



REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 83 OF 2020

BETWEEN:

JAMESON JAMU.....CLAIMANT

AND

ENERST JIMU CHINGUWO.....1ST DEFENDANT

NATIONAL BUS COMPANY LIMITED.....2ND DEFENDANT

CORAM: WYSON CHAMDIMBA NKHATA (AR)

Mr. Tandwe- of Counsel for the Claimant

Mr. Lungu – of Counsel for the Defendants

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 18th June 2017, where a sofa which was loaded on the top carrier of a Marco Polo bus registration number BR 5969 which was being driven by the 1st defendant from the direction of Luchenza Bus Depot towards the Mulanje-Thyolo Road fell on the Claimant's head knocking him down and injuring him in the process. The issue of liability was settled in favour of the claimant through an order by Honourable Justice Tembo striking out the defence upon failure by the defendants to attend mediation. 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 was the sole witness for his case. He adopted his sworn statement in which he stated that he is a businessman and he sells shoe laces at different places including Luchenza Market in Thylo District. He averred that as a result of the accident, he fell unconscious for about 10 minutes. He was taken to Chonde Health Clinic before being transferred to Thyolo District Hospital where he was admitted for two weeks from 18th June, 2018 to 1st July, 2017. On the day he was discharged, he felt paralysed in the whole body particularly the left hand side and he is till paralyzed up to date. He tendered a Medical Report marked “JJ2”. He further averred that since the accident, his life has not been the same as his left handside remains paralysed. He can no longer walk as before and cannot conduct his business as he used to do. After his discharge from hospital, the Claimant was paralysed on the left-hand side of the body. He is still paralysed up to date. This has resulted in a lot of hardship in his life.

In cross-examination, he stated that the doctor who treated him did not tell him his name but it was a man. He stated that the Medical Report was prepared by a lady. He re-iterated that both hands were paralysed.

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 fracture of the left side of the hip; paralysis of the left side of the body; head injury which left him unconscious and general body pains.

Counsel representing the claimant calls upon the court to consider the case of **Charity Luhanga v Attorney General (Malawi Police Service)** Personal Injury Cause No. 146 of 2020, where the Claimant sustained a wedge compression fracture at the thoracic bone number 10 which left her totally paralysed from the pelvic region down to the lower limb; fracture of the clavicle; fracture of the ribs, and complete paralysis of both legs. The Court awarded her the sum of MK6,000,000 damages for pain and suffering; MK2,500,000 for loss of amenities of life; MK3,000,000 for disfigurement; and MK20,000,000 for future treatment and future nursing care. The award was made on 16th October 2020.

In the present case, considering these injuries and the authority cited, Counsel representing the Claimant submits that the sum of MK35,000,000.00 as damages on all heads is fair and reasonable.

DETERMINATION

The injuries that the claimant suffered are not clear. There is a quite noticeable strand of inconsistency in the injuries as presented to the court. The pleadings in the Statement of Case indicates that the claimant suffered scalp lacerations, loss of a lot of blood, paralysis of the left side of his body, multiple bruises on the body, general body pains and unconsciousness. In his witness statement, the claimant only mentions of paralysis on the left side of his body and that he fell unconscious. The same is supported by the Medical Report. However, the Police Report states that he suffered paralysis of both hands. Further to that, in his submissions, Counsel representing the claimant submits that the claimant sustained a fracture of the left side of the hip; paralysis of the left side of the body; head injury which left him unconscious and general body pains. Other than the inconsistencies, the evidence seems to suggest that the paralysis affected the whole body. However, a visual assessment indicated that the claimant suffered a localized paralysis affecting the left hand. Upon a thorough consideration of the evidence presented before the court, I shall proceed on the understanding that upon being hit by a sofa on the head the claimant suffered cut wounds on the head, he fell unconscious and also suffered paralysis of the left hand.

Be that as it may, I am of the view that the injuries exposed the claimant to excruciating pain during the occurrence of the accident as well during recuperation. He continues to suffer pain for some time thereafter and currently still has pain although to a lesser degree. In addition, he suffered injuries which impacted negatively on his amenities of life. In his lamentation, he cannot walk, run and stand for long. He lamented that he earns a living by selling shoe laces from one place to another. Apparently, the injuries have dealt a massive blow to his way of earning a living which involved walking around. I believe this is an endeavor

which demands a steady physic. On disfigurement, the predominant injury herein is paralysis which is a disfigurement on its own right. The claimant lost muscle control of the left hand. Some people experience temporary paralysis and regain partial or full movement over time. In this case, it is not clear what the claimant's fate is. Suffice to say that learning to live with paralysis is challenging. It can cause dramatic changes to your life, activities and self-image. These changes can result in mental health issues and depression. In view of this, this court is convinced that the claimant suffered serious injuries attracting a substantial compensation.

Turning to the case authority cited, the case I have been referred to deals with paralysis and fractures but it is not on all fours with the case before me. The injuries sustained by the claimant in that case and the treatment administered on the injuries are not similar to those in the present case and as such the amount of compensation would not necessarily be the same. I am also mindful of the fact that the injuries sustained by the claimant in that case are more severe than in the current case. Suffice to say that the case includes an award of MK20,000,000 for future treatment and future nursing care out of then K31,500,000.00 that the claimant was awarded in that case. Future treatment and nursing was not pleaded in this case. I am of the view that the K35,000,000.00 being prayed for by the claimant is far on the higher side. It is an overkill. I am of the considered opinion that K8,000,000.00 would adequately compensate the claimant herein.

CONCLUSION

Upon a thorough consideration of facts and circumstances of this case, and upon an exhaustive consideration of the submissions by the both counsel in the light of the relevant and applicable law regarding general damages, I award the claimant **K8,000,000.00** 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