



The Judiciary

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CASE NUMBER 45 OF 2015

Between

MASAUTSO SUKALI..... 1ST CLAIMANT

EDWARD SOKOTA..... 2ND CLAIMANT

-and-

PRIME INSURANCE COMPANY LIMITED..... DEFENDANT

CORAM: A.J. Banda, Assistant Registrar

Mr. S. Mumba, for the Claimants

Ritz Attorneys, for the Defendant, absent without explanation

Ms. M. Galafa, Clerk/ Official Interpreter

BANDA, A.R:

ASSESSMENT ORDER

1. Background

By a consent judgment, the two claimants got judgment on liability on 1st November, 2017, against the defendant on their claim for damages for pain, suffering and loss of amenities of life; but also special damages as follows, K10,350.00 cost of medical reports and K3,000.00 cost of the police report. The matter came for assessment of damages.

The defendant was being represented by Mbendera and Nkhono Associates before the assessment hearing. Counsel for the claimants told the court that he did try to serve a notice of assessment hearing at Mbendera and Nkhono Associates but he was turned down and was advised to serve on the defendant personally. When the claimants' counsel reached the defendant, the defendant advised that process should be served on Ritz Attorneys and the claimant's counsel did serve a notice of the assessment hearing on Ritz Attorneys. No one from Ritz Attorneys however turned up on the day and the

court proceeded to hear the claimant in the defendant's absence given that there was proof of service of the notice.

Evidence

The evidence of the claimants is that they were walking along Dalton road in Limbe, Blantyre, when they saw a Tata Bus which was driving in high speed hit a Toyota Rav saloon. The next thing, both claimants said, they woke up from unconsciousness whilst in a min bus that was taking them to Queen Elizabeth hospital. In the case of Mr. Sukali, he said realised that he had sustained painful left ribs, cuts on the left elbow, bruises on both knees, injuries on the left leg and numbness of the left leg. As regards Mr. Sokota, he sustained bruises on both lower legs, had both legs swollen, painful ribs and general body pains.

Both Sukali and Sokota told the court that they were treated as outpatients and that both their injuries had healed. Sukali said that he still experiences pain on the left leg after walking a long distance. Sokota said that he also experiences pain in the legs when he walks a long distance and that they often get swollen. They both tendered police report and a copy of their medical report.

2. Analysis of Law and Fact

It is a principle of law that victims of tort must be compensated by the tortfeasor to remedy their loss, both pecuniary and non-pecuniary loss arising out of the tort. The compensation should be capable, as far as money can, of putting the victims in the same place as they were before the wrong was occasioned on them by the tortfeasor- Livingstone v. Rawyards Coal Co. (1880) 5 App. Case 25 @ 39.

It is not mathematically possible to precisely compensate non-pecuniary losses. Courts have recourse to awards in comparable cases. I have considered the injuries in this case. They are not serious injuries as compared to multiple cases I looked at. One of the comparable cases is that Makwinja v. Ackim Civil Cause Number 1480 of 2001 High Court, Principal Registry (unreported). In that case the claimant suffered a cut on the knee, and injuries on feet and waist. He had multiple bruises and a painful strained limb. There no permanent incapacity. He was awarded K18,000.00 for pain and suffering and loss of his bicycle. 17 years has since passed since the award. Surely the currency has lost value a lot more over that period. For comparison sake Kwacha to United States dollar in September, 2001 was about \$1 to K65.00. The United States of America dollar is currently averaging at K725. Based on the dollar alone the Kwacha has lost value 11 fold.

In the instant matter, although not belittling the injuries nor the pain and suffering they underwent, comparatively to most cases, the claimants only suffered cuts and painful

bodily parts. There were no fractures and they have healed although there are recurring pains at times. The medical practitioner who assessed them found that they can perform manual work as normally. It has not been stated what amenities the claimants would miss out on and from what injuries essentially, apart from the pain experienced periodically for a long walk for both and also the swelling of the legs for the second claimant. Degree of permanent incapacity was 13% for Mr. Sukali (1st claimant) and 15% for Mr. Sokota (2nd claimant) respectively. I wonder where this assessment of degree emanates from. Even though the court is not a competent medical expert but looking at the nature of the injuries put across, one would not expect such ranges.

It is from such a background that I award the claimants damages in the range of K600,000.00 for the 1st claimant and K620,000.00 for the 2nd claimant respectively, for pain and suffering, and loss of amenities of life. The cost of medical report was not proved in the hearing. Only Mr. Sukali exhibited a police report which was paid for at K3,000.00 on General Receipt Number 754071. I award Mr. Sukali special damages at K3,000.00 and no more.

3. Conclusion

In conclusion, the first claimant, Mr Masautso Sukali is awarded a total of K603, 000.00 as damages in this case whilst the second claimant recovers K620, 000.00 as the damages proved among those that he prayed for. The issue of costs has exercised my mind. They normally follow the event. I have considered that even though non pecuniary damages are at large, a look at comparable cases gives guidance. I find that counsel for the claimants could have commenced the matter in the magistracy given guidance from comparable cases. I award costs on the subordinate court's scale as provided for in section 31 of the Courts Act.

Made this 31st day of May, 2018.



Austin Jesse Banda
ASSISTANT REGISTRAR