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REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 304 OF 2017

BETWEEN

HORRIS JAMAMUSI

(a minor suing through Hellen Martferd, his Litigation Guardian).....CLAIMANT

AND

NICO GENERAL INSURANCE CO. LTDDEFENDANT

CORAM: Texious Masoamphambe, Deputy Registrar

Mr Chisale, of counsel for the claimant

Defendant, Served but absent

Miss Mada Galafa, Clerk/Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

This is an order on assessment of damages following a default judgment against the defendants dated 10th December 2019. The claimant sued through Hellen Martferd, his litigation guardian. The claimant's claim is for damages for pain and suffering, loss of amenities of life, disfigurement, special damages and costs of the action. The facts aver that on 27th April 2019, at about 17:30 hours, the claimant was lawfully crossing at Zebra crossing from left to right along Limbe/Thyolo road at Nkhwazi Lodge when the driver of the motor vehicle registration number **TO 7075**, Hyundai Santafe, hit the claimant.

The claimant adopted his witness statement where he stated that consequent to the accident, he sustained a fracture of the right shoulder bone, serious cut wound at the back of the head and right arm, soft tissue injuries, multiple bruises and general body pains. The claimant produced and exhibited medical, police and ex-ray report as part of evidence.

Counsel for the claimant submitted that the claimant should be awarded a sum of **K8, 000,000.00** in all heads of damages and **K23, 000.00** being cost of police and medical report. Counsel cited a number of comparable cases which I appreciate.

In the present matter, it is a trite law 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 wrong fact. This was propounded in the case of Admiralty Commissioners vs S.S. Susquehanna (1926) AC 655.

When assessing damages payable for personal injuries, the Courts are guided by awards for comparable injuries. However, the Court considers the pain which the particular claimants suffered because the circumstances of the particular claimants are bound to have a decisive effect in the assessment of damages. HO Chidule vs Medi MSCA Civil Appeal No. 3633 of 2005, is a case in point.


In coming up with a quantum for damages for pain and suffering, the court considers the physical experience of the nerves and mental anguish which comes as a result of the injury. This was held in the case of Lemon Banda and 19 others V Mota Engil Limited and General Alliance Insurance Limited, personal injury cause number 178 of 2012 (unreported). Loss of amenities is concerned with loss of enjoyment of life. This follows from the fact that human beings enjoy certain activities which may as a result of the injury be curtailed. Disfigurement is concerned with change of looks of the individual. This may be scars, amputations and postures. The case in point is Lemon Banda and 19 others V Mota Engil Limited and General Alliance Insurance Limited, (supra).

The medical report that was tendered herein shows that the claimant sustained a fracture of the right clavicle and moderate head injury. Besides, the medical report shows that the claimant had abrasions on the face and head as well as soft tissue injuries. The claimant lost consciousness for

about 30 minutes after the accident and was admitted in hospital for several days. The claimant being 8 years old at the time of the accident, suffered severe pain and suffering. The claimant further stated that he has difficulties to perform his chores as he feels pain when doing hard manual work and sporting activities. The claimant also bemoaned that his school progress was affected due to the accident. I have a recourse to the case of *Rita Exton vs Christopher Emmanuel and Prime Insurance Co. Ltd Personal Injury Cause No.394 of 2015* where the claimant sustained suffered a broken shoulder, collar bone, ribs, cut on the forehead and dislocated knee. The Court on 5th March 2019 awarded the claimant the sum of **K6, 500,000.00** under all heads of damages. In *Elsie Deris Davies vs Nakoma and UGIC PI 108 of 2018* the Court awarded a sum of **K3,200,000.00** to a claimant who sustained a fracture of the fibula, mild head injury with cut wound, painful neck and severe pain on the shoulder. The award was made in 2018.

In the light of the foregoing I award the claimant a sum of **K5,000, 000.00** in all heads of damages, and **K23,000.00**, being special damages as pleaded. The claimant is further awarded costs.

Made this Wednesday, the 6th day of May 2020 in Blantyre.


Textious Masoamphambe
DEPUTY REGISTRAR