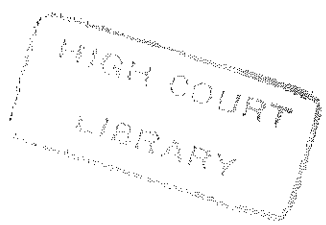


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IN THE HIGH COURT OF MALAWI

CIVIL DIVISION

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 782 OF 2018

Between

JOYCE AGNES MAUKA..... CLAIMANT

-and-

GENERAL ALLIANCE INSURANCE COMPANY LIMITED1ST DEFENDANT

PASTOR LIEUWE SHAAAFSMA 2ND DEFENDANT

CORAM: Austin Jesse Banda, Assistant Registrar

Phiri, on brief for Kamunga, for the Claimant

Kadyampakeni, for the Defendants

Galafa, Clerk/ Official Interpreter

JUDGMENT ON ASSESSMENT OF DAMAGES

Background

On 8th May, 2019, Honourable Justice N’riva entered judgment on liability against the defendants. On 23rd May 2019 the Judge forwarded the case to the Registrar for assessment of damages. I heard the parties for assessment of damages, and was called upon to make a determination as to the amount of damages that the claimant should be compensated with. This is the judgment on the quantum of damages.

Evidence

The court heard from the claimant, Joyce Agnes Malika that she was injured in a road accident attributed to the wrong of the defendants in their respective capacities. She said she had a heavy knock on the ribs, chest and left shoulder. She said that she sustained a fracture of the 6th rib on the right side, painful right ribs and chest, and a painful left shoulder. It was her evidence that she was still experiencing pain on the right and left ribs, chest, and left shoulder even after

treatment. She said that she was unable to do household chores due to the pain on her right ribs. She said in oral testimony on record that her broken parts of the rib cannot meet to heal properly and as such the doctor informed her that she would have the pain. She said that she uses pain killers in order to sleep properly. She therefore prayed for compensation for the pain and suffering, loss of amenities of life, damages for deformity and/or disfigurement and special damages for the medical report. She tendered a medical report and a police report.

In cross examination she said that it was Dr. Kampondeni who authored the medical report that she tendered and said that the doctor was at the time of giving the testimony alive and operating his practice at Mpingwe, within Blantyre. She said that she had Photostat copies of the x-ray that she had but were not at the court. She also said that she did not have medical evidence that she was still experiencing pain.

In re-examination she restated that her rib was broken from either a belt or an air bag that went off in the accident.

The Law and Fact

The starting point is that assessment of damages presupposes that damages have been proved and the business that remains is the measure of the amount of the damages- see the case of **Ngosi t/a Mzumbamzumba Enterprises v. Amosi Transport Co Ltd [1992] 15 MLR 370(HC)**. The rule is that the injured party has provided proof of the damage sustained prior to the assessment hearing- **Yanu Yanu Co v. Ltd v. Mbewe 11 MLR 405 (SCA)**.

Damages in a case like this one, are not awarded to punish the defendant or tortfeasor, but to fully compensate the claimant of all the losses that he has suffered as a direct or consequential result of the defendant's wrongful act or omission. In the case of **George Kankhuni v. Shire Buslines Ltd, Civil Case Number 1905 of 2002**, Katsala, J stated as follows:

“The law demands that the plaintiff, as far as money can do it, be put in the same position as if he has not suffered the loss. This is what is referred to as *restitution in intergrum*.”

It is not easy to quantify damages for losses that are not monetary in nature such as personal injuries. Courts as such use comparable cases as a guide to the quantification of applicable damages, without losing sight of particularities in the individual case that the court is dealing with. See **Chipeta v. Dwangwa Sugar Corporation, Civil Cause No. 345 of 1998, High Court, Principal Registry (unreported)**. The court will also consider factors such as passage of time since a particular comparable award was made, as well as currency fluctuations within the period between the case at hand and the comparable one- **Hon. Kennedy Kuntenga v. Attorney General, Civil Cause No. 2002 of 2002, High Court, Principal Registry, (unreported)**.

Pain and Suffering

The word pain 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-
Ian Goldrein et al, Personal Injury Litigation, Practice and Precedents (Butterworths, 1985) p8.
The award of damages for pain and suffering depends upon the claimant's personal awareness
of pain, and his capacity for suffering- see **Limpoh Choo v. Camden and Islington Area
Health Authority [1980] AC 174 @ 183.**

Loss of Amenities of Life

Damages are paid under the head of loss of amenities of life to compensate the claimant's
deprivation of the pleasures of life, which amounts to substantial loss, whether the claimant is
aware or not of that loss. See **City of Blantyre v. Sagawa [1993] 16(1) MLR 67 (SCA); Kemp
and Kemp, The Quantum of Damages, Vol. 1 (2nd Edition), 1961, p. 624.**

Disfigurement

Disfigurement is concerned with change of looks of the individual. This may be scars,
amputations and postures. See **Lemon Banda and 19 others v Motal Engil Limited and
General Alliance Insurance Limited, personal injury cause number 178 of 2012
(unreported.** Damages for disfigurement are awarded separately if the Claimant has been
ridiculed, lost his social status, or that he is in need of plastic surgery. See **Mary Kamwendo
v Stage Coach Malawi Limited Civil Cause Number 840 of 1995.**

Injuries in this Case

The claimant states that she was injured and had a fracture of the rib. The defendants submit
that that is not the case as she did not prove the injuries. The defence said that reliance was
placed on a medical report that the claimant tendered subject to the rule against hearsay. There
is no number of witnesses prescribed to state a point for it to be proved. There is no law also
requiring proof of oral evidence by documents. The person who asserts must prove, and in this
case on balance of probabilities.

I believe the oral evidence of the claimant that she had a fracture of the rib and that she was
informed of the same by a doctor. Whilst the contents of the medical report cannot be used to
prove the point because the doctor did not testify of it, the fact that the report was made
buttresses the point that the claimant was informed by the doctor. There is no reason why I
should not believe her evidence.

With the foregoing, I find that the injuries that the claimant sustained are; a fracture of the rib,
painful right ribs and chest, and a painful left shoulder.

Comparable Cases

In **Evelyn Jamu v. Prime Insurance Company Limited, Personal Injury Cause No. 612 of
2011,** the claimant was awarded K4, 555,000.00 for pain and suffering, and K1, 445,000.00 for
loss of amenities of life. She sustained a deep cut wound on the left leg, a fracture of four ribs
on the right hand side of the chest, injury to the right hand shoulder, swollen head, soft tissue
injuries and loosened teeth.

In **John Madeya v. Maphumuzana Jere and Prime Insurance Co. Ltd, Personal Injury Cause No. 476 of 2012**, the claimant was awarded the sum of K3, 500, 000.00 for pain and suffering and disfigurement, K1, 500,000.00 for loss of amenities of life on 12th June 2018 for injuries as follows open fracture of the femur, rib fractures, backache and soft tissue injuries.

In **Francis Chikoti v. UGI Limited Personal Injury Cause No. 736 of 2016**, a Claimant who sustained head injuries, multiple cuts on the face, swollen face, he lost four teeth of the upper gum, had bruises on the right hand, a painful right leg that had bruises, and dislocation of the ribs was awarded the sum of K3, 553, 000.00 as damages for personal injuries.

Determination

The two cited comparable cases all had more serious injuries than it is in this case. The awards were made about three years ago. I must factor in the loss of value of the currency. On the balance, I award the claimant the sum of **K3, 000,000.00** for pain and suffering. I award her **K1, 300,000.00** for loss of amenities of life and **K400, 000.00** for deformity.

The claimant did not testify on any special damages. I do not make any award under that head as special damages must be strictly proved.

Conclusion

In conclusion, the Claimant is awarded a total sum of K4, 700,000.00. The Claimant is also awarded cost of the assessment of damages.

Made this 20th day of July, 2021.



Austin Jesse Banda

ASSISTANT REGISTRAR