



IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY

Civil Case No. 178 of 2015

BETWEEN:

ANTONY MGABIZA..... PLAINTIFF

-AND-

ALFRED VALEMA.....1ST DEFENDANT

PRIME INSURANCE CO. LTD.....2ND DEFENDANT

CORAM:	Madalitso Khoswe Chimwaza	Assistant Registrar
	G. Taumbe	Counsel for Plaintiff
	C. Ng'ambi	Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

Background

1. The hearing on assessment of damages was concluded on 6th April, 2017 before the Senior Deputy Registrar His Honour Kishindo then, now Judge of the High Court, following a judgment which was entered after the defendant's defence was struck out on 22nd November, 2016. For the avoidance of any doubts this court shall proceed to assess damages by virtue of being in the office of Assistant Registrar.... on the evidence that was already filed in the witness statement and adopted during the hearing.
2. According to the record of proceedings dated 6th April, 2017 Counsel Kaonga representing the defendants appeared in Court late after the hearing of the matter had already been adjourned for an order on assessment and he promised to file submissions. However the submissions are not on file.

The court will proceed with the assessment basing on the available evidence which is clear and unambiguous, without submissions from defendant and without a re-hearing of the witness.

Brief Facts:

3. The plaintiff commenced legal action by way of writ of Summons issued on the 30th of January, 2015, against the Defendant. The facts are that on 28th November, 2014 the plaintiff was hit by the 1st defendant who was driving motor vehicle Reg. No. ZA 550 Nissan Vannette minibus from the direction of Area 18 round-about heading towards Lilongwe Old Town along Kamuzu Procession road while passing by Magalasi House. The plaintiff was crossing the road from left to right. The accident herein was caused as a result of negligence of the 1st defendant. As a result of the accident, the Plaintiff sustained fracture on the left ribs, deep cut on the left eye, chest pain and bruises on his face. The plaintiff is therefore claiming damages for pain and suffering, damages for loss of use of amenities of life, damages for disfigurement, special damages for MK6000.00 and cost of action. The Defendants filed a defence in which all claims were denied and in the alternative pleaded that the 2nd defendants liability should be limited to the policy limit of K5,000,000. The Defendants defence was struck out hence the judgment and assessment proceedings. Counsel for the claimant made oral submissions to the effect that the plaintiff should be awarded K2,000,000 for pain and suffering, K1,500,000 for loss of amenities of life and K800,000 for disfigurement and K700,000 for party and party costs.

Issue for determination

How much damages should be awarded

General Principles on Damages

4. A person who suffers injury as a result of another's negligence is entitled to be compensated for the injury suffered. Such damages are awarded to compensate the plaintiff in so far as money can do (see **Nakununkhe v Paulo Chakhumbira and Attorney General** Civil cause no.357 of 1997 (Unreported). As was held in the case of **Namwiyo v Semu et al** [1993] 16 (1) MLR 369, in awarding compensation, the court attempts to put the plaintiff in the position he/she would have been but for the injury arising from the tort. Such damages however cannot be quantified by any mathematical calculation as such the court relies on decided cases of a comparable nature for guidance. Sight must not be lost however, of peculiar facts of each case in order to avoid occasioning injustice by inflexible maintenance of consistency and uniformity (**D. Kwataine**

Malombe & Another vs. G.H. Chikho t/a Bec Line Minibus Civil Cause No. 3687 of 2001 (HC Unreported).

5. The fundamental principle which underlines the whole law of damages is that the damages to be recovered must, in money terms, be no more and no less than the Plaintiffs actual loss. In the case of **M Livingstone vs. Raywards Coal Company (1880) 5 App. Cas 25** at p. 39 Lord Blackburn formulated the principle as follows:

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

6. In this case the Court will be guided by decided cases of a comparable nature while bearing in mind that each case is peculiar to its own facts. Lord Morris in **West v. Shephard (1964) AC 326** at paragraph 346 stated the position as follows:

"By common assent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that as far as possible comparable injuries should be compensated by comparable awards. When all this is said, it still must be that the amounts which are awarded are to a considerable extent conventional. Actual compensation in personal injury case is therefore impossible."

7. It is the duty of the Court to determine an appropriate award of damages to compensate the plaintiff. The plaintiff herein suffered serious injuries 'AM2', the medical report put the rate of his incapacity at 35%. In the case of **Piason Shadi v Reunion Insurance Company Limited Personal Injury Cause No. 200 of 2014** the plaintiff was awarded K600,000.00 as damages for disfigurement for a simply fracture. The plaintiff herein suffered fracture on the left ribs. In the case of **Muleso and others v Rashy Motors Civil Cause number 1626 of 2010 (unrep)** in which the 2nd plaintiff sustained a fracture of the lower arm and was in POP for 6 weeks. The court awarded him K2,200,000.00 for pain and suffering and loss of amenities on the 8th of August 2012. In the case of **Lewis Mtawanga v Jenifer Kamteme & Southern Region Water Board Personal Injury Cause No. 371 of 2011** in which the plaintiff was awarded the sum of K2,500,000.00 as damages for loss of amenities of life. The award was made on 3rd October 2013.

Analysis

8. Upon careful consideration of the circumstances of this case, and in the light of decided cases of comparable nature and the devaluation of our currency in recent times, the claimant is awarded MK2, 000,000.00 for pain and suffering, K1,500,000 loss of amenities of life. The claimant is awarded K500,000 for disfigurement.

Special damages

9. A Plaintiff who claims special damages must therefore adduce evidence or facts which give satisfactory proof of the actual loss he or she alleges to have incurred-**Govati v Manica Freight Services (Mal) Limited** [1993] 16(2) MLR 521 (HC).

Cost of police and medical reports are special damages and must be specifically pleaded and proved as required by law. Therefore, this court will not make an award for the cost of police and medical reports as no evidence was led to prove the same.

Disposal

10. The plaintiff is therefore awarded MK4,000,000.00 (four million Kwacha) for pain and suffering, loss of amenities of life and disfigurement. The court makes no order on cost of medical and police reports. The plaintiff is also awarded costs of this action summarily on standard basis pursuant to **Order 31 rule 4 of the CPR** as submitted by the plaintiff which are proportionate and reasonable at **K700,000.00**.

Right of Appeal

11. Either party aggrieved by the order of assessment has the right to appeal to the Supreme Court.

Delivered in Chambers this 28th day of October, 2021, at High Court Lilongwe Registry.



Madalitso Khoswe Chimwaza

ASSISTANT REGISTRAR