goldrein et al,**

Personal Injury Litigation, Practice and Precedents (Butterworths, 1985) and **City of Blantyre vs. Sagawa**: [1993] 16(1) MLR 67 (MSCA). In **Sakonda vs. S.R. Nicholas**: Civil Appeal Cause No. 67 of 2013, it was highlighted that pain and suffering is attributable to the claimant's injury or to any necessary surgical operations and mental anguish.

The fundamental factor in assessing damages for pain and suffering was aptly put by the Supreme Court of Appeal in **Chidule vs. Medi**: Malawi Supreme Court of Appeal, Civil Appeal No. 12 of 1993, to say:

“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”.

The implication of the above statement is that, in principle and practice, each case must be dealt with according to its peculiar circumstances.

Loss of amenities of Life

Loss of amenities is attributable to deprivation of the claimant's capacity to engage in some sport or past-time which he/ she formerly enjoyed. Basing on the case of **Kanyoni vs. Attorney General**: [1990] 13 MLR 169. It means that he is incapable of performing some activities he used to do. Damages for loss of amenities of life are therefore awarded for the fact that the plaintiff is simply deprived of the pleasures of life, which amounts to a substantial loss, whether the plaintiff is aware of the loss or not. **Poh Choo vs. Camden and Islington Area Health Authority**: [1979] 2 All ER 91.

Disfigurement

Damages under the head of disfigurement are paid for the change in physical form of a person injured either as a result of the impact of the injury or its treatment, such as scar coming in as a result of surgical operation necessitated by the injury. It is a change in appearance but it is capable of limiting a person from doing certain things- see- **Francis Chikoti vs- United General Insurance Company Limited** Personal Injury Cause No. 730 of 2016.

COMPARABLE CASES

Basically, it is not possible to quantify such damages 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, the claimant claims to have sustained a fracture of the malleolus bone (right ankle), multiple bruises

on the right foot, soft tissue injuries and excessive body pains. Counsel representing the claimant calls upon the court to consider the following cases for comparison:

- **Damison Watson V Kingsley Sendema And Prime Insurance Personal Injury Cause Number 335 Of 2016** in which the claimant suffered a fractured right ankle, bruises on the scalp of the head, and bruises on the right foot and the injuries were assessed at 18% incapacity. The Court awarded K3.5 million for pain and suffering, loss of amenities of life and disfigurement. The award was made on 14th October, 2020.
- **Chitimbe V Malamba, Prime Insurance and Ocean Car Hire Pi Cause 295 Of 2017**, in which the claimant suffered a fracture of the ankle which needed a number of surgeries and was hospitalized for a period of 41 days twice and was in three P.O.Ps from 15th May, 2017 to 27th October, 2017, a period of almost 6 months (26 weeks) after which she went back to hospital in November, 2017 for 28 days. At the time of the assessment, a year after the accident, the claimant was in crutches because of the fracture. The claimant was awarded K3.5 million in October, 2018 for pain and suffering, loss of amenities of life as well as disfigurement.
- **Dan Kananji vs Noel Zigowa & NICO General Insurance Company Limited, Personal Injury Cause No. 977 of 2020**, in which the claimant sustained a fractured ankle, deep cut wound on the left eye which was stitched several times, he stayed with the Plaster of Paris for over 6 weeks. He was awarded MK4,500,000.00 for personal injuries. The award was made on 10th July, 2021.
- **Cidreck White Vs Joseph Ndekwa and Prime Insurance Company Limited Personal Cause No. 360 of 2015**, in which the plaintiff was awarded MK4,505,500.00 for damages for personal injuries. The plaintiff sustained fracture of the left arm, deep cut wound on the left shoulder, bruises all over the body. The award was made on 12th July, 2018.
- **Thomas Mitepa Vs General Alliance Company Limited Personal Injury Cause No, 73 of 2019**, in which the Claimant suffered broken tooth, humerus fracture right hand, bruises on the right abdomen, sprained hip joint. The Registrar Honourable Mangawa Makhalira (the Late) on 21st day of August awarded the Claimant the sum of MK6,003,000.00 as damages for personal injuries.

In view of the foregoing, Counsel representing the Claimant prays for the award of MK8,000,000.00 for damages for pain, suffering and loss of amenities of life and MK4,000,000.00 for disfigurement.

DETERMINATION

The evidence before this court indicates that the Claimant suffered a fracture of the malleolus bone (right ankle), multiple bruises on the right foot, soft tissue injuries and excessive body pains. During a visual assessment in court, the claimant stated that he sustained a fracture on the right leg and he showed the court multiple small scars on the area. This stands not controverted. I am therefore compelled to take the injuries as proved. Suffice to say at this point that the injuries exposed the claimant to excruciating pain during the occurrence of the accident as well during recuperation. However, there is no evidence tendered which indicates that he continues to suffer pain save for the fact that his hand lost its versatility as it has become stiff. Other than pain and suffering, there is evidence as to the amenities of life that he has lost. He lamented in his testimony that he can no longer do manual work and walk long distances. Lastly, the issue of disfigurement was quite apparent. His hand is stiff and has residual scars in the affected areas. This is something he will live with for the rest of his life. This court is aware that the general societal attitude towards disfigurement often causes psychological distress to disfigured individuals.

Turning to the case authorities cited, I am of the opinion that the circumstances of this case are much closer in intensity as that of **Dan Kananji** case (supra). In that case the claimant, sustained a fractured ankle, deep cut wound on the left eye which was stitched several times, he stayed with the Plaster of Paris for over 6 weeks. He was awarded MK4,500,000.00 for personal injuries. The case was decided in the year 2021. I also bear in mind the case of **Austin Julius vs. Rasika Gunawardena & General Alliance Insurance Limited** Personal Injuries Cause Number 316 of 2014, where the court emphasized the need for the courts to make a special award for disfigurement.

CONCLUSION

Upon a thorough consideration of facts and circumstances of this case, and upon an exhaustive consideration of the submissions by Counsel in the light of the relevant and applicable law regarding general damages, I award the claimant **K4,500,000.00** under all heads claimed and proved.

The claimant is further awarded costs for the assessment of damages proceedings to be taxed if not agreed by the parties.

DELIVERED IN CHAMBERS THIS 22ND DAY OF NOVEMBER 2021


WYSON CHAMDIMBA NKHATA

ASSISTANT REGISTRAR