



**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL DIVISION
CIVIL CASE NO. 279 OF 2020**

BETWEEN:-

JOHN KAMCHACHA..... CLAIMANT

-AND -

GEOFFREY MTONGA.....1ST DEFENDANT

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

Coram:

Brian Sambo, Assistant Registrar

L. Mtambo, of counsel for the Claimant

Defendants, absent and unrepresented

Mr. Matope, Court Clerk/Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

Introduction

The Claimant had, on the 4th of June, 2020 obtained a default judgment for the following;

- i. Damages for pain and suffering
- ii. Damages for loss of amenities of life
- iii. Damages for disfigurement
- iv. Special damages
- v. Costs of action.

On 17th November, 2021, I heard evidence on assessment from the Claimant, in the absence of the Defendants. There was no excuse from the defence despite being duly served with the notice of hearing of assessment of damages.

Brief Facts of the Case

The facts of this case are to the effect that 1st Defendant was driving motor vehicle registration number LL 6235, Mazda Bongo with 2 passengers on board, from the direction of Nkhoma heading towards Kamphata, along the Nkhoma/Kamphata Road. Upon arrival at Zikeke Village, the 1st Defendant lost control of the motor vehicle, and as a result it overturned. The Claimant was a passenger in the motor vehicle that had overturned. Following the impact, the Claimant sustained a compression fracture of the lumbar spine, a cut on the lower lid of his right eye and bruises on his head.

The Claimant was the sole witness in his case. He testified that as a result of the accident, he had become too weak in bed to the extent that he could not perform sex with a woman anymore because of the spine injury. He said he was still feeling pain in his injured eye and leg.

Issues for Determination

The hearing was conducted to assess the amount of damages payable by the Defendants for pain and suffering, damages for loss of amenities of life, damages for disfigurement and special damages.

The Law on Damages

Damages are the remedy for a victim of a wrong, and the wrongful party has to compensate the victim, in as far as money can, to be put back in the same position that the victim would have been if not for the wrong- **Elida Bello v. Prime Insurance Company Limited**, Civil Cause No177 of 2012 (unreported).

Damages for Pain and Suffering

As regards 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- Ian Goldrein et al, Personal Injury Litigation, Practice and Precedents (Butterworths, 1985) p8. See also **City of Blantyre v. Sagawa**, [1993] 16(1) MLR 67 (SCA).

In the instant case, the Claimant went through pain and suffering during and after the accident. He sustained a compression fracture of the lumbar spine plus

some bruises. Surely, it goes without saying that the pain associated with such an experience is unbearable.

Counsel for the Claimant, in his skeletal arguments proposed MK4, 000,000.00 being damages for pain and suffering. This is much on the higher side considering the fact that the injuries were not heinous. I am also mindful that, in order to achieve consistency and uniformity, courts of law would also want to consider comparable judicial precedents.

In **Mica Banda vs. Fabiano & others**, Civil Cause No. 82 of 2013, the court on 4th May 2018 awarded the plaintiff the sum of **MK3, 500,000.000** for sustaining Massive bruises on his scalp, Bruises on his face, back and posterior chest.

On 30th day of August 2018 the court in **Joseph Manyumba v Kondwani Phiri & Other**, Civil cause no. 533 of 2013, awarded the plaintiff the sum of **MK3 500 000.00** as damages for all heads on the fact that he sustained a dislocation of right elbow.

Damages for Loss of Amenities of Life

Coming to the claim for damages for loss of amenities of life, there is no much evidence as to what amenities has the Claimant really lost so far. The Claimant said, as a result of the injuries, he was no longer able to have sexual relationship with a woman. I do not disagree with him that sexual intercourse constitutes a pleasure in life. For loss of amenities embraces all that which reduces the Claimant's enjoyment of life; his deprivation of amenity whether he is aware of it or not. See **City of Blantyre v Sagawa [1993] 16(1) MLR**. Sex is indeed a very salient amenity of life. My only problem is that the Claimant did not substantiate his assertion with medical evidence. The Medical Report he tendered does not talk about this incapacity, and therefore it is difficult to believe that this amenity has really been lost as a result of the spine injury. To this end, what could be considered as a lost amenity is the enjoyment associated with seeing using both eyes; although the loss is not total and permanent. During his testimony he told the court that he was unable to see properly with the injured eye.

Damages for Disfigurement

On the issue of disfigurement, there is again, serious speaking, no disfigurement registered. A disfigurement is not in abstract; it is physical. 'Disfigurement' can simply be described as a permanent physical deformity of the body. See **Ronaldo Likoloma vs. Iqbal Mahomed**, Civil Cause No. 870 of 2013. Not every person who sustained fractured bone will be disfigured. The medical evidence itself does not show any deformities. If there are any deformities, we could be fair to only

John Kamchacha vs Geoffrey Mtonga & Prime Insurance Company Limited, Civil Cause No. 279 of 2020

talk about scars if they could be seen, but strictly speaking what could be awarded is quite nominal, in these circumstances.

Special Damages

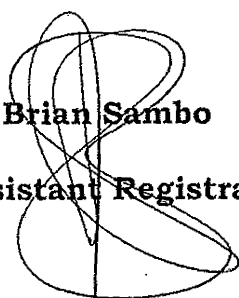
Generally, special damages are specifically pleaded and strictly proven. See **General Farming Limited v Chombo (1996) MLR 16**. There is no evidence on the record to the extent that the Claimant spent a total of **MK10, 000.00** towards the Medical Report and the Police Report. There are no payment receipts attached. However, I have seen the Medical Report and the Police Report attached, and I take judicial notice that these reports are not accessed free of charge, and that Police Reports are obtained at a fee of MK5,000.00 today while Medical Reports range between MK5,000.00 to M15,000.00. The Claimant is asking for MK10,000.00, only; which falls within the range I have given above. I would, therefore award him as requested.

Conclusion

In conclusion, the Claimant is awarded **MK3, 510, 000.00** being damages covering all heads above. This whole sum is payable within 14 days from today.

Costs are for the Claimant, and shall be assessed separately if not agreed upon by the parties.

Made in chambers today Tuesday the 30th day of November, 2021.


Brian Sambo
Assistant Registrar