



IN THE HIGH COURT OF MALAWI

LILONGWE DISTRICT REGISTRY

CIVIL DIVISION

CIVIL CAUSE NO. 77 OF 2019

BETWEEN

MR. G.M. CHIMENYA.....CLAIMANT

AND

ATTORNEY GENERAL

(Ministry of Health –Queen Elizabeth Central Hospital).....DEFENDANT

Coram:

Brian Sambo, Assistant Registrar

Dr. Zolomphi Nkowani, of counsel for the Claimant

Mr. Maulidi, of counsel for the Defendant

Mr. Kumwenda, Official Interpreter/ Law Clerk

ORDER ON ASSESSMENT OF DAMAGES

1. Background

The present assessment follows a default judgment obtained by the Claimant on 19th May, 2021 for the following;

- i. Special damages

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- ii. Damages for pain and suffering
- iii. Damages for loss of amenities of life
- iv. Damages for further medical expenses
- v. Exemplary damages
- vi. Cost of action.

1. 2 On the 18th of August, 2021 the court heard the Claimant's evidence for assessment. The defence declined to parade any witnesses but had, instead requested for 14 days during which to file skeleton arguments in defence. I did wait for them up to the 2nd of October, 2021 but nothing came forth. I had to proceed and provide my assessment order to the diligent party, anyway.

2. Brief Facts

2.1 On 26th May, 2016 the Claimant went for a cataract surgical operation in his left eye at Machinga District Hospital. Before the operation procedure, the attending doctor induced an anesthetic procedure but it did not work as the Claimant still felt excruciating pain.

2.2 During the operation, the attending doctor had acknowledged to one of the persons present in the operating room that something had gone wrong but could not clarify to the Claimant what it was.

2.3 The Claimant was eventually discharged from the hospital, but since the said discharge, he had been in continuous pain and suffering, and had since lost sight in both eyes.

2.4 On 20th November, 2017 a further prognosis at Zomba Hospital indicated that there was possibility of loss of sight in his left eye.

2.5 On 6th February, 2018, a further prognosis at Queen Elizabeth Central Hospital confirmed that he would need future medical nursing treatment and that he had permanently lost sight in his left eye.

3. Evidence On Assessment Of Damages

3.1 The Claimant was the sole witness in his case. Testifying as PW1 he told the court that he lost his sight in his left eye after the cataract surgical operation. He adopted and tendered his Witness Statement marked PEX 1, 1st Medical Report marked PEX1A and a 2nd Medical Report marked PEX1B. He told the court that he believed that the loss of sight, pain and suffering were solely caused by the negligence of the Defendant's doctor who failed to operate his eye in a professional manner, and discharged him without proper diagnosis of the risks incurred by the operation. He further believed that what had happened to him was a medical malpractice because by failing to clarify to him the complication that occurred during operation, the attending doctor's work was a substandard care, and that the doctor lacked responsibility, and that he could have discontinued the operation procedure having noticed that the anesthetics did not work. He testified that, as a result of the doctor's medical negligence, he suffered loss and damages for which he was now claiming special damages, damages for pain and suffering, loss of amenities of life, exemplary damages for gross negligence and cost of action.

4. Issue

4.1 The hearing was conducted in order to assess the quantum of damages payable by the Defendant under the heads specified in the previous paragraph.

5. Determination

5.1 It is no longer a myth that damages are a remedy that is open to a victim of the wrongful act of another. The wrongful party is the one responsible for compensating the victim. This is a way of trying to restore the position the victim would have been had the accident not happened. This is known as the principle of *restitutio in integrum*. Katsala J in the case

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of *George Kankhuni v Shire Buslines Ltd*, Civil cause no 1905 of 2002, as quoted in the case of *Chidoola v Chilunga and prime insurance co. Ltd*, personal injury cause no 488 of 2014 said that the law demands that the plaintiff should be put in the same position as if he has not suffered the loss.

6. Damages for Pain and Suffering

6.1 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 incident while suffering includes fright, fear of future disability, humiliation, embarrassment and sickness – see **Ian Goldrein et al, personal injury Litigation, practice and precedents** (Butterworth's, 1985) p8.

6.2 In **Belinda Banda vs Daeyang Luke Hospital**, Civil Cause No. 1165 of 2013 the Claimant experienced pain and suffering after a swarb was left in her stomach during a surgical operation at the defendant's hospital. After being subjected to a 2nd operation to remove the swarb, she developed a medical condition known as Lumbar Spondylosis. During her testimony she said her claim was aggravated as the defendant failed to properly diagnose the problem after the Claimant had duly reported to the Defendant that she was experiencing extreme pain and her wound was oozing puss. Her Honour Madalo Chimwaza made an award of **MK4, 656,250.00** in damages, in 2017.

6.3 In **Alinafe Odala Chilinda vs The Attorney General**, Personal Injury Case No. 165 of 2020 I made an award of **MK9, 500,000.00** in 2021. In this case, the Claimant had her uterus removed by the Defendant after delivering her baby through caesarean section at Mzuzu Central Hospital. As a result of the operation, she sustained urinary blood and lower abdominal pains. She was later given frequent blood transfusions but it yielded nothing. The hospital conducted an ex-ray on her and never found any problem with her,

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after which they discharged and she was advised to be taking a lot of water.

6.4 To her surprise, by end of April, 2019, the Claimant noticed that her condition was not improving as she was getting weaker by the day, and was losing a lot of water and blood. She therefore decided to seek alternative medical attention at Good Hope Private Clinic Limited in Lilongwe on the 2nd day of May, 2019. At Good Hope clinic, the Claimant was placed under exploratory operation and it was discovered that there was a sharp knife bladder injury and her large bowel was partly stitched together with the omentum at the time she was undergoing caesarean section at Mzuzu Central Hospital. Further at the point where the uterus was removed, it started rotting and there was a lot of hemorrhage accumulating in her abdomen. Her condition was pathetic.

6.5 In the present case the Claimant was subjected to a cataract surgical operation in his left eye at Machinga District Hospital. Before the operation procedure, the attending doctor induced an anesthesia but it did not work as the Claimant still felt excruciating pain. Eventually, his further prognosis at Queen Elizabeth Central Hospital confirmed permanent loss of sight in his left eye.

6.6 Counsel for the Claimant, in his submission prayed for **MK28, 000,000.00** being damages under this head. However, considering the case authorities above-cited, it is conspicuous that the proposition is much on the higher side. Circumstances of the Claimants in the cited cases were much more serious than those of the Claimant in the case at hand. It is, therefore, my considered view that **MK4, 000,000.00** is sufficient damages under this head in the circumstances.

to a medical report and a police report, and this is what I award him on special damages.

12. Conclusion

11.1 In summary the Claimants are awarded as follows;

- i. **MK4,000,000.00** being damages for pain and suffering
- ii. **MK3,000,000.00** being damages for loss of amenities of life
- iii. **MK1,500,000.00** being damages for future medical expenses
- iv. **MK1,200,000.00** being exemplary damages
- v. **MK1, 800, 000.00** being special damages and Party and Party costs.
- vi. **MK10, 000.00** being special damages.

In total, the Defendant shall pay **MK11, 510,000.00** including party and party costs. This whole sum is payable within 30 days from today.

Made in chambers today Monday the 4th of October, 2021.



Brian Sambo
Assistant Registrar