



Republic of Malawi
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 66 OF 2021

BETWEEN
MISHECK BEN (A minor suing
through her father and Litigation guardian,
VALALIANO BEN) CLAIMANT
AND
PRIME INSURANCE COMPANY
LIMITED 1ST DEFENDANT
CHIFUNIRO KAPALALIZA 2ND DEFENDANT

CORAM :
MATAPA KACHECHE Deputy Registrar
Chakuwawa for the Claimant
Chisale For the Defendant
Mbekeani Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

1. By a summons dated 5th February, 2021 the plaintiff claimed the following reliefs: damages for pain and suffering, damages for loss of amenities of life, damages for disfigurement, K3,000.00 cost of police report, and K10,000.00 cost of medical report.
2. It was alleged that the claimant, then aged seven (7) years, on 7th November, 2020, was crossing the road at Iponga Shop along the Blantyre-Zalewa Road when he was hit by motor vehicle Registration Number BLK 3519, Toyota Sienta Saloon.
3. The vehicle was insured by the first defendant and driven by the second defendant.

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4. On 29th April, 2021, during mediation, the parties agreed to have a judgment entered against the defendants for negligence that resulted in the accident.
5. The parties were allowed to continue with the negotiations outside court and were required to report back to the judge after 14 days. Apparently the negotiations yielded nothing and the parties brought the matter to the Registrar to have the damages assessed.
6. The matter came before me for assessment on 29th July, 2021 and claimant's litigation guardian was the only witness called on the claimant's behalf. The defendant did not bring in any witness but asked to be allowed to file submissions.
7. It was stated on behalf of the claimant that, as a result of the accident, the claimant suffered the following injuries: deep cut wound on the nose, bruises on the right elbow, serious cut wounds on the right elbow, multiple serious bruises on the left ribs, painful right arm, painful left ribs, serious degloving wound on the left ribs, multiple lacerations on the right knee, painful back, bruises and general body pains.
8. I must state that, in its submission the defence asks this court to ignore the whole testimony of the litigation guardian on account of it being hearsay. I must state that this was not raised as an issue at the time of assessment and in any event, in my view the fact of the accident and injuries suffered were already settled by the judgment. What remained was the quantum of damages awardable as per the pleaded injuries. The issue cannot be reopened at this stage.
9. A person who suffers bodily injuries due to the negligence of another is entitled to the remedy of damages. The principle is that the Court must, as nearly as possible, award an amount, as far as money can, which will put the plaintiff in the same position s/he would have

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been in if s/he had not sustained the wrong for which s/he is being compensated.

10. Such damages are recoverable for both pecuniary and non-pecuniary losses. The pecuniary losses include loss of earning capacity and related benefits and medical expenses and related expenses. In this case we are to assess non pecuniary damages for pain and suffering, loss of amenities and disfigurement and pecuniary damages being the claim for the cost of the medical report and police report.
11. Pain refers to the immediately felt effect on the nerves and brain of some lesion or injury to a part of the body, while suffering is distress which is not felt as being directly connected with any bodily condition.
12. Loss of amenities of life concentrates on the curtailment of the plaintiff's enjoyment of life by their inability to pursue the activities they pursued before the injury. Bricket L.J. put it thus in *Manley v. Rugby Portland Cement Co. (1951) C.A. No 286*, reported at Kemp and Kemp, *The Quantum of Damages*, Vol. 1 (2nd Ed., 1961, p. 624.2

"There is a head of damage which is sometimes called loss of amenities; the man made blind by the accident will no longer be able to see the familiar things he has seen all his life; the man who has had both legs removed will never again go upon his walking excursions- things of that kind-loss of amenities."
13. The amount to be awarded for this head of damages cannot be quantified in monetary terms by use of a mathematical formula but by use of experience and guidance afforded by awards made in decided cases of a broadly similar nature. See *Wright v British Railway Board [1983] 2 AC 773*.
14. Disfigurement refers to the change in physical form of a person injured either as a direct result of the injury such

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as scars that remain after the wound heals, or its treatment, such as scars coming in as a result of surgical operation necessitated by the injury. Again the amount awardable here cannot be scientifically quantifiable.

15. The defence contends that damages for disfigurement were not pleaded. The statement of claim clearly claims damages for disfigurement as a relief. And my notes show that the claimant was made to show some scar in this Court although the scar is largely fading.
16. In its submissions the defence says damages for pain, suffering and loss of amenities are awarded as a lumpsum and not separately – counsel cites *City of Blantyre v Sagawa* [1993] 16(1) MLR 67. And asks this court to follow *Tabord v David Whitehead and Sons (Malawi) Ltd* [1995] 1MLR 297 to incorporate the damages for disfigurement in damages for pain and suffering.
17. With due respect to counsel, the two cases did not set a general rule to be incorporating all damages into one lump sum. In fact, the two judgments emphasized that all these heads of damages are separate and need to be considered separately. However, in those particular cases the Court justified why the damages were incorporated.
18. I for one am very reluctant to lump all heads of damages into one lump sum as this practice clearly distorts precedents on assessment of damages as, in such instances there is no clear guidance as to how each head affected the final outcome of the award. I will therefore separate the awards apart from the pain and suffering one since by their nature, pain and suffering are intertwined.
19. I am grateful to counsel for both sides for doing a good research to come up with previous awards. Numerous orders have been cited but I do not intend to refer individually to them. Suffice to say that the cited awards were in respect of more serious injuries than the present

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case. I will have them in mind though as I come up with my final award.

20. From the narrated facts above, it is clear that the claimant's injuries were multiple bruises and some general body trauma. As at the time of assessing damages he had almost fully healed save for some back pain. At the time of the accident he had been taken to hospital and was treated as an outpatient. No surgical procedures were operated on him.
21. Further I must state that the claimant has not proved any amenities that were lost although loss of the same was pleaded and, therefore was awarded in the judgment. The result is that I will award a very small amount to satisfy the judgment.
22. Having considered all the relevant facts, I make the following awards:
 - a. Damages for pain and suffering – K750, 000.00
 - b. Damages for loss of amenities – K250, 000.00
 - c. Damages for disfigurement – K500, 000.00
 - d. Special damages for the cost of police report – K3, 000.00
23. The total award therefore comes to K1, 503, 000.00.
24. I also award costs of these proceedings.

Delivered this 20th day of May 2022



Chimbizgani Matapa Kacheche
Deputy Registrar