



**JUDICIARY**



**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**PERSONAL INJURY CAUSE NO. 867 OF 2013**

**BETWEEN**

**DOROTHY GOLOMBE ..... 1<sup>ST</sup> PLAINTIFF**

**ANDREW CHAPE ..... 2<sup>ND</sup> PLAINTIFF**

**HYMAN GRANT CHATEPA ..... 3<sup>RD</sup> PLAINTIFF**

**CHIPATA MAMBALA ..... 4<sup>TH</sup> PLAINTIFF**

**JOLINI CHATEPA ..... 5<sup>TH</sup> PLAINTIFF**

**SEMU DZUNGULIMODZI ..... 6<sup>TH</sup> PLAINTIFF**

**AND**

**TRANS RUKURU BUS SERVICE ..... DEFENDANT**

**CORAM : HER HONOUR MRS E. BODOLE**

Ms. Kambwili, of Counsel for the Plaintiff

Counsel for the Defendants, Absent

Ms. Kazembe, Court Clerk

## **ORDER ON ASSESSMENT OF DAMAGES**

### **Introduction**

The plaintiffs and 2<sup>nd</sup> defendant entered consent judgment on 12<sup>th</sup> October, 2016 for damages for personal injuries and special damages as pleaded. The matter has now come for assessment of damages for pain and suffering, loss of amenities of life, disfigurement, loss of earning capacity and special damages. The 3<sup>rd</sup> plaintiff did not appear during the assessment proceedings.

I must thank Counsel for the plaintiff for the authorities on assessment of damages which were useful to this court.

### **The Evidence**

On 6<sup>th</sup> April, 2013, the plaintiffs were lawful passengers in motor vehicle registration number 5286 Scania Marcopolo bus which belonged to the defendant. The bus was travelling from Balaka heading towards Ntcheu. Upon arrival at Kamzingeni village the driver of the bus lost control of the bus and served to the nearside verge, hit road embankment and stopped in a maize garden.

As a result of the accident the plaintiffs sustained injuries. The 1<sup>st</sup> plaintiff sustained a painful shoulder and painful leg. She testified that after she mops or work, the left leg gives her pain and sometimes gets swollen. She works as a house keeper.

The 2<sup>nd</sup> plaintiff sustained a laceration on the mouth and painful lower molar tooth. He testified that the tooth was later removed. The court noted a scar on the lip. He is feeling fine now.

The 4<sup>th</sup> plaintiff sustained a painful right ankle and left hip (subluxation of the hip). He testified that after he was injured he was unable to sit due to back pain. He is now feeling better only that he is unable to farm because of the back pain. He is a farmer.

The 5<sup>th</sup> plaintiff sustained swollen right lateral side of the head and a deep cut wound on the anterior aspect of the right leg. He testified that he has scars on his body. This court noted a small scar barely visible on the head and a small scar like a black dot on the leg. He is feeling fine now.



The 6<sup>th</sup> plaintiff sustained a painful right shoulder. She testified that she feels pain when she stretches herself and she is unable to lift heavy objects. She works as a house keeper.

The special damages being claimed by each of the plaintiffs are K3,000.00 and K2,500.00 as costs for obtaining Police and medical reports respectively.

#### General Law on Damages

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 Co. Ltd** Civil Cause No. 177 of 2012 (unreported).

The 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 – **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. In **Renzo Benetollo v Attorney General and National Insurance Co. Ltd** Civil Cause No. 279 of 1993 (HC) the court held that where a party has not proved special damages reasonable compensation in the circumstances can be awarded. In **Phiri v Daudi** [1992] 15 MLR 404 (HC) the court did not allow the claim for loss of profits as these were special damages that had to be specifically pleaded and strictly proved. The court awarded damages on the basis that during the period the vehicle was with the defendant, the plaintiff lost profit and use of the vehicle.

#### Pain and Suffering

Pain and suffering is attributable to the plaintiff'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.

It is clear from the evidence that the plaintiffs went through a lot of suffering and were in great pain and are still suffering. The 1<sup>st</sup> plaintiff sustained a painful shoulder and painful leg. After she mops or work, the left leg gives her pain and sometimes gets swollen.

The 2<sup>nd</sup> plaintiff sustained a laceration on the mouth and painful lower molar tooth. The tooth was later removed.

The 4<sup>th</sup> plaintiff sustained a painful right ankle and left hip (subluxation of the hip). After he was injured he was unable to sit due to back pain. He is now feeling better only that he is unable to farm because of the back pain.

The 5<sup>th</sup> plaintiff sustained swollen right lateral side of the head and a deep cut wound on the anterior aspect of the right leg.

The 6<sup>th</sup> plaintiff sustained a painful right shoulder. She feels pain when she stretches herself and she is unable to lift heavy objects.

#### **Loss of Amenities of Life**

Loss of amenities is attributable to deprivation of the plaintiff'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.

It is clear from the evidence that the 1<sup>st</sup> plaintiff is unable to enjoy life as she used to. Her leg gives her pain and sometimes gets swollen after she mops or works. This is very unfortunate and inconvenient because she is a house keeper and this requires her to do such chores.

It is also clear that the 4<sup>th</sup> plaintiff has been deprived of enjoyment of his life as before. He is unable to farm because of the back pain. He is a farmer and his livelihood has been taken away from him.

The 6<sup>th</sup> plaintiff is unable to enjoy life as she used to. She feels pain when she stretches herself and she is unable to lift heavy objects. This is very unfortunate



for her because she works as a house keeper which requires her to lift heavy objects.

There is no evidence to show that the 2<sup>nd</sup> plaintiff and the 5<sup>th</sup> plaintiff are unable to enjoy life as they used. The assessment on this head is dismissed.

#### 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.

The 2<sup>nd</sup> plaintiff has a permanent disability in that he lost one tooth. He also has a scar on the lip which has taken away his beauty.

The 5<sup>th</sup> plaintiff has a small scar barely visible on the head and a small scar like a black dot on the leg. They are very minor scars though it is not very clear whether or not they will fade with time.

There is no evidence to show that there is any permanent limitation either physically or mentally on the 1<sup>st</sup> plaintiff, 4<sup>th</sup> plaintiff and 6<sup>th</sup> plaintiff. This head on the assessment of damages is dismissed.

#### Loss of Earning Capacity

Neither the evidence nor the skeleton arguments show how the injuries sustained by the plaintiffs would have an impact on their earning capacity. It appears to this court that this head on assessment of damages was abandoned. It is, therefore, dismissed.

#### Award of Damages

In **Trifonia Kaisi v Veramo Mukomera and Prime Insurance Company Limited** Personal Injury Cause No. 482 of 2014, the plaintiff sustained multiple cuts on the chest, legs and on both elbows. She also had a bruised face. She had permanent disfigurement in that she had scars and residual shoulder pain. She was awarded a sum of K1,800,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement. In **Master Kaliati v Prime Insurance Company Limited** Personal

Injury Cause No. 996 of 2013 the plaintiff sustained severe soft tissue injury, bruises, swollen left leg and reduced left knee joint movement. He was awarded a sum of K1,500,000.00 as damages for pain and suffering and loss of amenities of life.

Looking at the comparable cases above and the injuries sustained by the plaintiffs in those cases and this case, I make the following awards:

The 1<sup>st</sup> plaintiff is awarded a sum of K800,000.00 as damages for pain and suffering, and K500,000.00 as damages for loss of amenities of life. The 2<sup>nd</sup> plaintiff is awarded a sum of K800,000.00 as damages for pain and suffering, and K800,000.00 as damages for disfigurement. The 4<sup>th</sup> plaintiff is awarded a sum of K1,800,000.00 as damages for pain and suffering, and K1,000,000.00 as damages for loss of amenities of life. The 5<sup>th</sup> plaintiff is awarded a sum of K1,000,000.00 as damages for pain and suffering, and K150,000.00 as damages for disfigurement. The 6<sup>th</sup> plaintiff is awarded a sum of K600,000.00 as damages for pain and suffering, and K500,000.00 as damages for loss of amenities of life.

#### Special Damages

Special damages are supposed to be pleaded and proved. There is no evidence to show that the plaintiffs expended the amount they are claiming for obtaining the medical report. If some money had been spent, that should have been shown to the court. However, this court is mindful of the fact that the plaintiffs had to travel to the hospital from home in order to obtain the medical report. Reasonable compensation for that is fair and just.

I, therefore, award each plaintiff a sum of K2,500.00 as costs for obtaining the medical report. I also award the each plaintiff a sum of K3,000.00 as costs for obtaining the Police report.

#### Conclusion

The 1<sup>st</sup> plaintiff is awarded a total sum of K1,305,500.00, the 2<sup>nd</sup> plaintiff a total sum of K1,605,500.00, the 4<sup>th</sup> plaintiff a total sum of K2,805,500.00, the 5<sup>th</sup> plaintiff a

total sum of K1,155,500.00, and the 6<sup>th</sup> plaintiff a total sum of K1,105,500.00. The plaintiffs are also awarded costs of the action.

Pronounced in court this 6<sup>th</sup> day of February, 2018 at Blantyre.



**E. BODOLE (MRS)**

**ASSISTANT REGISTRAR**