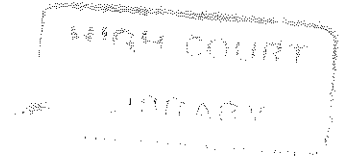


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REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY NO. 436 OF 2016

BETWEEN

ROSE MOYENDA..... CLAIMANT

AND

TIMOTHY CHIGWERE... 1ST DEFENDANT

PRIME INSURANCE CO. LTD..... 2ND DEFENDANT

CORAM: T. Soko, Assistant Registrar

Mr Kanyika, of counsel for the claimant

Mr Tembo, of Counsel for the Claimant

Mr. G. Phiri, of Counsel for the defendant  01/03/2021

N. Munthali, Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

Introduction

This is an order on assessment of damages pursuant to a consent judgment on liability against the defendant dated 30th March 2019. The claimant's claim is for damages for pain and

suffering, damages for loss of amenities of life, damages for disfigurement, K13,500.00 as cost for both police and medical report and costs of the action. The facts aver that on or about the 8th day of August 2015, the 1st defendant was driving a motor vehicle from the direction of Zalewa road block heading towards Zalewa turn-off. Upon arrival at or near Zalewa filling station, he hit the unknown male pedal cyclist who was carrying a Pillion Passenger, the claimant herein and was cycling towards same direction with the said motor vehicle. As a result of the accident, the claimant sustained multiple injuries.

Evidence

In evidence, the claimant adopted her witness statement where she averred that as a result of the accident, the claimant suffered multiple deep cuts on the head and bruises on the face, back and both knees. The claimant was attended to and treated at Queen Elizabeth Central Hospital. She tendered a police and medical report as part of evidence. The claimant stated that she also had injuries on her teeth. She showed the Court a picture to supplement her evidence. She also stated that she had injuries on her neck. She said she did not receive treatment for her neck and teeth. She stated that she discovered about the injuries soon after she was discharged out of the hospital. She said she continued to take medicine that she was given.

In cross examination, she stated that she realised about the neck pains in August 2015. She stated that she never went to the hospital but continued with the medication. She admitted that there was no evidence that she was still experiencing pain because the medical report was done in 2015. She said she had permanent scars on the buttocks, shoulder and face. She stated that she suffered upper part according to the medical report. She stated that she did not lose her teeth but the teeth hurt.

Submissions

In submissions, Counsel for the claimant submitted that the claimant should be awarded a sum of K5,000,000.00 in all heads of damages. Counsel cited the following authorities:

1. **Lovemore Mathemba vs Prime Insurance Co. Ltd Personal Injury Cause No. 358 of 2013** where the plaintiff suffered a deep cut wound at the back of the head, chest injuries and multiple bruises on the legs. The Court awarded the claimant a sum of

K4,450,000.00 as damages for disfigurement, pain and suffering and loss of amenities of life. The award was made on 29th October 2015.

2. **Frank Vashco vs Farook Haquin & Olympic Bakery Personal Injury Cause No. 1043 of 2015**, where the claimant sustained a deep cut wound on the head, multiple facial bruises and a cut wound on the right palm. The Court awarded the claimant a sum of K4,100,000.00 as damages for pain and suffering and loss of amenities of life. The award was made on 10th March 2016.
3. **Habet Lidaka vs Charles Van Remoortere and Prime Insurance Co Ltd Personal Injury Cause No. 124 of 2015**, where the claimant suffered soft tissue injuries, multiple body wounds, bruises and abrasions and general body pains. The Court awarded the claimant a sum of K2, 300,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement. The award was made on 16th July 2015.
4. **Zalimba Misomali vs Alex Kamgogo and Prime Insurance Co Ltd Personal Injury Cause No. 389 of 2012** where the plaintiff sustained head injuries and multiple bruises on the face and knees. The Court awarded the claimant a sum of K2, 200,000.00 as damages for pain and suffering and loss of amenities of life. The award was made on 10th September 2015.
5. **Gift Maulidi vs Chikondi Kuwani and General Alliance Insurance Co. Ltd Civil Cause No. 247 of 2015**, where the plaintiff suffered multiple bruises on the right and left knee joint, painful right arm, chest pains, painful back as well as a deep cut wound on the right shoulder. The Court awarded the claimant a sum of K2, 000,000.00 as damages for pain and suffering and loss of amenities of life. The award was made on 30th June 2015.

It is a trite law that in Civil Cases the burden of proof rest upon he who asserts the affirmative. The standard of proof is that on balance of probabilities. It was stated in **Miller vs Minister of Pension (1942) All ER 372** that the degree is well settled. It must carry a reasonable degree of probability not so high as is required in a criminal case. If the evidence is such that the tribunal can say: We think it more than not, the burden of proof is discharged, but if the probabilities are equal it is not. See **Miller vs Minister of Pensions and also Mr Lipenga(Administrator of the Estate of Janet George) vs Prime Insurance Co Ltd Civil Cause No. 2306 of 2004**.

The general principle on which damages are assessed is that “damages due either for breach of contract or tort are damages which, so far as money can compensate will give the injured party reparation for the wrongful act.” See Admiralty Commissioners Vs S.S. Valeria (1922) AC 242 at 248.

Pain and Suffering

It 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. **See City of Blantyre vs Sagawa (1993) 16(1) MLR 67 (SCA)**

Loss of amenities of life

Loss of amenities of life is attributed to the deprivation of the claimant’s capacity to engage in a past time activity which he formerly enjoyed. It embraces all that which reduces the plaintiff’s enjoyment of life, his deprivation of an amenity of life whether he is aware of it or not. See Kanyoni vs Attorney General (1990) 13 MLR 169 and Blantyre Sagawa (1993) 16(1) MLR 67 (SCA).

Disfigurement

Damages are paid under this head for the change in physical form of a person injured either as a result of the impact of the injury or its treatment, such as a scar coming in as a result of a surgical operation necessitated by the injury.

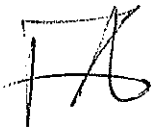
Determination

The medical evidence shows that the claimant sustained multiple deep cuts on the head, bruises on the face, back and both knees. The claimant also showed the Court pictures showing that she sustained the said injuries and also injury on the teeth. There is no adequate evidence supporting that she had injuries on her neck. The wounds were sutured and dressed. Besides, the claimant was given analgesics. Looking at the nature of the injuries and the treatment that the claimant received, there is sufficient evidence that the claimant went through pain and suffering. Besides, it was recorded in the medical report that the claimant will have difficulties to perform manual work and previous job. The injuries also left the claimant with scars. Counsel submitted that the claimant should be awarded a sum of

K5,000,000.00 as damages. However, the injuries that the claimant sustained were not very serious for this Court to award the said sum. In my view the case of Zalimba Misomali where the claimant was awarded K2, 200,000.00 is more relevant to this case. Considering that the award was made in 2015 and that our currency has devalued, I award the claimant a sum of K2, 500,000.00 as damages for pain and suffering and disfigurement and K500,000.00 as damages for loss of amenities of life. I will not award special damages since they have not been proved. In total, I award the claimant a sum of K3,000,000.00 in all heads of damages.

Costs are for the claimant to be taxed if not agreed.

Made on this ¹⁴ day of March 2021.



T.Soko

Assistant Registrar