



IN THE HIGH COURT OF MALAWI

LILONGWE DISTRICT REGISTRY

CIVIL DIVISION

CIVIL CAUSE NO. 470 OF 2019

BETWEEN

KONDWANI MUNTHALI.....CLAIMANT

AND

MR. FLY J. CHIKUSE.....1<sup>ST</sup> DEFENDANT

WATCH DOG SECURITY COMPANY LIMITED.....2<sup>ND</sup> DEFENDANT

**Coram:**

**Brian Sambo, Assistant Registrar**

Mr. Banda, of counsel for the Claimant

Defendants, absent and unrepresented

Mr. Kumwenda, Official Interpreter/ Law Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

The present assessment follows a default judgment obtained by the Claimant on 18<sup>th</sup> of October, 2019 for the following;

- i. Damages for pain and suffering
- ii. Damages for general incapacitation
- iii. Damages for loss of amenities of life
- iv. Damages for deformity and/or disfigurement

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v. Cost of action.

On 30<sup>th</sup> of September, 2021 I received evidence for the assessment of damages from the Claimant in the absence of the Defendants. The latter was duly served with the notice of assessment of damages but did not attend the hearing.

Brief facts of this case state that on the 30<sup>th</sup> of July, 2018 Mr. Kondwani Munthali, aged 29 years was driving motor vehicle registration number MH 376 Nissan Tilda Saloon from Area 25 going to Area 49. Upon arrival at Golji Chinese Houses he hit motor vehicle registration number LA 55892 Toyota Hilux Pick Up which was being driven by Mr. Fly J. Chikuse, who was joining the road from Golji Chinese Houses heading towards BNS, with four passengers on board, without giving way. Following the impact, both drivers and three of the passengers sustained minor injuries, while motor vehicle registration number MH 376 Nissan Tilda caught fire soon after the impact, while the other vehicle had its rear side extensively damaged. According to the Police Abstract Report, the accident was caused by the 1<sup>st</sup> Defendant by failing to give way to the Claimant. The 1<sup>st</sup> Defendant was ordered to pay spot fine by the police amounting to MK10, 000.00 which he paid under General Receipt Number 5859690.

The Claimant was the sole witness in this case. He testified that he was under panic as the car was burning, and he was left with no choice but force himself out of the car window, and in the process, he injured his knees, twisted his elbows and back in trying to escape fire. He injured his spine. He also sustained left rib fracture, severe back pains, scars and bruises in his hands and legs.

He witnessed his car burn into ashes. The value of his car was MK2, 960,854.40. He asked the court to order reimbursement of costs for the purchase of his car, Medical Report and Police Report.

He further told the court that the accident had left him with permanent scars on his legs, knees and back. He was still experiencing some pains, especially when walking and performing manual work. He said as a result of the accident, he was

unable to perform sporting activities as before. He also testified that he was spending a minimum of MK10, 000.00 per month on medication in order to minimize pains.

The only issue present in this matter is the assessment of appropriate level of damages under the heads above-outlined.

Damages constitute a remedy that is available to a victim of a 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 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.

From the skeleton arguments, I noticed that the claimants were demanding MK7, 960, 854.40 covering heads of damages of damages in the default judgment. I consider the proposition unfair and unjust considering the injuries suffered by the Claimant in this matter. In order to avoid disparities, in my view, the safest way is to direct myself to decided cases in similar matters.

In *Lastone Chidule V ESCOM Ltd*, Personal Injury Cause No. 947 of 2015 the court on the 23<sup>rd</sup> day of May 2018, awarded the plaintiff the sum of MK2 300 000.00 as damages on this head for the death of 12-year-old Mphatso Chidule.

In *Charles Chokha v Nyambalo & Prime Insurance Company Limited*, Personal Injury No. 33 of 2017 the court on the 13<sup>th</sup> day of July 2018, awarded the plaintiff MK1 500 000.00 as damages for loss of expectation of life in respect to the deceased who died at the age of 5 years.

Whereas on the 7<sup>th</sup> day of August 2018. The court in *Alex Chigwale V ESCOM*, Personal Injury Cause No. 691 of 2014, awarded the plaintiff the sum of MK1 800 000.00 as damages for loss of dependency for the death of 12-year-old Yvonne Chingwale who was in standard 7.

In the present case, there is no doubt that the Claimant suffered considerable pain and suffering when his left rib got fractured and also after sustaining *Kondwani Munthali vs Fly J. Chikuse and Watch Dog Security Company Limited, Civil Cause No. 470 of 2019*

bruises and cervical spine injury. The process of escaping fire through a car window is by all means difficult and painful. Regarding the claim of damages for deformity, general incapacitation and disfigurement, admittedly, the same were not excessively suffered; the Claimant was only complaining about scars on his body which came after the bruises he had suffered. His degree of impairment was assessed at 23%. He also complained that he was unable to enjoy sporting activities as a result of the injuries he suffered. However, the Medical Report does not show quite serious injuries or deformities.

Considering all circumstances above, and the case law provided, I award the Claimant **MK2, 000,000.00** being damages covering all heads to do with personal injury.

Turning to the Claim for reimbursement of costs for the lost motor vehicle, it is in the evidence that, as a result of the negligent driving by the 1<sup>st</sup> Defendant, the Claimant's motor vehicle caught fire instantly and bunt to ashes at the scene. The Claimant pegged the cost for the same at MK2, 960,854.40. The Claimant attached an exhibit to the effect that the cost of the motor vehicle including freight and duty charges was MK2, 619,300.00. He told the court that he bought the car in United States Dollar at \$3606.4 while the exchange rate was at \$1 to MK726, 33, and that because the exchange rate today had upgraded to \$1 to MK821, the actual cost of the car today would be **MK2, 960,854.40**. I did not find any reason to doubt this evidence. I therefore award him the same amount being the cost of the motor vehicle.

In conclusion, the Claimant is awarded **MK4, 960,854.40**. The Defendants shall pay the whole of this amount within 7 days from today.

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

Made in chambers today Monday the 20<sup>th</sup> day of October, 2021.

  
Brian Sambo  
Assistant Registrar

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