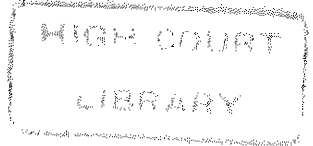


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**REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CASE NUMBER 370 OF 2020**

BETWEEN

**CHIKONDI NJOBVUYALEMA.....CLAIMANT
-AND-**

**GREY MAKONDE1ST DEFENDANT
PRIME INSURANCE COMPANY LIMITED2ND DEFENDANT**

Coram

E. Chapita- Banda, Assistant Registrar
Ms. S. Muhammad, Counsel for the Claimant
Mr. Tembo, Counsel for the 2nd Defendant
Ms. Chida, Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

On 6th December 2019, the claimant was riding a motorcycle along Chingeni - Liwonde Road when he was hit by motor vehicle registration number CZ 7623 Toyota Dyna Pick-up. He sustained injuries and sued the 1st and 2nd defendant who were the driver and insurer of the motor vehicle at the time of the accident. He claims damages for pain and suffering; loss of amenities of life; and disfigurement due to the injuries he sustained in the accident.

Judgment was entered for the claimant pursuant to a mediation session between the parties. The 2nd defendant's liability was made subject to the policy limit of K5,000,000.00. The parties appeared before me for assessment of damages on 12th January 2022. This is an order on assessment of damages.

The Evidence

According to the claimant, when he was hit by the motor vehicle registration number CZ 7623 Toyota Dyna Pick-up, he sustained a fractured jaw and a wire was used for six weeks to put it back together. He got one loose tooth. He also sustained a cut on the jaw and bruised knees. As a result of the injury, he had to survive on watery foods for a period of six months and spent quite a fortune on juices and his fish business suffered.

He stated that the injury on his jaw took one year to heal. To date the witness cannot chew hard food as that invites pain. He cannot play football as running leads to shaking of the jaw which is also painful.

Comparable Cases

In her submissions to the court and as a basis of comparison with the current case, counsel for the claimant cited the case of **Aaron Amosi and Another v Lanjesi Lile and Prime Insurance Company Limited**, Personal Injury Cause No. 133 of 2013 (unreported), in which the claimant had fractures on both legs, dislocation of the right shoulder and was awarded K4,000,000.00 as damages for pain and suffering; K2,000,000.00 as damages for loss of amenities of life; and K1,000,000.00 as damages for disfigurement.

In **Simon Nyondo v Banja la Mtsogolo**, Civil Cause No. 109 of 2013 (unreported), the claimant was awarded K4,100,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement in 2018. The claimant sustained head injuries, fracture of the left humerus and bruises on the head and arm.

Damages for Pain and Suffering and Loss of Amenities of Life

A claimant who has suffered loss as a result of a defendant's negligence is entitled to compensation. The damages awarded to the claimant are meant to compensate for both pecuniary and non-pecuniary losses. For non-pecuniary losses courts have made awards for pain, suffering and loss of amenities. See **Lindani v Mlenga and Another** (1992) 15 MLR 199.

In **Sumana v Hara and another** [1993] 16(2) MLR 843 at page 847, the High Court elucidated 'pain and suffering'. The Honourable Judge stated:

“Pain and suffering are ordinary words. Pain refers to that which is felt by the senses, the discomfort, the ache, etcetera. Suffering refers to the mental injuries and the actual pain and the overall effect of the injury now and for the future.”

On amenities the judge had this to say:

“Amenities are really the things that the injury will deprive enjoyment of. In one case it would be loss of leisurely pursuit, in other cases it would just be the enjoyment of work, all these come under the epithet, “amenities”.

The claimant experienced pain and suffering at the time of the accident and even throughout the treatment process. As a result of the injury, he cannot enjoy certain foods which are hard to chew or play football due to pain on his jaw when he does so.

With the comparable cases in mind and considering the specific injuries sustained by the claimant herein, I award the claimant K3,000,000.00 as damages for pain and suffering and K1,000,000.00 as damages for loss of amenities of life.

Damages for Disfigurement

Damages for disfigurement were initially awarded as part of damages for pain and suffering owing to the suffering a claimant went through as a result of being disfigured. See **Mwasinga v Stagecoach (Mal) Ltd** 1993 16 (1) MLR 363. Later they began to be awarded separately where a claimant is embarrassed by the disfigurement. In **Matenje v Beams** (1992) 15 MLR 253, the court awarded damages for disfigurement as a separate head of damages when the claimant got scarred as a result of a dog bite.

Damages for disfigurement are awarded to compensate for a change in a claimant's physical form or appearance as a result of injury. See **Francis Chikoti v United General Insurance Company Limited**, Personal Injury Cause No.1958 of 2016.

The claimant's disfigurement in the present case is hardly noticeable. He has a loose tooth. The evidence does not prove any other deformities apart from this. I never saw any of his scars. K300,000.00 is reasonable and is awarded to the claimant as damages for disfigurement.

Special Damages

No attempt was made to prove the special damages apart from a mere repetition of his pleadings.
They are not awarded.

Total Award

The claimant has been awarded K4,300,000.00 as damages in total.

Dated 20th Day of May 2022

E. CHAPITA- BANDA
ASSISTANT REGISTRAR

