



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY NO 52 OF 2019

BETWEEN

MAXWELL NGILAZI..... CLAIMANT

-AND-

JUSSAB TRANSPORT.....1st DEFENDANT

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

CORAM: Texious Masoamphambe, Deputy Registrar

Mr Msuku for the Claimant

Mr Phiri for the Defendant

Mrs Mtegha Official Court Interpreter

ORDER ON ASSESSMENT OF DAMAGES

This order of assessment follows entry of judgement on liability against the Defendants on 7th October 2019. As to the background facts, the Claimant brought a claim for damages against 1st and 2nd Defendants for cost of repairs of his minibus and loss of business. The Claimant is owner of motor vehicle Toyota Hiace minibus registration number BT 1422 which used to operate as a public passenger vehicle. On 12 February 2018 the said vehicle collided with Freightliner truck registration number MC 3916/KK48 along Blantyre-Chikwawa road. The Freightliner was at the time of accident being driven by the 1st Defendant's driver and it was insured by the 2nd Defendant. As a result of the accident, the Claimant's minibus was severely damaged. The Claimant incurred costs for repairing his minibus and lost income the time the minibus was grounded.

Evidence

The matter came for assessment on 31st October 2019. The parties prior to the day had agreed that the Claimant should adopt his witness statement and the rest of documentation he had filed in support of his claim. The Claimant stated that he was Maxwell Ngilazi and as part of his evidence he tendered witness statement, pictures of his minibus, extracts of his record book, quotation from the garage, receipts from the garage, letter to Prime Insurance, copy of insurance policy. He adopted the tendered documents as his evidence in their entirety. The defence proposed cross examination to be postponed to a later date. Assessment was adjourned to 14th November 2019 for cross examination to be conducted, however, the parties agreed that ruling should proceed without cross examination.

Issue

The amount of damages to be awarded to the Claimant.

The Law

Where a person has suffered a damage due to the negligence of the other, the position of the law is that an award for damages should be made to put such a person in position as if he had not suffered the damage. This was laid down in **Livingstone v Rawyards Coal Company (1880) 4 AC 25** in which Lord Blackburn made the following statement:

“Where any injury is to be compensated by damages, in settling the sum to be given for reparation you should as nearly as possible get at the sum of money which will put the party who has been injured or who has suffered, in the same position as he would have been in had he not sustained the wrong for which he is now getting his compensation or reparation.”

Damages to be awarded falls in two categories thus general and special damages. General damages are damages that are assessed by the court: see **Laston Sukali v Davie Saizi & Prime Insurance Company Limited, Personal Injury no 18 of 2016**. Special damages are those that need to be specifically pleaded and strictly proved: see **Phiri v Daudi 15 MLR 404**. This means that the Claimant must produce evidence to prove the amount of special damages he/she is seeking.

A Defendant is obliged to repair an item or chattel that has been damaged as a result of his negligence and is in repairable state. The court is to award the cost of repair in such circumstances: see **Hara v Malawi Housing Corporation 16(2) MLR 527**.

A Claimant is entitled to recover general damages for loss of use of non-profit earning chattel: see **The Grata Holme (1877) AC 596**. In **Chinema v World Vision International, civil cause number 1097 of 1991** the judge noted that the courts are rather conservative in awarding damages for loss of use. The court pointed out that damages for loss of use are not consistent and depend on circumstances of each case. A Claimant is also entitled to damages for loss of profits on a damaged chattel: see **Mafenyetsetsa Transport v Land Train Haulage, Civil cause no 448 of 2001**. Such profits fall in the category of special damages meaning that the Claimant must prove lost profits by adducing sufficient evidence.

Where the Claimant does not strictly prove his entitlement to damages, reasonable damages are awarded. This was properly stated in **Renzo Benetollo v Attorney General and NICO, civil cause No 279 of 1993** in which Banda J stated as follows:

‘I’m not satisfied that the plaintiff has not proved his special damages and in the circumstances, I must consider what would be reasonable compensation for his loss’

Chatsika J buttressed the same point in **Mdumuka v Mphande 7 MLR 425 at 437**, he said:-

“Two courses are open to me in that instant, either to award what I consider to be reasonable damages or to award damages to the plaintiff in principle and refer the matter to independent arbitrator to assess quantum. I do not think the second course necessary since I consider that the court in the instant case can award damages which would be considered reasonable having regard to the circumstances of this case.”

The Award

The Claimant in the present matter is seeking K4,500,000 being the cost of repairing his minibus. He submitted both quotation and receipts in support. Looking at the evidence on file, I am satisfied that the Claimant indeed incurred K4,500,000 for repairing his minibus. Therefore, I award him K4,500,000 as claimed.

The Claimant further claimed damages for loss of use of vehicle. The claim for such is dismissed as he had indicated in the statement of claim that the minibus was being used for business, therefore he was not deprived of any usage.

With regard to loss of earnings, the Claimant attached a log of his income as evidence of lost income. What I found to be strange is that he claims that the

minibus was making K25000 every day. I found this less convincing. Ideally, a minibus cannot be generating the same amount everyday with just slight fluctuations on few days. There are days like Sundays and public holidays when people are resting in their homes and less mobile, you will expect less income on such days for minibus operators. On analysis of the figures provided, I'm not convinced that the figures give a true reflection of the income the minibus was generating. Therefore, I opt to ignore making award based on the figures provided. Instead, I opt for a reasonable sum of K17,500 as an average income generated on daily basis.

The minibus was grounded on 12th February 2018 to 28th November 2018 which translate to 289days. The Claimant indicates that the minibus was operating 7days a week. I do not believe that was case. Employment laws require a worker to rest at least one day in a week. I do not believe that the Claimants workers were working daily without a rest. Therefore, I will make a deduction on the days the minibus was grounded.

289 days = 9.6 months

I will deduct 4 resting days for every month.

That will be $9.6 \times 4 = 38.5$ days

289days - 38.5days = 250.5days

K17,500 X 250.5


K4,383,750

The Claimant is awarded K4,383,750 for loss of business

The Claimant is also awarded K3000 being the cost of procuring a police report. There is no separate receipt to prove the procurement of police report, however the top part of the said report indicates that it was procured for K3000 under general government receipt 4897180.

In total, the Claimant is awarded K8,886,750. The Claimant is further awarded costs of proceedings to be taxed at a later date.

Made this in chambers this Thursday, 19th day of December, 2019.


Texious Masoamphambe
Deputy Registrar