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IN THE HIGH COURT OF MALAWI

CIVIL DIVISION

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 556 OF 2020

Between

PRECIOUS JASI CLAIMANT

-and-

MR. DALITSO KAM'BAULE1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED2ND DEFENDANT

CORAM: Austin Jesse Banda, Assistant Registrar

Master, for the Claimant

None for the Defendants

Kazembe, Clerk/ Official Interpreter

JUDGMENT ON ASSESSMENT OF DAMAGES

Background

By a default judgment Precious Jasi (claimant) was awarded damages and costs of action against Mr. Dalitso Kam'baule and Prime Insurance Company Limited (defendants). This is in relation to the injuries that he sustained following a road accident that occurred at Makala Bus Stage attributed to the wrong of the defendants in their respective capacities. The Court ordered that the Registrar should assess the damages. I heard the claimant for assessment in the inexplicable absence of the defendants who had notice.

Evidence

The court heard from Precious Jasi that he sustained a fracture of the left humerus, bruises on both knees and right elbow joint, cut wound on the foot and facial bruises. He said that he was taken to the hospital where he was admitted and given treatment. He tendered a medical report.

The claimant stated further that he was at risk of developing arthritis as a result of the injuries and that he had reduced ability to participate in sporting activities and in performance of household chores. He said the degree of permanent incapacity was assessed at 23%. He said that he incurred expenses to procure a medical report and a police report at K13, 500.00.

Precious Jasi prayed for compensation for pain and suffering, loss of amenities of life, disfigurement and the sum of K13, 500.00 that he spent to procure the reports.

Issue

The only issue at this stage of the proceeding is the amount of damages that the claimant should be paid with as compensation.

Analysis

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's evidence is uncontroverted and I do not have any reason to doubt it. It is therefore taken wholesale.

Comparable Cases

In the case of **Raphael Lungu v Prime Insurance Company Ltd, Civil Cause No. 2024 of 2010 (unreported)**; an award of MK5,000,000.00 for pain and suffering, loss of amenities of life, and disfigurement for a fractured distal humerus open fracture of radius and ulna. The award was made on the 17th May, 2012.

In **Issa Idrissah v. Daniel Ndawala & Prime Insurance Co Ltd, Personal Injury Cause No. 67 of 2017**, a Claimant who suffered a dislocation of the left hip, a cut on the forehead and another cut on the eye lid and multiple bruises on the left leg was awarded the sum of K2,400,000.00 for pain and suffering, K1, 500,000.00 for loss of amenities of life, and K1,000,000.00 for disfigurement in March, 2019.

In **Christina Mande v Charter Insurance Company Limited, High Court, Principal Registry, Personal Injury Cause Number 329 of 2016**. The Plaintiff sustained a fracture of the right femur (inclusive of the knee cap), dislocation of the right hip joint, cuts on the head and lost consciousness on the spot of the accident. Surgery was performed on the patella/knee cap and metal rods inserted to hold the joint together. The Plaintiff was awarded MK6,300,000.00 for pain and suffering, loss of amenities of life and disfigurement.

The Award

Considering the above cited comparable cases in light of each case's peculiar circumstances, and the time of the awards, I award the claimant the sum of K3, 000,000.00 for pain and suffering, K1,500,000.00 for loss of amenities of life. I award him the sum of K1,000,000.00 for disfigurement. He is only awarded K5,000.00 special damages as there is evidence that the police report was given on payment of that sum under general receipt number 6734815. The expense for a medical report is not proved.

Conclusion

The Claimant is awarded a total of **K5, 505,000.00** for the personal injuries he sustained in the road accident. The Claimant is further awarded costs of assessment.

Made this 29th day of July, 2021.



Austin Jesse Banda

ASSISTANT REGISTRAR