

Library



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 380 OF 2015

BETWEEN:

DAVIE OWENCLAIMANT

AND

JACOB CHIKOYA1ST DEFENDANT

O. DAUDI2ND DEFENDANT

PRIME INSURANCE COMPANY LIMITED3RD DEFENDANT

CORAM

Mrs T. Soko : Assistant Registrar

Malijani : Counsel for the claimant

Chisale : Counsel for the defendant

Mrs Mkandawire : Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

BACKGROUND

This is an order on assessment of damages following a Judgment by Justice Tembo dated 1st November 2017. The claimant's claim is for damages for pain and suffering and loss of amenities of life, damages for disfigurement, special damages as pleaded and costs for the action. The facts of the case are that on 6th

August 2014, the claimant was involved in a road traffic accident at Disi Village along Balaka Liwonde road when he was hit by the motor vehicle registration number DNY 925 EC. As a result of the accident the claimant suffered a fracture of the left distal femur, fracture of the right tibia and fibula.

EVIDENCE

On the date of hearing, the claimant appeared through his Legal Practitioner. The claimant was the sole witness and adopted his witness statement. In the witness statement, the claimant explained that in August 2015, he was hit by a motor vehicle Toyota Hilux pick up registration number DNY 925 EC. The claimant further explained that as a result of the accident he sustained 2 fractures on the right tibia and fibula and left distal femur. The claimant said that an external fixator was applied on the right tibia and fibula. Further the claimant stated that he has cross K- wires applied on the left distal femur. The claimant said he was admitted at Zomba Central hospital from 6th August 2014 to 23rd September 2014. He said he is unable to walk without aid and he is unable to do manual work. The claimant tendered a medical report as part of evidence.

In cross examination, the claimant stated that he used to be a brick layer but now he is unable to work. The claimant also said that the wounds healed but he is still weak. He stated that he walks using clutches and he is struggling.

ISSUES

The quantum of damages payable to the claimant

SUBMISSIONS

Only Counsel for the claimant made submissions where the claimant prays for a sum of K6, 500, 0000.00 damages for pain and suffering and loss of amenities of life and K600, 000.00 damages for disfigurement. Counsel cited a case of **Nellie Manda vs Nico General Insurance Company Limited Civil Cause No. 619 of 2009** where the plaintiff suffered a fracture of the left arm, deep cut wound on the right thigh, bruises on the leg and cut wounds on the left thumb and finger. The Court awarded K6, 500,000.00 damages on 25th April 2012. Counsel also cited a case of **Red Lucia vs James Mkandawire and Citizen Insurance Company Limited Civil Cause Number 2442 of 2010** where the plaintiff was awarded a sum of K6, 000,000.00 for sustained fracture of tibia and humerus as well as head injuries. In addition, Counsel cited a case of **Norah Malich(a minor by her father and next friend, Henry Malich) vs Prime Insurance Company Limited Civil Cause Number 3613 of 2009** where the plaintiff was awarded a sum of K4, 500,000.00 for sustained

fracture of the left tibia, cut wound on the scalp, bruises on the faces and swollen head. An award was made on 29th May 2012. Lastly, Counsel cited a case of James Chaika vs Nico General Insurance Co Civil Cause No. 909 of 2007 where the plaintiff was awarded K300, 000.00 damages for disfigurement.

DETERMINATION

The medical report stated that the claimant suffered a fracture of the distal femur and a fracture of the right tibia and fibula. He was admitted from 6th August 2014 to 23rd September 2014. Besides, an external Fixator was applied on the right tibia and fibula and cross K- wires were applied on the distal femur. In addition the claimant suffered 40% incapacitation. The medical report states that the claimant will have difficulties to perform his previous job and he is still on treatment. The period that the claimant stayed in the hospital being over one month indicates that the claimant suffered serious injuries. Further the claimant underwent a serious treatment that in my mind left him in great pain. The medical treatment being on going only shows that the claimant is still experiencing pain due to his injuries. The condition that he is into renders him difficult to perform manual work and logically he cannot enjoy the things that he used to be.

Having considered the nature of the injuries that the claimant suffered, the treatment that he underwent, the comparable cases that Counsel for the claimant cited and the devaluation in currency, the Court awards the Claimant a sum of K4, 500,000.00 damages for pain and suffering including disfigurement and K1, 000,000.00 damages for loss of amenities of life. The court also awards K3, 000,000.00 cost of police report which was paid under GR NO. 315147. The total award is K5, 503, 0000.00.

Costs are for the claimant.

Pronounced in Chambers on this 2th day of May 2018.



T. Soko

Assistant Registrar