



IN THE HIGH COURT OF MALAWI

CIVIL DIVISION

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 1027 OF 2019

Between

ACKIM GEORGE..... CLAIMANT

-and-

PRIME INSURANCE COMPANY LIMITED1ST DEFENDANT

JOSEPH BAULENI 2ND DEFENDANT

CORAM: Austin Jesse Banda, Assistant Registrar

Kamunga, for the Claimant

Phiri, for the Defendants

Kazembe, Clerk/ Official Interpreter

JUDGMENT ON ASSESSMENT OF DAMAGES

Background

The claimant commenced this proceeding against the two defendants claiming for damages; for pain and suffering, loss of amenities of life, deformity/disfigurement, and special damages and costs of the proceeding. When the matter came before Honourable Justice N’riva for mediation, the parties settled the matter and the defendants were held liable to pay damages and costs to be assessed by the court. I heard the parties for the purposes of assessment of damages.

Evidence

Mr. Ackim George adopted his witness statement in court and told the court that he was walking along Angoni road near Mount Soche Hotel in Blantyre on the 2nd of August, 2019 when he was hit on the edge of the road by motor vehicle Toyota Sienta registration number BT 5654 due to the negligent driving of the driver of the vehicle, who lost control of it.

Ackim George said that he sustained the following injuries; dislocation of the left ankle, fracture of the left foot, and a swollen left leg. He said that he was experiencing a painful left leg, difficulties in walking, and numbness of the left leg, deformed left foot, and disfigured left foot. He said that he was still feeling pain in the left leg, and having difficulties in walking. He therefore prayed to be paid damages under the heads as stated before, plus special damages at K24, 500.00 being cost of a medical and a police report that he tendered and marked "AG1" and "AG2" respectively.

In cross examination, Ackim George said that he was injured on his foot and ankle joint. He also said that he had an x-ray of the injured part and the doctor treating him found that there was a fracture. He further said that he was admitted for one night and given pills. He said that he was told to be seen a second time on his discharge.

The claimant closed his case with his testimony.

Issue

The only issue at this stage of the proceeding is the amount of damages that the claimant ought to be compensated with.

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 Metal 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 submitted that he suffered dislocation of the left ankle, fracture of the left foot, and a swollen left leg. He said that he was experiencing a painful left leg, difficulties in walking, and numbness of the left leg, deformed left foot, and disfigured left foot. He said that he was still feeling pain in the left leg, and having difficulties in walking. The defendant on the other hand believes that the claimant only sustained a displacement of the tarsal bones on his left foot and that the other injuries the claimant stated were exaggerated and had no proof.

Going through the evidence, it is difficult not to agree with the defendant. The claimant needed to prove his claims. The medical report that he tendered has no mention of any fracture apart from the displacement of the bones that the defendant submitted about. The doctor who examined him was not called to testify either. It is difficult for me to believe that he had a fracture as his leg was said to be normal without any swelling, cuts or wounds on the outer experience.

I therefore find that the claimant suffered a displacement of bones in the foot that was corrected without the use of a Plaster of Paris (POP). I find that the leg was not deformed or disfigured. The claimant suffered pain and numbness of the foot, and no further injuries.

Comparable Cases

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 the case of **Foster Kasokota vs. Davis Simenti and Prime Insurance Co. Ltd Personal Injury Cause Number 371 of 2011**, the court made an award of K3, 900,000.00 as damages for pain and suffering and loss of amenities of life in respect of a claimant who sustained a fracture of the pelvis and a dislocated shoulder.

In **Madalitso Nyambo v. Prime Insurance Co. Limited Personal Injury Cause Number 176 of 2015** the claimant was awarded a sum of K 5, 800,000.00 as damages for pain, suffering, loss of amenities of life and disfigurement where the claimant sustained a dislocation of both knees.

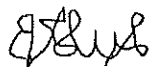
The Award

Considering the above cited comparable cases which are all much more serious than the damage in this case, and considering the circumstances prevalent in this case, I award the Claimant, the sum of K1, 200,000.00 for pain and suffering and loss of amenities of life. I award him nominal sum of K50,000.00 for disfigurement. He not awarded anything for special damages as these were not proved.

Conclusion

The Claimant is awarded a total of **K1, 250,000.00** for the personal injuries he sustained in the road accident. The Claimant is further awarded costs of assessment.

Made this 20th day of July, 2021.



Austin Jesse Banda

ASSISTANT REGISTRAR