



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI

LILONGWE DISTRICT REGISTRY

CIVIL CAUSE NUMBER 929 OF 2019

BETWEEN

FESTON NANKHUMWA.....CLAIMANT
(Suing on behalf of OWEN NANKHUMWA)

AND

LUKAS CHARLES.....1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED.....2RD DEFENDANT

CORAM: KAPASWICHE	: ASSISTANT REGISTRAR (AR)
Mr. Kaunde	: Counsel for the Claimant
Defendant	: Absent/ Unrepresented
Mr. Kumwenda	: Clerk/ Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

BACKGROUND

This is my ruling on a claim for damages for pain and suffering; loss of amenities of life and disfigurement; loss of earnings; permanent incapacitation, mental anguish and psychological harm. This assessment of damages follows entering of a default judgment against the Defendants on the 1st day of December 2020. A notice of assessment of damages was issued on the 22nd day of May 2021 and was served on the defendants accordingly. The application was supported by a witness statement deposed by the Claimant himself. Skeleton arguments were also filled and the claimant in essence claims MK7, 500, 000.00 as total compensation for all the three heads of the claims. The Defendants were served with the notice of assessment but they failed to appear before Court for the assessment for reasons not known to this Court.

THE EVIDENCE

The evidence came from the witness statement of the Claimant. The claimant brings the action in his own capacity and on behalf of Owen Nankhumwa who happens to be a minor. The Claimant happens to be father of the said Owen Nankhumwa. On 21st March 2019 the minor left home in the morning going to Buluzi Primary School at a place near Bypass Road in the city of Lilongwe where he was involved in a road accident. The minor was walking on the road with his friends and he was hit by a motor vehicle, a Toyota Probox Saloon Registration Number NU 890 driven by the 1st Defendant and insured by the 2nd Defendant. As a result of the accident, the minor sustained injuries which included fractured clavicle, a cut on chin, contusion of ankle, hematoma of frontal part of head, multiple bruises on hand, a cut on neck, permanent incapacitation assessed at 28% and disfigurement. The claimant proceeded to testify that the injuries that he sustained have left him with some disfigurements that have drastically affected his wellbeing including his school performance. A medical report as well as police report was tendered in evidence.

THE LAW ON DAMAGES

The law generally provides that a person who suffers bodily injuries or losses due to the negligence of another is entitled to recover damages. The fundamental principle which

underlines the whole law of damages is that the damages to be recovered must, in money terms, be no more and no less than the Plaintiff's actual loss. The principle was laid down in numerous case authorities more particularly by Lord Blackburn in the case of **Livingstone v. Rawyards Coal Company (1880) 4 AC 25** in the following terms:

"where any injury or loss is to be compensated by damages, in settling a sum of money to be given as damages, you should as nearly as possible get at the sum of money which will put the party who has been injured, or who has suffered loss, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation."

Be that as it may, it ought to be borne in mind that it is not possible to quantify damages for pain and suffering, loss of amenities and deformity as claimed in this matter with mathematical precision. As a result, courts use decided cases of comparable nature to arrive at awards. That ensures some degree of consistency and uniformity in cases of a broadly similar nature: See **Wright -vs- British Railways Board [1983] 2 A.C. 773**, and **Kalinda -vs- Attorney General [1992] 15 M.L.R. 170 at p.172**. As such this court will have recourse to comparable cases to arrive at the appropriate quantum of damages for the plaintiff.

SUBMISSIONS AND ANALYSIS

DAMAGES FOR PAIN AND SUFFERING

'Pain' is used to suggest physical experience of pain caused by consequent act upon the injury while 'suffering' relates to the mental elements of anxiety, fright, fear of future disability, humiliation, embarrassment, sickness and the like as was held in **City of Blantyre v. Sagawa [1993] 16 (1) MLR 67 (SCA)**. Three cases were cited in making a prayer under the head of damages for pain and suffering.

DAMAGES FOR LOSS OF AMENITIES OF LIFE

The head of loss of amenities of life is awarded to cater for loss of all things that the claimant used to be able to do, see and experience and that these things can no longer be seen or be done or be experienced due to the impact of the injury in question. In the case of **Mtika v Chagomerana t/a Trans Usher (1997) 2 MLR 123, 126**; the court explained loss of amenities of life in the following terms;

“there is loss known as the loss of amenities of life. This covers the loss caused by the injury in that the plaintiff will be unable to pursue the leisure and pleasures of life that he used to enjoy but for the injury”

DAMAGES FOR INCAPACITATION AND DISFIGUREMENT

Damages for disfigurement are awarded for some form of permanent scars or deformity left on the body of the victim as was held in the case of **Tabord v. David Whitehead and Sons (Mw) Ltd, (1995) 1 MLR 297 (SCA)**. In the case of **James Chaika v Nico General Insurance Co Ltd Civil Cause number 909 of 2007**, the court stated that disfigurement is not a matter to be taken lightly and casually as it is something that one has to permanently live with.

ASSESSMENT OF FACTS AND COMPARABLE AWARDS

The Claimant prayed for a sum of MK22,515,000.00 as total damages on heads of claims. The Claimant cited a number of comparable awards justifying the prayer made in the present matter. The following are comparable case authorities that inform the Claimants prayer on award of damages for pain and suffering, loss of amenities of life and disfigurement and incapacitation.

The first case was the case of **Patricia Demesani Bannet v. Isaac Lizimba and Another, Civil Cause Number 811 of 2011** (unreported) where the Claimant was awarded MK2,000,000.00 on 20th July 2015 for pain and suffering after he sustained sprained ankle; multiple bruises over the body and face and was admitted in hospital for a day. The second case is that of **Habert**

Lidaka v. Charles Van Remoore and Prime Insurance Company Limited; Personal Injury Cause number 124 of 2015 (High Court, Zomba district registry) where the claimant sustained soft tissue injuries, multiple body wounds, bruises and general body pains. The court awarded MK2, 300, 000.00 in July 2015. Considering the fact that the injuries suffered in the present case by the Claimant are fractured clavicle, a cut on chin, contusion of ankle, hematoma of frontal part of head, multiple bruises on hand, a cut on neck, permanent incapacitation assessed at 28% and disfigurement; the Claimant prayed for an award of MK5,000,000.00 as damages for pain and suffering.

The case of **Lunduka v. Zenengeya and United General Insurance Company Limited, Civil Cause Number 1144 of 2016** was cited on damages of loss of amenities of life. In that case, the Claimant suffered injuries that meant that she could no longer participate in challenging activities and she was awarded MK3,000,000.00. The Claimant prayed for an award of MK7,000,000.00 in the circumstances of the present case. On disfigurement, the Herbert Lidaka case was cited to justify a prayer of an award of MK5,000,000.00 in the present case. On incapacitation, the prayer was that this Court should make an award of MK5,500,000.00.

The argument from Counsel for the claimant was that this court should award more damages than the ones awarded in the above three cases on the basis that the said awards were made in 2015 and 2016 and further that the claimant of the present case suffered fracture clavicle, cut on chin, contusion of ankle, haematoma frontal part of head, multiple bruises on hand, cut on the neck, nasal bleeding and has 28% permanent incapacity. The evidence shows that the Claimant of the present matter was unconscious after the occurrence of the accident and is permanently incapacitated at 28% and it is clear that he is continuing suffering due to an accident he never foresees on that fateful day. Much as I agree that the Defendant endured severe suffering due to the severe injuries suffered and the fact that the Claimant has long time incapacitations; I still feel that the amount claimed is still on the higher side.

FINDING

Having appreciated all the circumstances of the present case, this Court proceeds to award a sum of MK12,000,000.00 as reasonable recompense on all heads of claims made by the

Claimant. Judgment is accordingly entered in favour of the claimant in the sum of K12, 000,000.00. The Claimant is further awarded costs of this action.

MADE IN CHAMBERS THIS ^{23rd}..... DAY OF JUNE 2022


ANTHONY PITILIZANI KAPASWICHE

ASSISTANT REGISTRAR