



**IN THE HIGH COURT OF MALAWI**

**LILONGWE REGISTRY**

**CIVIL DIVISION**

**CIVIL CASE NO. 207 OF 2018**

**BETWEEN:-**

**KHUMBO NYASULU ..... CLAIMANT**

**-AND -**

**ANDREW MANGENI.....DEFENDANT**

**Coram:**

**Brian Sambo, Assistant Registrar**

Miss Chihana, of counsel for the Claimant

Defendants, absent and unrepresented

Mr. Matope, Court Clerk/Official Interpreter

**ORDER ON ASSESSMENT OF DAMAGES**

The Claimant had successfully obtained a summary judgment for the following;

- i. Damages for pain and suffering
- ii. Repair costs for his motor vehicle; Toyota Harrier Registration Number MZ 9020, and
- iii. Costs of action.

On the 17<sup>th</sup> of November, 2021, I heard evidence for the assessment from the Claimant, Khumbo Nyasulu in the absence of the Defendant. There was sufficient proof of service upon the Defendant; who was served through his legal practitioners, the Legal Aid Bureau. Despite being duly served with the notice of

*Khumbo Nyasulu vs Andrew Mangeni, Civil Cause No. 207 of 2018.*

assessment hearing, the Defendant did not attend the same let alone give any excuse.

### **BRIEF FACTS**

On 13<sup>th</sup> November, 2016, the Defendant was driving his motor vehicle registration number MZ14 from the direction of Biwi Triangle heading towards Matchasi, along Chidzanja Road in the city of Lilongwe. Upon arrival at Mwala, he negligently turned to the right, and in the process he collided with the Claimant's car. As a result of the collision, the Claimant's vehicle had its front part extensively damaged. The police charged the Defendant with the offence of negligent driving of a motor vehicle plus driving a motor vehicle without an insurance policy cover. Following the impact, the Claimant now demands damages for pain and suffering, repair costs for his motor vehicle and costs of action.

### **EVIDENCE DURING ASSESSMENT OF DAMAGES**

The Claimant was the sole witness in his case. Testifying as PW1, he told the court that the Defendant had negligently turned to the right hand side of the road and in the process he extensively damaged his car. He said he went to Bonga Motors and obtained a quotation for repairs. He adopted and tendered his Witness Statement (marked PEX 1) along with the quotation (marked PEX 1A) and the Police Report (marked PEX 1B). On his part, he said he also experienced shock, pain and suffering to the extent that he had to go to the hospital for medical treatment.

### **ISSUE**

The hearing was conducted in order to assess the amount of damages payable by the Defendant for pain and suffering, and costs for repairs.

### **ANALYSIS OF FACTS AND DETERMINATION**

#### **THE LAW ON DAMAGES**

Damages are the remedy for a victim of a wrong, and the wrongful party has to compensate the victim, in as far as money can, to be put back in the same position that the victim would have been if not for the wrong- **Elida Bello v. Prime Insurance Company Limited**, Civil Cause No177 of 2012 (unreported).

#### **PAIN AND SUFFERING**

As regards 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. See also **City of Blantyre v. Sagawa**, [1993] 16(1) MLR 67 (SCA).

In the instant case, there is no medical evidence to show that the Claimant had sustained any bodily affliction. In his Witness Statement, he talked about shock, pain and suffering but did not go ahead to support his claims with medical evidence. However, from the definition above, the shock itself suffices damages. However, damages for shock or mere fright are usually minimal. They are not as high as in the case where a claimant has really undergone pain and suffering. In the present matter, there is no evidence of pain. The Claimant testified that he went to the hospital for treatment, but surprisingly, he did not tender any medical evidence to that effect. Considering the above, I award the Claimant **MK500, 000.00** as damages for suffering.

#### **MOTOR VEHICLE REPAIR COSTS**

The Police Report is clear that the Claimant's motor vehicle was extensively damaged on its front part. I have, however doubted the quotation attached by the Claimant. It is, obviously not authentic, and therefore unreliable. It is written on a mere A4 plain paper; giving an impression that someone just printed it out from his computer, attached it – purporting it to be a quotation from Bonga Motors. I believe, if it were a photocopy, I would have expected counsel to get it certified. Owing to the state in which it is, there is no way a court of law such as this, could consider it as a truthful piece of evidence. I will therefore attach very little weight to it. And, again, the normal thing for the Claimant to do was to solicit at least three quotations, for the avoidance of doubt. From the three quotations, the choice would usually go to the most affordable. In this case, there was only one quotation available, and this denied the court the opportunity to examine and compare documents for purposes of admissibility and relevance. It is possible that some garagists would have charged less for the same repairs.

In light of the above, the only evidence admissible and relevant is that of the Police Report which provides that the front part of the Claimant's motor vehicle was extensively damaged. In these circumstances, I award the Claimant **MK1, 600,000.00** being damages for the repair costs.

#### **CONCLUSION**

In conclusion, the awards are as follows:

- i. **MK500, 000.00** being damages for suffering.
- ii. **MK 1, 600 000.00** being damages for motor vehicle repairs.

In total, the Defendant shall pay **MK2, 100,000.00**. This whole amount is payable within 14 days from today.

Costs are for the Claimant, and shall be assessed separately if not agreed upon by the parties.

Made in chambers today Monday the 29<sup>th</sup> day of November, 2021.



**Brian Sambo**  
**Assistant Registrar**