



REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

SITTING AT LILONGWE

CIVIL DIVISION

CIVIL CAUSE NUMBER 188 OF 2021

BETWEEN:

TSIRIZANI MASOAKHUMBIRA.....1ST CLAIMANT

MATEYO MASOAKHUMBIRA.....2ND CLAIMANT

HOWARD LINGISONI.....3RD CLAIMANT

AND

MRS V KACHEPATSONGA.....1ST DEFENDANT

MR. KACHEPATSONGA.....2ND DEFENDANT

PRIME INSURANCE COMPANY LIMITED.....3RD DEFENDANT

CORAM: CHILUNGA CHIRWA (ASSISTANT REGISTRAR)

Mtambo,, for the Claimant

Chapo, for the Defendant

Kumwenda, Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

Background

1. This is this Court's order on assessment following a Default Judgment entered by the Honourable Court finding the Defendants liable for personal injuries suffered by the Claimants. The assessment is in respect of damages for pain and suffering, damages for loss of amenities of life, damages for disfigurement, special damages, and replacement of motor cycle.

Evidence.

The 1st Claimant

2. This witness, did not give any evidence. What he purportedly adopted as his witness statement, turns out, in my view, to be none of his. It bears features unique to the 2nd Claimant and is word for word what the 2nd Claimant also gave. It even bears attachments belonging to the 2nd Claimant. There is simply nothing on record to fit the description of a witness statement proper to the 1st Claimant. Indeed, it would seem to me this is a typical case of 'copy and paste' gone sour. It appears this was all done in confused haste. It fell upon Counsel to make sure that what she was attaching and filing with respect to each claimant was

the right material. She did not give it sufficient thought and care. Perhaps counsel had the hope that the court would somehow correct her mistake, but this is litigation. Great care ought always to be exercised by Counsel at all material times in the execution of their duties on behalf of their clients. Such care was conspicuously absent in this case.

3. As far as this instant exercise is concerned, therefore, there is no any evidence to support the 1st Claimant's claim for damages.

The 2nd Claimant

4. He adopted his witness statement with its attachments. According to the statement, the 1st Defendant was at all material times the driver of a motor vehicle registration number KA6752, a Suzuki Swift Saloon. The 3rd Defendant was at all material times the insurer of the said motor vehicle. The 2nd Claimant and the other Claimants were on the material day travelling on a motor cycle from the direction of Lilongwe heading to Mponela when the 1st Defendant negligently caused or permitted the motor vehicle registration number KA 6752 to go at excessive speed when she knew or ought to have known that she was approaching a busy trading centre along the Lilongwe-Kasungu road. He exhibited a copy of the police report on the accident which is marked as MM1.
5. He went on to state that as a result of the impact he sustained an open malleolus fracture and a closed humerus fracture. He exhibited MM1 and MM2, namely the police report and medical report respectively detailing the circumstances surrounding the accident and the injurie sustained.

The 3rd Claimant

6. This witness also adopted his witness statement. His evidence on the circumstances of the accident is the same recount of events as made by the 2nd Claimant in his statement. Needless for me to reproduce it. He however, states that as a result of the impact he sustained fractures on the right femur, bruises in the head and soft tissue injury on the right knee. He exhibited HL1 and HL 2, namely the police report and the medical report respectively detailing the circumstances surrounding the accident and his injuries.

Issue for Determination

7. The main question for the court to determine is what quantum of damages to be awarded to the 2nd and 3rd Claimants.

The Applicable Law

8. Generally, any person who suffers injury as a result of another's negligence is entitled to be compensated by the negligent party for the injury suffered. Such damages are awarded to compensate the Plaintiff in so far as money can do. (see *Nakununkhe v Paulo Chakhumbira and Attorney General*, Civil Cause Number 357 of 1997). In *Namwiyo v Semu et al* [1993] 16(1) MLR, it was held that in awarding compensation, the court attempts to put the Plaintiff in the position he would have been but for the injury arising from the tort. Such damages however cannot be quantified by any mathematical calculation and as such the court relies on decided cases of a comparable nature for guidance. Sight must not be lost however, of peculiar facts of each case in order to avoid occasioning injustice by inflexible maintenance of consistency and uniformity (see *D Kwataine Malombe and another v G.H. Chikho, t/a Bec Line Minibus*, Civil Cause No. 3687 of 2001)

Pain and Suffering

9. Pain is 'that which is felt immediately upon the nerves and brain, albeit directly related to the accident, or resulting from medical treatment reasonably necessitated by the accident' while suffering includes 'fright, fear of future disability, humiliation, embarrassment and sickness'. See Ian S Goldren, Margret R. De Haas and Kenneth H.P. Wilkinson, *Personal Injury Litigation, Practice and Procedures* and also case of *City of Blantyre v Sagawa* [1993] 16(1) MLR 67 SCA.
10. Factors to be considered in assessing damages under this head include the extent of the injuries suffered (*Tsegula v Msaka and another*, Civil Cause No. 565 of 2009) period of hospitalization, prospects of pain and suffering continuing (*James v Pew Ltd* [1993]16(1) MLR 128)

Loss of Amenities of Life

11. Loss of amenities of life simply means loss of pleasure of life resulting from one's life. In the case of *Rose v Ford* [1937]AC 826 the court stated as follows:
 - a. *"I regard impaired health and vitality, not merely as a cause of pain and suffering, but a loss of a good thing in itself"*

Disfigurement

12. Damages for disfigurement are awarded for some form of permanent scars or deformity left on the body of the victim, and may include the shortening of the limb. See *Tabord v David Whitehead & Sons (Malawi) Ltd* [1995] 1 MLR 297.

Comparators

13. In the case of **Reuben Haswell Chanza v Jones Somanje and Prime Insurance Company Limited**, Civil Cause Number 122 of 2017, the Claimant sustained an open fracture on the right leg, deep cut wound on the right hand thigh, degloving wound on the left leg, chest pains and bilateral knee injury. He was awarded a global sum of MK5,000,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement.
14. In the case of **Aaron Fredrick v Crown Agro Industries and Polypack Limited**, Personal Injury Cause No. 1007 of 2015 an award of MK4,500,000 was awarded to the Claimants who sustained a fracture of the right distal tibia and fibula, multiple bruises on hands and shoulders and had visible scars.
15. And in **Rex Walala v Davison Chikuta and Prime Insurance Company Limited**, Civil Cause No. 461 of 2011, the Claimant sustained a fracture of the left tibia, bruises on the left arm and cuts on his face. He was awarded a sum of MK6,500,000.00 as damages for personal injuries.

Determination of the instant matter

16. Having considered the instant matter in light of the above law and by the side of the comparators, I am of the view that the facts are not so far removed from those in the comparators, at least as far as the sustained injuries are concerned. The 2nd and 3rd Claimant who were able to successfully give their evidence in court, both satisfy the court through their

witness statements and the medical reports attached that they sustained fractures of varying degrees but of, more or less, equal impact to those sustained in the comparative cases.

17. For the above reasons I award the 2nd Claimant and the 3rd Claimant a global sum of MK5,020,000.00 each as damages for pain and suffering, loss of amenities of life and disfigurement. I also award them MK200,000.00 as costs of the action. I will not make any award with respect to the damaged motorcycle as there was no evidence advanced to prove the amount involved.

18. Any party aggrieved as the right to appeal against this Court's decision.

Made in Chambers this 18th day of May 2022



Patrick Chilunga Chirwa

ASSISTANT REGISTRAR