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REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NUMBER 412 OF 2015

BETWEEN:

FRANK SUNGANANI (a minor suing through
his father and next of friend, FRANK SUNGANANI).....CLAIMANT

AND

MARTIN CHIKOTI.....1ST DEFENDANT

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

CORAM: WYSON CHAMDIMBA NKHATA (AR)

Mr. Malijani- of Counsel for the Claimant

Mr. Chisale-of Counsel for the Defendant

Ms. Chida- Court Clerk and Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

INTRODUCTION

The claimant was injured in a road traffic accident on 26th January, 2015 at Hajira Admarc along Robert Mugabe Highway when he was hit by a motor vehicle Toyotiace minibus registration number KK 4173. Consequent to which, through a writ of summons issued on 30th April, 2015, he commenced this action through his father and next of friend claiming damages for pain and suffering, loss of amenities of life, special damages and costs of the action. He sued the 1st defendant as the driver of the motor vehicle in question and the 2nd defendant as the insurer of the said vehicle. The issue of liability was settled in favour of the claimant by a consent order executed by the parties on 5th November, 2018. Subsequently, the matter was referred to this court for assessment of damages which I must now consider.

THE EVIDENCE

The Claimant paraded his next friend as his witness. He tendered and adopted his witness statement in which he stated that as a result of the accident his son suffered injuries. He further stated that his son sustained multiple cut wounds on the head, multiple cut wounds on both shoulders, on the right ankle and bruises on both legs. He was referred to Queen Elizabeth Central Hospital where he was treated. His wounds were sutured and dressed with iodine and was given some pain killers. He now experiences lapse in memory, recurrent nasal bleeding and headache. He has permanent scar formation on the affected parts. He exhibits a copy of medical report marked "FS1".

In cross examination, he stated the accident took place at Hajira at Bangwe in the year 2015. He stated that the accident took place 6 years ago. He stated that his son was admitted for almost a week. He confirmed that he suffered soft tissue injuries. He stated that he had not brought a medical report attesting to the memory loss. He stated that the claimant goes to school at Kids Kingdom and he is in Standard 7.

Such was the evidence on assessment of damages. I would like to thank Counsel for the claimant 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 counsel 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

Pain means the physical hurt or discomfort attributable to the injury itself or consequent upon it. It includes the pain caused by any medical treatment which the plaintiff might have to undergo. See **Sakonda v S. R. Nicholas** Civil Appeal Cause No. 67 of 2013. 'Suffering' on the other hand denotes the mental or emotional distress which the plaintiff may feel as a result of the injury. This includes but not limited to

anxiety, worry, fear, torment and embarrassment. In **City of Blantyre v. Sagawa** [1993] 16 (1)MLR 67. 'pain' and 'suffering' were defined to suggest physical experience of pain caused by consequent upon the injury while "suffering" relates to the mental element of anxiety, fear, embarrassment and the like.

Loss of amenities of life

In the case of **Kanyoni v Attorney General** [1990] 13 MLR 169, 171 the court held that loss of amenities of life must include the loss of all the things the claimant used to be able to do, see, and experience. Justice Mwaungulu (as he then was) in the case of **Mtika v. US Chagomerana t/a trans Usher (Zebra Transport)** [1997] 2 MLR 123, 126 explained that this head covers the loss caused by the injury in that the claimant will be unable to pursue the leisure and pleasures of life that he used to enjoy but for the injury.

COMPARABLE CASES

In awarding damages for pain and suffering and loss of amenities of life, Counsel representing the claimant calls upon the court to consider the following cases:

- **Foster Muleso and Khaulumu Chinseche v Rashy Motors** Civil Cause No. 1626 of 2010 wherein the 1st plaintiff was awarded MK1,000,000.00 for muscular injuries, soft tissue injuries and pain on the chest. The award was made on 7th August, 2012.
- **Buleya v Kumilamba and another**, Civil Cause No. 2407 of 2008 HC (unreported), wherein the plaintiff suffered head injuries, two big cuts on the head, a cut wound on the neck and soft tissue injuries to the shoulder. He was awarded MK1,500,000.00 as damages for pain and suffering and loss of amenities.
- **Lemoni Banda & 19 others vs Mota Engil & General Alliance Insurance Limited** Personal Injury Cause No. 178 of 2012, wherein the 20th Plaintiff sustained a sprained right shoulder and soft tissue injuries on the right knee and on the back. An award of K1,100,000.00 was made on 18th September, 2014.
- **Jane Mabaso & 19 others vs R.Y. Kumwenda and Citizen Insurance Company Limited** Civil Cause No. 242 of 2010, wherein the 7th Plaintiff sustained multiple injuries and cuts and a dislocated right leg. An award of K1,000,000.00 was made on 31st October, 2012.

In view of the cases cited above, Counsel representing the claimant submits that considering the current value of the Kwacha, an award of MK3,500,000.00 would adequately compensate the claimant for pain and suffering and loss of amenities of life.

DETERMINATION

In making assessment, I begin by pointing out that the evidence indicates that the claimant sustained multiple cut wounds on the head, multiple cut wounds on both shoulders, on the right ankle and bruises on both legs. There is an assertion of memory loss. The claimant failed to adduce evidence in support of the same. Such being the case, the court shall consider that the injuries suffered by the claimant are soft tissue injuries. This was duly conceded by the claimant's witness during cross-examination. Other than that, during cross-examination it became clear that the accident having taken place about six years ago, the claimant had healed. It did not come as a surprise when the court was not shown the scars where the claimant sustained cut wounds and bruises. Be that as it may, this court still recognizes the fact that the accident exposed the child to a lot of pain and suffering arising from the cuts and bruises. His wounds were sutured and dressed with iodine and he was given some painkillers. I believe the treatment also exposed him excruciating pain.

Counsel representing the claimant has cited several cases for comparative purposes. The cases are predominantly on soft tissue injuries. The highest award is K1,500,000.00 and the latest award was made in 2014. In my opinion, in considering the cited cases, the court ought to consider the devaluation of the Kwacha. Thus, upon a thorough consideration of facts and circumstances of this case, and upon an exhaustive consideration of the submissions by Counsel in the light of the relevant and applicable law regarding damages for personal injuries, I award the claimant **K2,500,000.00** under the heads claimed and proved.

CONCLUSION

The claimant is awarded **K2,500,000.00** as damages 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 11th DAY OF AUGUST 2021


WYSON CHAMDIMEBE NKHATA

ASSISTANT REGISTRAR