



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
Civil Cause Number 547 of 2011

BETWEEN:

LLOYD JAZIELE.....**CLAIMANT**
AND
YAPHET PHIRI.....**1ST DEFENDANT**
LILONGWE HANDLING COMPANY LTD.....**2ND DEFENDANT**

CORAM:	CM MANDALA:	ASSISTANT REGISTRAR
	Dzimphonje:	Counsel for Claimant of Winlaw & Ndau
	1 st Defendant:	Unrepresented (Absent)
	2 nd Defendant:	Knight & Knight
	C Zude:	Court Clerk

ASSESSMENT OF DAMAGES

INTRODUCTION AND BACKGROUND

This is an order for assessment of damages pursuant to the Defendant's non-compliance with an order for directions. The Defendants' defences were struck out and judgment entered for the Claimant. The Defendants are liable for: damages for pain and suffering, damages for loss of amenities of life, damages for disfigurement, special damages as pleaded and costs of the action. The hearing on Assessment of Damages was conducted on 10th August 2020.

This matter arose from a road accident that occurred on 16th February 2011 when the 1st Defendant, while driving along the Likuni road, drove their car into the Claimant's lane at African Union. The two cars collided, and the Claimant was injured as a result.

EVIDENCE

Claimant's Evidence

The Claimant adopted their witness statement as evidence in chief. The witness statement states:

I, **LLOYD JAZIELE** of c/o PO Box 51824, Limbe make statement as follows:-

1. I am the Claimant in this matter.
2. On or around 16th day of February, 2011 I was driving motor vehicle registration number KU 1747 Toyota Hiace Minibus along Likuni road when I was involved in a road accident which occurred at or near African Union when the 1st Defendant who was driving motor vehicle registration number BM 531 Toyota Dyna Bus, drove so negligently and encroached the lane which I was driving. Attached is a copy of the police report marked and exhibited as "LJ 1".
3. The driver of the motor vehicle registration number BM 531 Toyota Dyna Bus was negligent in the manner he drove the motor vehicle. He drove his motor vehicle at a very fast speed and without proper look out. The driver did not take any precautionary or preventive measures to avoid occurrence of the accident.

4. The road accident occurred due to the negligence of the 1st Defendant.
5. As a result of the accident I sustained injuries including fracture of right femur, fracture of ipsilateral, multiple cuts and general body pains for which I was referred to Kamuzu Central Hospital for medical attention. Attached is a copy of the Medical Report marked and exhibited as “LJ 2”.
6. Since then I have not been compensated by the Defendants despite being responsible for the accident. I am looking for the same through Winlaw and Nda.
7. I verily believe in the statement made to the best of my knowledge and belief.

The Claimant told the Court, viva voce, that he sustained a fracture on his leg and had a metal rod inserted in the leg. The rest of the leg also had some cracks. The Claimant still struggles with the wound on his thigh and it periodically produces pus. The Claimant cannot bend the affected leg and he cannot work anymore.

SUBMISSIONS BY COUNSEL FOR THE CLAIMANT

Counsel for the Claimant filed written submissions in support of the application. Counsel avers that the extremity of the Claimant’s injury and the devaluation of the Kwacha would attract a total award of K25,101,000.00 as compensation. Counsel for the Claimant cited the following comparable awards in support:

- ***Ashavin Manuel (a minor, suing through Victoria Ramzy Manuel, a litigation guardian) v Derlie Mchekenl and Prime Insurance Company Limited*** – Personal Injury Cause Number 498 of 2018 where, at the age of 4, the Claimant sustained a closed fracture of fibula and tibia, open fractured metatarsal and degloving wound on the right foot. The Claimant was awarded K4,800,000.00 for pain and suffering, and loss of amenities of life.
- ***Kachisi and another v United General Insurance Company Limited*** – Personal Injury Cause Number 87 of 2017 where the Claimant sustained multiple fractures and a cut wound on the head. On 14th July 2017, the Claimant was awarded K5,600,000.00.
- ***Aaron Amosi and another v Lanjesi Lile and Prime Insurance*** – Personal Injury Cause Number 133 of 2013 where the Claimant sustained fractures on both legs, dislocation of the right shoulder and post traumatic arthritis. On 24th February 2014, the Claimant was awarded K7,000,000.00.

ASSESSMENT GUIDELINES

Damages for personal injuries are awarded for a Claimant’s pecuniary and non-pecuniary losses. The pecuniary losses include the loss of earnings and other gains, which the Claimant would have made had they not been injured, and the medical and other expenses which accrue from care and after-care of the injury. The non-pecuniary losses include pain and suffering, loss of amenities of life and loss of expectation of life. The principle underlining the award of damages is to compensate the injured party as nearly as possible as money can do it.¹

Perfect compensation for a Claimant is unlikely. The Claimant, however, is entitled to fair and adequate compensation.² Since it is difficult to assess damages involving monetary loss, courts resort to awarding

¹ See *Cassel and Co v Broom* [1972] AC 1027. See also *Tembo v City of Blantyre and The National Insurance Co Ltd* – Civil Cause No. 1355 of 1994 (unreported).

² *British Commission v Gourley* (1956) AC 185.

conventional figures guided by awards made in similar cases and also taking into account the money value. Lord Morris buttresses this contention in *West v Shepherd*³ by stating: ‘*money cannot renew a physical frame that has been battered and shattered. All judges and courts can do is to award a sum which must be regarded as giving reasonable compensation.*’

The mode of assessment of damages requires the court to consider comparative awards of a similar nature. In doing so, regard must be had for fluctuations in the value of the currency. The court should make an award that is commensurate with the value of the currency at the time the award is made. In *Malamulo Hospital (The Registered Trustees) v Mangani*⁴, the Supreme Court states: “*It is, therefore, recognised by the courts that awards of comparable injuries should be comparable. This is done by looking at previous awards of similar cases and adjusting the award according to the fall of the value of the money.*” In *Tionge Zuze (a minor, through A.S. Zuze) v Mrs Hilda Chingwalu*,⁵ the Court states: “*Where a claim relates to non-monetary loss in respect of which general damages are recoverable it is not possible to quantify the loss in monetary terms with mathematical precision. In such cases courts use decided cases of a comparable nature to arrive at an award.*” In *Steve Kasambwe v SRK Consulting (BT) Limited* Personal Injury Cause Number 322 of 2014 (unreported), the High Court states thus: ‘*At times the court is faced with situations where the comparative cases have been rendered obsolete because of the devaluation of currency and inflation. It would not achieve justice if the court insisted on the same level of award as was obtaining in the previous cases. In such situation, when deciding the new cases, the court must take into account the life index, i.e. cost of living and the rate of inflation and the drop-in value of the currency. The court must therefore not necessarily follow the previous awards but award a higher sum than the previous cases.*’

COMPENSATION

The Claimant sustained a right femur fracture and tibia fracture ipsilateral. He had an open reduction surgery which required insertion of a metal rod in his leg. The Claimant was hospitalised for about six months, from 16th February 2011 to 3rd August 2011.

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. See: *Ian Goldrein et al, Personal Injury Litigation, Practice and Precedents* (Butterworths, 1985) 8 and *City of Blantyre v Sagawa* [1993] 16(1) MLR 67 (SCA).

The Claimant has faced three stages of pain and suffering. The first is the pain of the treatment once taken into hospital. As per the medical report, the Claimant sustained ‘polytrauma, deep bleeding cut wounds on left leg, mouth, cuts on left ankle, multiple fracture right femur, and leg tibia fibula.’ The second stage of pain and suffering was from the length of his stay in hospital spanning 6 months, during which he had to endure skin and skeletal traction for six weeks. The final stage of pain and suffering subsists to date in the form that his leg is now stiff, has ‘*chronic infection*’ evidenced by the medical report and his explanation that the wound periodically produces pus.

³ West v Shepherd (1964) AC 326 at 346.

⁴ [1996] MLR 486.

⁵ Quoting from *HQ Chidule v Medi* MSCA 12 of 1993.

Counsel for the Claimant cited comparable awards of K4,800,000.00, K5,600,000.00 – these were awards under all heads of damages and K4,000,000 as an award for pain and suffering made in 2017 and 2014. See: *Ashavin Manuel (a minor, suing through Victoria Ramzy Manuel, a litigation guardian) c Derlie Mchekenl and Prime Insurance Company Limited, Kachisi and another v United General Insurance Company Limited*, and *Aaron Amosi and another v Lanjesi Lile and Prime Insurance* (cited above).

Based on this, this court awards the sum of K4,500,000.00 as damages for pain and suffering.

Loss of Amenities of Life

The expression ‘loss of amenities of life’ simply means loss of faculties of pleasures of life resulting from one’s injuries. Damages for loss of amenities of life are awarded for the fact that the plaintiff is simply deprived of the pleasures of life, which amounts to a substantial loss, whether the plaintiff is aware of the loss or not. See: *Poh Choo v Camden and Islington Area Health Authority* [1979] 2 All ER 910 and *City of Blantyre v Sagawa* [1993] 16(1) MLR 67 (SCA) at 72.

As a result of the accident, The Claimant has a permanent wound that periodically produces puss. He can no longer bend his leg, nor can he work. The Claimant earned a living by driving and he can no longer do so now. As per the medical report, the Claimant has a ‘*cosmetically disfiguring scar with deep intermittent pain, chronic infection and has a poor walking pattern.*’ It is clear from the evidence that the Claimant’s life was significantly altered by the accident and that he will constantly have to deal with the chronic infection. The Claimant’s permanent incapacity was pegged at 45%, and he has a very high possibility of developing arthritis.

The Claimant tendered a letter from his employer explaining the nature of his employment and wages received. The Claimant was employed as a bus driver on temporary basis receiving K1500 per day. Through submissions, Counsel for the Claimant argues that the Claimant could have worked up to 55 years of age and has therefore lost up to 28 years of productivity. Counsel made computations based on this and came up with the total figure of K12,096,000.00 (28 years x 12 months per year x K36,000 per month) as being due to the Claimant. The court appreciates Counsel’s computations but notes that the Claimant was employed on temporary basis, and the length of the temporary engagement was not specified.

Further, it is trite that awards made for loss of amenities of life are based on previous awards of a similar nature. See: *Malamulo Hospital (The Registered Trustees) v Mangani*⁶, and *Tionge Zuze (a minor, through A.S. Zuze) v Mrs Hilda Chingwalu*,⁷. Computations such as those made by Counsel are not supported by law. Computations such as these are often made when calculating loss of dependency in personal injury cases where there has been loss of life. However, despite the deficiencies in Counsel’s computations and the letter from the employer, computations such as these would provide some mathematical precision to awards made for loss of amenities of life. Providing evidence of employment, earnings and predictions on future earnings would guide the court to make awards that are commensurate with every Claimant’s unique circumstances. As we look towards the future and the development of jurisprudence, this might be a worthwhile course to take.

⁶ [1996] MLR 486.

⁷ Quoting from *HQ Chidule v Medi* MSCA 12 of 1993.

On the other hand, it should be noted that compensation for loss of amenities of life is for a Claimant's deprivation of the pleasures of life, which amounts to a substantial loss, whether the plaintiff is aware of the loss or not. See: *Poh Choo v Camden and Islington Area Health Authority* [1979] 2 All ER 910 and *City of Blantyre v Sagawa* [1993] 16(1) MLR 67 (SCA) at 72. One, therefore, ought to question whether the deprivation of the pleasures of life can be calculated with mathematical precision, and whether employment, earnings and future earnings could be defined as a 'pleasure of life'. The deprivation must lead to a substantial loss, in this case the Claimant has lost his capacity to earn. I suppose one could reasonably conclude that the ability to earn is indeed a pleasure of life. Maybe, there is something to be said for mathematical precision for calculations of compensation for loss of amenities of life.

Counsel for the Claimant cited *Aaron Amosi and another v Lanjese Lile and Prime Insurance* – Personal Injury Cause Number 133 of 2013 where the Claimant sustained fractures on both legs, dislocation of the right shoulder and post traumatic arthritis. On 24th February 2014, the Claimant was awarded K4,000,000.00 for pain and suffering, K2,000,000.00 for loss of amenities of life and K1,000,000.00 for disfigurement. This award was made six years ago and the Court ought to adjust the amounts to take into account inflation.

Based on the foregoing discussion, this court awards the sum of K2,500,000.00 as damages for loss of amenities of life.

Disfigurement

In the matter of *James Chaika v NICO General Insurance Co Ltd* the High 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.' In *Nyirenda v Moyo and other*, the claimant was awarded the sum of K500,000.00 as damages for disfigurement in 2018.

The Claimant submitted pictures to show the extent of his injuries. The Claimant has a very visible and deep scar on his thigh. There is further scarring around his knee on the same leg. The Claimant's medical report describes the scar as 'cosmetically disfiguring'.

Following the sentiments made in the *James Chaika Case* and considering the devaluation of the Kwacha since 2018, the Claimant is hereby awarded K2,000,000.00 as damages for disfigurement as damages.

Special Damages

The law distinguishes general damages and special damages as follows – general damages are such as the law will presume to be the direct natural or probable consequence of the action complained of. Special damages, on the other hand, are such as the law will not infer from the nature of the course - *Stros Bucks Aktie Bolag v Hutchinson* (1905) AC 515. In determining the natural consequences, the court considers if the loss is one which any other claimant in a like situation will suffer – *McGregor on Damages* p23 para 1-036.

Special damages must be specifically pleaded and must also be strictly proved - *Govati v Manica Freight Services (Mal) Limited* [1993] 16(2) MLR 521 (HC). A Plaintiff who claims special damages must therefore adduce evidence or facts which give satisfactory proof of the actual loss he or she alleges to have incurred. Where documents filed by the Plaintiff fail to meet this strict proof then special damages are not awarded – *Wood Industries Corporation Ltd v Malawi Railways Ltd* [1991] 14 MLR 516.

The Claimant herein was awarded special damages as claimed. In the Statement of Claim, the Claimant sought reimbursement of K3,000 for the police report and K2,000 for the medical report. No evidence was provided to the court to prove that these amounts were indeed spent. Special damages ought to be specifically claimed and proved. Though the Claimant specifically claimed special damages, they were not proved during trial and/or submissions. For these reasons, no award will be made under this head.

DISPOSAL

The Claimant is therefore awarded K4,500,000.00 for pain and suffering; K2,000,000.00 for loss of amenities of life; K2,000,000.00 for disfigurement and; K0 as special damages and costs of the action (to be taxed by the court). A total of K8,500,000.00 (eight million, five hundred thousand kwacha). The Claimant already received the K3,200,000.00 (three million two hundred kwacha) from Nico General Insurance Company Limited in 2012. This sum will be subtracted. **The Claimant's total award is therefore K5,300,000.00 (five million three hundred thousand kwacha).**

Leave to appeal is granted. Each party is at liberty to appeal to the Supreme Court of Appeal within the requisite time frames.

Ordered in Chambers on the 16th day of October 2020 at the High Court, Lilongwe.



C Mandala

ASSISTANT REGISTRAR