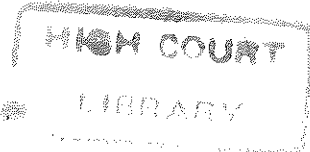


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REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 428 OF 2020

BETWEEN

WILLIAM MPATA.....CLAIMANT

AND

REVEREND MALANI MTONGA.....1st DEFENDANT

PRIME INSURANCE CO. LTD.....2nd DEFENDANT

Coram: T.Soko, Assistant Registrar

Mwaungulu, Counsel for the claimant

Ndhlobvu, Counsel for the defendant

N. Munthali, Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

Introduction

This is the order on assessment of damages following an order by Honourable Justice Tembo to enter liability against the defendant dated 13th October 2020. The claimant's claim is for damages for pain and suffering, loss of amenities of life, deformity and disfigurement, replacement value of the motor cycle, cost of police and medical report and costs of the action. The facts aver that on 27th August 2019, the claimant was riding his motor cycle from the direction of Chileka Health Centre heading towards Ngumbe Trading Centre on Chileka Airport Road when at or near Ten Miles near Pamba Wholesalers the 1st defendant hit the

claimant whilst turning to the right to Pamba Wholesalers shop. As a result of the accident, the claimant sustained injuries.

Evidence

On the date of hearing of assessment of damages, the claimant adopted his witness statement where he stated that as a result of the accident, he sustained mild head injury, fracture of the ribs with lung contusions, sprained right knee and bruised shoulder. He was taken to Queen Elizabeth Central Hospital where he was fully treated. He was admitted for one week and after that, he was treated as an outpatient up to January 2020. The claimant produced and exhibited a medical report and two pictures marked WM3, WM4 and WM5. He said since the accident, he feels lapses in memory and pain on the knee joint when walking or squatting. The motor cycle was extensively damaged such that its handle bar, headlamps and fuel tank got damaged. He stated that he paid K3,000.00 for the police report and K30,000.00 for the medical report. The claimant also claims the replacement value of the motor cycle and costs of the action.

In cross examination, the claimant stated that he was better. He said he was unable to walk and use hands properly. He said he was able to breath without problems. The claimant responded that he had not brought x-ray pictures but the x-ray pictures were at the hospital. He stated that he was not better as he still feels pain in his ribs. He was asked if he visited the hospital for the pain he was struggling with and the response was negative. He admitted that he was feeling better than the time of the accident. He stated that he was able to work and find food for the family. He stated that he was able to fetch for the daily livelihood. He said he had difficulties to walk sometimes.

In re-examination, he stated that the x-ray pictures were still at QECH and he was not given. He said the reason why he did not go back to the hospital he was being assisted at the hospital where he works to do the physiotherapy. He stated that his right leg hurts and his ribs as well. He complained that his leg still hurts when he walks for a long distance.

Submissions

In submissions, Counsel representing the claimant submitted that the claimant should be awarded a sum of K15,000,000.00 as damages for personal injuries, K3,000.00 as costs of police report and costs of the action. Counsel cited the following cases

1. **Rita Exton vs Christopher Emanuel and Prime Insurance Co. Ltd Personal injury cause No. 394 of 2018** where the claimant after the accident, lost consciousness and regained it after 10 minutes. The claimant sustained broken shoulder, collar bone and ribs, cut on the forehead and dislocated knee joint. The claimant was awarded a sum of K6,213,346.00. The award was made on **5th March 2019.**
2. **Friday Mtelera vs Nenani Misolo and Prime Insurance Co. Ltd** where the claimant sustained fracture of femur, fracture of right patella, fracture of tibia/fibula, cut on the left leg, cut on the right elbow and bruises. The claimant was awarded a sum of K5,0020,000.00 as damages for pain and suffering, K1,000,000.00 as damages for loss

of amenities of life and K1,000,000.00 as damages for disfigurement and costs of the action.

3. **Thomasi Matemba vs Richard Kalitendere and Britam Insurance Co. Ltd Personal Injury No. 913 of 2016** where the claimant suffered a broken tibia and fibula and used clutches to stabilize. He wore a Plaster of Paris for 5 months. He was awarded K6,000,000.00 as damages for personal injuries. The award was made in October 2017.
4. **Zuze Bonjesi vs Prime Insurance Co. Ltd Civil Cause No. 488 of 2011** where the claimant was awarded K7,000,000.00 as damages for personal injuries. The claimant sustained severe open fracture of the left tibia and deep wound on the right leg. The award was made on 17th July 2012.
5. **Christina Mande vs Charter Insurance co. Ltd Personal injury Cause No. 329 of 2016**, where the claimant was awarded K6,300,000.00 as damages for personal injuries. The claimant sustained fracture of the right femur, dislocation of the right hip joint, cuts on the head and lost consciousness on the spot. She spent 1.5 months getting treatment at QECH. She continued feeling numbness to the leg each time she walked. Her permanent incapacity was pegged at 20%. The court awarded K6,300,000.00. The award was made on 11th January 2017.
6. **Rex Walala vs Davison Chikuta and Prime Insurance Co. Ltd Civil Cause No. 461 of 2011** where the claimant was awarded K6,500,000.00 for damages for personal injuries. The claimant sustained fracture of the left tibia, bruises on the left arm and cuts on his face. The award was made on 20th March 2013.

The defendants did not file submissions but it does not refrain me from exercising my jurisdiction to award the damages.

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 evidence of the claimant is clear that the claimant sustained mild head injury, fracture of the ribs with lung contusion, sprained right knee and bruised shoulder. The claimant went through severe pain considering the nature of the injuries that he sustained and the treatment he received from the hospital. The claimant also went through psychological torture looking that he was in the hospital and that he had sustained severe injuries. He complained that he still feels pain when he walks for a long distance. According to the medical report, the claimant was admitted for a week and his degree of incapacity was pegged at 25%. The cross examination by the defendant did not controvert that the claimant sustained the above injuries.

I have considered the authorities cited by Counsel for the claimant and in my view K7,000,000.00 will adequately compensate the claimant for damages for pain and suffering, disfigurement and loss of amenities of life. On special damages such as the cost of medical and police report as well as replacement value of the motor cycle, no substantial evidence has been provided before this Court to warrant the award of the same. I therefore decline to award special damages.

In total I award the claimant a sum of K7,000,000.00 and costs of the action to be taxed if not agreed by the parties.

Made on this ^{10th} day of ^{March} February 2021.



T.Soko

Assistant Registrar