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**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 835 OF 2020**

BETWEEN

STEVEN MATIKI CLAIMANT

AND

JOHN MHANGO 1ST DEFENDANT

NICO GENERAL INSURANCE COMPANY LIMITED 2ND DEFENDANT

CORAM : HER HONOUR MRS. E. BODOLE, ASSISTANT REGISTRAR

Mickeus, of Counsel for the Claimant

Counsel for the Defendants, absent

Mrs. Chilemba, Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

Introduction

The Claimant brought proceedings against the Defendants claiming damages for pain and suffering, deformity and incapacitation, special damages, and costs of the action. Judgment on liability was entered for the Claimant on 23rd November, 2020. The matter has now come for assessment of damages.

The Evidence

On 15th October, 2017 the 1st Defendant was driving motor vehicle registration number MZ 1989 BMW Saloon insured by the 2nd Defendant. He was driving from the direction of Blantyre heading Limbe along Masauko Chipembere Highway. Upon arrival at a place near Universal Industries, he hit the Claimant as he was crossing the road from the right-hand side of the road to the left-hand side of the road.

As a result of the accident, the Claimant sustained injuries. According to the medical report, the Claimant sustained fracture of the tibia on the left leg. He was taken to Queen Elizabeth Central Hospital where he was subjected to very painful procedures. A plaster of Paris was applied on the injured leg. He was admitted in hospital from 15th October, 2017 to 22nd October, 2017.

Before the occurrence of the accident, the Claimant enjoyed good health. He could walk long distances without any problems. As a result of the injuries he sustained, the he is unable to walk long distances due to the pain in his left leg and he is thus incapacitated. He is also deformed as he has permanent scars. He is, therefore, going to suffer permanent effects of the accident.

The Claimant is claiming a sum of K28,00.00 as costs for procuring Police and medical reports. He produced a receipt of K3,000.00 as costs for procuring Police Report but did not produce any receipt as to the medical report.

Applicable Law

A person who suffers bodily injuries due to the negligence of another is entitled to the remedy of damages. Such damages are recoverable for both pecuniary and non-pecuniary losses. The principle underlying the award of the damages is to compensate the injured party as nearly as possible as money can do it – *Elida Bello v Prime Insurance Company Ltd* Civil Cause No. 177 of 2012.

The damages cannot be quantified in monetary terms by use of a mathematical formula but by use of experience and guidance affordable by awards made in decided cases of a broadly similar nature – *Wright v British Railway Board [1983] 2 AC 773*. The Court, however, considers the time the awards were made and currency

devaluation – *Kuntenga and Another v Attorney General* Civil Cause No. 202 of 2002.

The non-pecuniary head of damages include pain and suffering, loss of amenities of life and disfigurement. These are assessed by the Court. Pecuniary loss must be pleaded and proved. Where a party has not proved special damages reasonable compensation in the circumstances can be awarded - *Renzo Benetollo v Attorney General and National Insurance Company Ltd* Civil Cause No. 279 of 1993.

Pain and Suffering

Pain and suffering is attributable to the Claimant's injury or to any necessary surgical operations and mental anguish such as that suffered by a person who knows that his expectation of life has been reduced or who being severely incapacitated, realizes the condition to which he has been reduced – *Sakonda v S.R. Nicholas* Civil Appeal Cause No. 67 of 2013.

Incapacitation/Loss of Amenities of Life

Loss of amenities is attributable to deprivation of the Claimant's capacity to engage in some sport or past-time which he formerly enjoyed – *Kanyoni v Attorney General* [1990] 13 MLR 169. It means that he is incapable of performing some activities he used to do.

Deformity/Disability

Disability is a limitation either physically or mentally for someone to do what any other person can do without reasonable accommodation. In *Ching'amba v Deerless Logistics Ltd* Civil Cause No. 2888 of 2007 the Court stated that disfigurement is not a matter to be taken lightly and casually. It is something that one has to live with permanently.

Analysis

It is clear from the evidence that the Claimant was in great pain and suffered a lot. According to the medical report, the Claimant sustained fracture of the tibia of the left leg. A plaster of Paris was applied on the injured leg. He was admitted in hospital for 8 days. He is unable to walk long distances due to the pain in his left leg. He is thus incapacitated. He is also deformed as he has permanent scars.

Award of Damages

In *Mackenzie Masamba v Mr. Kelvin Messa and Britam Insurance Company Limited* Personal Injury Cause No. 388 of 2018 the Claimant sustained fracture of the left rib, multiple cuts on the head, painful right leg and severe soft tissue injury. He had difficulties in doing household work and sporting activities. The Court awarded him a sum of K4,000,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement on 26th February, 2020. In *Jamson Makwinja v Edward Basikolo and Prime Insurance Company Limited* Personal Injury Cause No. 191 of 2019 the Claimant sustained an open fracture of the right tibia and fibula. He was in fixators for 2 months and plaster of Paris for 1 ½ months. He was admitted in hospital for 9 days. His leg had been shortened by 0.5 centimetres. The Court awarded him a sum of K5,800,00.00 as damages for pain and suffering, loss of amenities of life and disfigurement on 28th February, 2020.

The injuries sustained by the Claimants in the above-mentioned cases are similar to the injuries sustained by the Claimant in the present. This Court, therefore, awards the Claimant a sum of K5,000,000.00 as damages for pain and suffering.

Special Damages

Special damages are supposed to be pleaded and proved. There is no evidence to show that the Claimant expended the amount he is claiming for obtaining the medical report from Queen Elizabeth Central Hospital. This is a free hospital so if some money had been spent, that should have been shown to the Court. However, this Court is mindful of the fact that the Claimant had to travel to the hospital from home in order to obtain the medical report. Reasonable compensation for that is fair and just. This Court, therefore, awards him a sum of K8,000.00 as costs for procuring the medical report.

The Claimant adduced evidence to show that he spent the money he is claiming for procuring the Police report. The Claimant is, therefore, awarded a sum of K3,000.00 as costs for procuring the Police report.

Conclusion

The Claimant is hereby awarded a total sum of K5,011,000.00. He is also awarded costs of this action.

Made in Court this day of 4th day of June, 2021 at Blantyre.



EDNA BODOLE (MRS)

ASSISTANT REGISTRAR