



Republic of Malawi
IN THE HIGH COURT OF MALAWI
MZUZU DISTRICT REGISTRY

Civil Cause No. 223 of 2016

Between:-

ABEL SICHILA.....PLAINTIFF

-AND-

CHIMWEMWE LUHANGA.....1ST DEFENDANT
NUSWE CHIRWA.....2ND DEFENDANT
PRIME INSURANCE COMPANY.....3RD DEFENDANT

CORAM

Brian Sambo, Assistant Registrar (Ag)

Christon Ghambi, of counsel for the Plaintiff

Evans Mbotwa, of counsel for the Defendants

Henry Kachingwe; Official Interpreter

ASSESSMENT OF DAMAGES FOR PERSONAL INJURY

INTRODUCTION

This assessment follows the decision by Honourable Justice Ligowe in tantamount of the Plaintiff for damages. The court had given opportunity to the parties to agree on quantum of the same within 30 days from the date of judgment; the 16th of January, 2018. As a proof of disagreement between the parties on the quantum of damages payable, on 31st of March, 2018, the Claimant, through his legal practitioner

filed a Notice of Assessment, which I gladly issued and set it down on the 8th of May, 2018 at 9.00 AM for hearing on assessment of the quantum of damages payable.

On Tuesday, May 8, 2018, I received evidence and heard the plaintiff's submissions on assessment of damages for pain and suffering, loss of amenities of life, permanent body deformation, loss of earnings, damages for loss of earnings capacity, and special damages for costs of a police Report amounting to MK3, 000.00, Medical Report amounting to MK3, 000.00, Medical expenses amounting to MK14, 300.00 and transport expenses amounting to MK94, 000.00.

I may be helping someone if I include this in my assessment order that the hearing was almost defeated when counsel for the Defendants prayed for an adjournment in that they were served a bit late with the Notice of hearing of the assessment of damages. Counsel Mbotwa told the court that the Notice was served upon them on the 3rd of May, 2018 at 2.00 PM. This assertion was vehemently controverted by counsel for the Claimant to the extent that the service occasioned was infallible. The heat that was there, struck me off the realm of trust for either of the two counsels; and upon consulting the served Notice, I realized that the truth was that the Defendants were served on the 14th of March, 2018. It is was my finding that the service was good. I proceeded with the hearing as scheduled.

The Plaintiff is suing on his own behalf as a victim of the road accident. The 1st Defendant is sued as the driver of the motor vehicle registration number BL 3835, Nissan Cabster. The 2nd Defendant is sued as owner of the said motor vehicle whereas the 3rd Defendant is sued as the insurer of the stated motor vehicle under

Certificate Number 13011764, issued on the 11th of August, 2016 expiring on the 17th of May, 2017.

The accident occurred within the subsistence of the insurance policy above- stated.

BRIEF FACTS

The facts of this case are simple enough. On 4th September, 2016, at about 8.20 PM, the 1st Defendant was driving the above-mentioned motor vehicle from Karonga heading towards the direction of Chilumba, within the same district. Upon arrival at Karonga Museum Junction, he lost control of the said motor vehicle and swerved to the left hand side of the road where he hit the Plaintiff herein who was, at that time, cycling and heading towards the same direction. Following the impact, the Plaintiff sustained fracture of his left arm, multiple bruises and lacerations on his extremities and bruises on the anterior aspect of the left forehead.

According to the Police Report, the said accident was caused by the negligence of the 1st Defendant. The 1st Defendant, during criminal trial, he admitted the charge of negligent driving contrary to section 126 of the Road Traffic Act, and upon conviction, he paid a fine of MK5000.00 under General Receipt Number 3042688.

ISSUE

The hearing was conducted to assess the quantum of damages payable under the above outlined heads that the Plaintiff had prayed for.

ANALYSIS OF FACTS AND DECISION

The basis of my assessment comes from the victim's own evidence, the tendered medical report, the victim's own spectacle, the police report that was tendered, submissions by counsels be it written or oral, and skeleton arguments. I will be tackling all these quite in a moment. Before then, I would like to thank both Counsels for the guidance given me through the submissions made. I noticed, at some point, especially during cross examination, this matter became quite passionate. I will try as much as possible to consider them in my assessment as far as the law disposes. I

also want to thank the witness who came all the way from Karonga to testify. Such evidence, I believe, will help me to come up with a correct assessment order.

I had time to look at the medical report and the police report. On page 1 of the police report it was written as follows, "Mr. Abel Sichila sustained a fracture on the left lower arm". It ended there. Knowing that police officers, generally, are not medical experts, I also inspected the Medical Report prepared by H.K. Munthali, Clinical Officer at Karonga District Hospital. This is what it said,

"The bearer, Abel Sichila, 40 years, male, presented with general body pains and bruises and lacerations on lower extremities, bruises on the left chest and reduced motor function of left upper limb following RTA on 4th September, 2016 around 20.00 hours.

On examination, he was in pain, pink hydrated multiple bruises and lacerations on his extremities, bruises on the anterior aspect of the left forearm with reduced range of motion.

Findings of AP and lateral views of X-rays of left forearm revealed fracture distal ulnar. X-ray of left leg was normal.

The patient was then put on pethidine 100g stat, ibuprofen, 400g tds and TTV 0.5mls stat. POP cast applied on 5th September, 2016 and was discharged on 6th September, 2016. He is for POP removal on 6th October, 2016."

The Medical Report above leaves us without doubt that the Claimant sustained injuries. A person who suffers bodily injuries due to the negligence of another, such as the Defendants herein, is entitled to the remedy of damages. Indeed the principle guiding the award of damages is to compensate the injured party as nearly as possible

as money can do. However, the court is guided by the merit of each case as stated in **D Kwataine Malombe et al v GH Chikho, t/a Bec Line Minibus**, Civil Cause No. 3687 of 2001. Merit is considered when granting damages in order to achieve consistency and uniformity in cases of broadly similar nature. See **Kwataine** case above.

I had time to go through comparative judicial precedents and I have noted that in **Saidi v Prime Insurance Company**, personal Injury cause No. 402 of 2012, the plaintiff was awarded K5,000.000.00 disfigurement, after he had suffered a fracture of the 4th figure and 5th metacarpal, deep cut wound on his forehead and a wound on his right hand. This award was made in his favour on the 26th of October, 2015; just a year ago.

In **Black Luwayo v Adam Msumuko, Pangani Sambo and Prime insurance Company**, Civil Cause No. 1262 of 2009, the plaintiff who suffered a fracture of his left tibia, crushed nose, cut on left hand and dislocated of the right able was awarded K5, 104,500.00 as damages two years ago.

In another similar circumstance; in **Akimu Chingamba v Prime Insurance Company Limited**, Civil Cause No. 574 of 2011, the plaintiff was awarded damages to the tune of K3, 000,000.00, three years ago, after he had sustained multiple tissue injuries on his hip, a fracture of radius and ulna, dislocation of metacarpal bones, painful back and left shoulder, was in plaster of paris for two months, incapacity of 20% and reduced mobility of the arm.

Admittedly, the precedents above are quite relevant to the matter at hand. In the instant case, the Plaintiff, Abel Sichila is claiming damages for pain and suffering, loss of amenities of life, permanent body deformation, loss of earnings, damages for loss of earnings capacity, and special damages for costs of a police Report amounting to MK3, 000.00, Medical Report amounting to MK3, 000.00, Medical Report expenses amounting to MK14, 300.00 and transport expenses amounting to MK94, 000.00.

It is trite law that when a driver of a motor vehicle, who owes different duties of care to different roads users, the questions of foreseeability, causation and remoteness would always arise in respect of different roads users affected by his negligence. See **Wright v Lodge and another Kerek v Lodge and others** [1993] 4 All ER 299. Thus, if his vehicle is involved in an accident as a results of his own negligence, he is responsible for personal injuries as well as for subsequent events which would occur incidental thereto; arising from his negligence when driving his motor vehicle. See **Bradford v Robinson Rentals Ltd** [1967]1 All ER 276. This entails that all expenses incurred by the plaintiff as a result of the accident; liability is still shouldered by the negligent driver.

In this matter, admittedly, the injuries were serious. He is no longer strong to work and fend for his family, as per the medical report. There is, however, a slight difference in terms of the degree of injuries in the cases I have cited above as compared to those inflicted on the Plaintiff herein. It could be noticed that, in the cases above-cited, apart from the availability of fractures, the victims also sustained other grievous injuries such as deep cut wounds which left them with huge and visible deformities. In this case, the evidence did not show serious injuries as grievous as those sustained by the victims above. Mr. Abel Sichila sustained fracture

of forearm and soft tissue injuries. As such, he could not be compensated at the same rate. I know that those cases are a bit old but the Malawi Kwacha has not also gone down so bad. That does not, in any way, suggest that his injuries were minor. Nevertheless, being a family man this condition is heartrending. On page 2 of his Witness Statement he told the court that his doctor told him that he would still need to undergo surgery to replace the bone on his writ joint. He said, as a driver by profession, he could no longer drive, frequently or driver over long distances because his wrist joint becomes swollen and painful each time he tries to drive a car. He further told the court that he was struggling to perform some tasks at his home using his hands as a result of the injury.

During his evidence he told the court that he was a football player in Lusubilo Football Club and he used to earn some money out of it. Although he did not bring any evidence with respect to his claim for damages for loss of earnings as a footballer, I have no doubt that he used to earn something out of it. Football has, of late become a great source of income to those who play it.

He, however supported his claim for medical expenses. He tendered some payment receipts from pharmacies such as Mima Pharmacy.

Considering the facts before me and the present condition of the Applicant, Abel Sichila, my assessment is this:

- i. MK3, 800,000.000 being damages for pain and suffering, permanent body deformation, loss of amenities for life and loss of earning capacity.
- ii. MK6000.00 being refunds for costs of Police Report and Medical Report
- iii. MK12,000.00 being medical expenses
- iv. MK80,000.00 being transport expenses

In total, the Defendants are required to pay MK3, 898,000.00. The whole sum should be paid within 7 days from today.

Costs are for the Plaintiff, and shall be assessed, separately.

Made in chambers today the 11th of July, 2018.

Brian Sambo

Assistant Registrar (Ag)