



The Judiciary

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CASE NUMBER 120 OF 2014

Between

PEARSON TAMBALA..... CLAIMANT

-and-

MORRISON JALI..... 1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED..... 2nd DEFENDANT

CORAM: A.J. Banda, Assistant Registrar

Mr. Chayekha, for the Claimant

None present, for the Defendants

Mr. Mathanda, Clerk/ Official Interpreter

Banda, Asst. Reg.

ASSESSMENT ORDER

1. Background

Mr. Pearson Tambala, also referred to as the claimant in this order, commenced these proceedings by a specially endorsed writ of summons claiming damages against the defendants, who are the material driver of motor vehicle registration number NU 2703 and insurer respectively, which vehicle hit him whilst he rode his motor bike. The claimant was successful in his claim on liability when the matter came before the honourable justice Kenyatta Nyirenda, who further ordered that assessment of damages be done by the

registrar. The claimant obtained a date for the assessment hearing and served their notice on Chagwanjira and Company who were representing the defendants, and also personally on the 2nd defendant. The defendants did not show up inexplicably for the assessment hearing and the court proceeded to hear the claimant.

2. Evidence

The only witness in the assessment hearing, Mr. Tambala adopted his witness statement. He told the court that he was riding a motor bike on 30th May, 2013 when he collided with a motor vehicle registration number NU 2703. He said as a result of the collision he fell into a drain along the road and hit his head on the ground. He sustained a fracture of the fibula with degrooving wound on the left leg.

He said further, that he was treated at Queen Elizabeth Central Hospital where he was admitted and only discharged on 18th July, 2013. He said the wound was treated by skin grafting, and that he now has a big scar on the part of his leg where skin was removed for grafting. He also said that his leg was put in a Plaster of Paris for six weeks. He said he still has difficulties walking. He said that since he hit his head on the ground he suffers memory loss and that he was laid off from work where he worked as an accountant, as a result.

The claimant tendered a medical report which shows that he was healed but with post traumatic arthritis and that long term effects will be stiffness of the leg after the grafting with the scar formation leading to difficulties in walking. He was rated at 35% degree of permanent incapacity.

3. Issue

The only issue in this case is the amount of damages that the claimant should be compensated with, under the heads as follows; pain and suffering, loss of amenities of life, and deformity.

4. Law and Fact

Damages are the remedy that is open to a victim of the wrongful act of another. Courts do award damages not to punish the defendant but to fully compensate the claimant of all the losses she has suffered. 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 [now called the Claimant], 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 integrum*. ”

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.

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 Ed.), 1961, p. 624.2

Deformity/ Disfigurement

Damages are paid under the head of disfigurement for the change in the physical form of a person injured either as a result of the impact of the injury or its treatment, such as a scar coming in as a result of surgical operation necessitated by the injury. It is a change in appearance but it is capable of limiting a person from doing certain things as was observed by the court in the case of **Austin Julius v. Rasika Gunawardena and General Alliance Limited, Personal Injury Cause Number 316 of 2014**.

Potani, J, in the case of **Chingámba v. Deerless Logistics Limited Civil Cause No. 2888 of 2007**, stated that disfigurement was not something to be taken lightly and casually as a person lives with the deformity for the rest of his life. In **Zaina Chipala v. Dwangwa Sugar Corporation Civil Cause Number 345 of 1998, High Court, Principal Registry, per Chimasula, J**, it was held that money cannot renew a physical frame that has been battered and shattered. The courts must therefore award a sum that is regarded as reasonable compensation.

Comparable Cases

The claimant cited five cases as comparable cases to this one. I have referred to two in this order but I have also considered the others. The claimant dwelled much on the case of **Noah Makina v. Sammy's Transport Limited and United General Insurance Limited** where the claimant was awarded the sum of K2, 500, 000.00 as damages for pain and suffering and loss of amenities of life and disfigurement when he suffered a fracture of the clavicle, was hospitalised for a month and had some ugly scars. The award was made on 3rd November 2011.

The other case cited by the claimant is the case of **Batumeyo Paulo v. United General Insurance Company Limited Civil Cause No. 2265 of 2010, High Court, Principal Registry (unreported)**, In that case the claimant was awarded the sum of K1, 550, 000.00 as damages for pain and suffering and loss of amenities of life where he had sustained a fracture of the tibia and fibula, and was admitted in hospital for a month. The award was made on 24th January, 2011.

In **Rex Walala v. Davison Chikuta and Prime Insurance Co. Limited Civil Cause No. 461 of 2011**, the claimant sustained a fracture of the left tibia, bruises on the left arm and cuts on his face. He was awarded a sum of K 6, 500, 000.00 as damages for personal injuries on 17th July, 2012.

In **Mawiro v. Bakuli and Prime Insurance, Personal Injury Cause No. 14 of 2015, High Court Principal Registry (unreported)** the claimant was awarded K2, 500,00 as damages for pain and suffering, K1,000,000.00 as damages for loss of amenities of life and K3, 000.00 cost of a police report. In this case whose award was made on 11th June, 2018, the claimant suffered an open fracture of the left tibia and was put in Plaster of Paris for 8 weeks, and admitted for a day.

The Instant Case

The claimant suffered pain in the fracture that he sustained, by the head hitting the ground and also the degroving. He suffered further pain in the skin grafting. The scar that developed on his leg where skin was removed will also give its own problems for the claimant to walk, coupled with the ugliness it has brought. The claimant also healed but with arthritis. In light of the comparable cases and general principles on damages, and the circumstances, prevalent in this case, I make an award of **K2, 800,000.00** for pain and suffering, **K1, 500,000.00** for loss of amenities of life and **K1, 000,000.00** for deformity.

5. Conclusion

The claimant should recover a total sum of **K5, 300,000.00** (Five million and three hundred thousand Kwacha) as damages for the personal injury he suffered. The defendants are further ordered to pay costs of the assessment.

Made this 9th day of July, 2018.



Austin Jesse Banda

ASSISTANT REGISTRAR