



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY
PERSONAL INJURY CASE NO. 407 OF 2016

BETWEEN

TEST WHITE MAMBA.....PLAINTIFF

AND

DANIEL KENNEDY NDAWALA.....1ST DEFENDANT

PRIME INSURANCE COMPANY LTD.....2ND DEFENDANT

Coram: **WYSON CHAMDIMBA NKHATA** (ASSISTANT REGISTRAR)

Mr. Jere- of Counsel for the plaintiff

Mrs. Mkandawire- Court Clerk and Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

The plaintiffs in this matter took out a writ of summons dated 3rd of November 2016 against the defendants claiming replacement value of his motor vehicle registration number BLK77, damages for loss of business of the said motor vehicle, damages for loss of use of the said motor vehicle and costs of the action. This is the court's order on assessment of damages pursuant to a summary judgment obtained on the 30th of March 2017. The summary judgment is in respect for a claim that arose out of an accident that occurred on or about the 16th of July 2016. The issue of the Defendant's liability having been settled

already by the said judgment, the duty placed upon this court was to determine the reasonable quantum of damages that would adequately compensate the Plaintiffs for the losses and damages suffered herein.

The matter came for hearing on assessment of damages on 22nd of March 2018 and the plaintiff was sole witness for his case. The defendant did not avail himself for the hearing on assessment of damages albeit having been served as shown in the sworn statement of service. The plaintiff adopted his witness statement in which he averred that by a judgment of the Court dated 30th of March 2017, the Court awarded damages for loss and damage of motor vehicle registration no. BLK 77 Toyota Hiace Minibus following a road traffic accident which occurred on 16th July 2016. The Court awarded the replacement value of the said motor vehicle, damages for loss of use and costs. He further averred that the market value of the said motor vehicle at the time of the accident was K1,300,000.00 and the present market value is K5,500,000.00. He further stated that before the accident the motor vehicle was earning K15,000.00 a day and in a month he was making K450,000.00. It is his submission that as a result of the accident he has been deprived of use of the vehicle and prays that the court calculates damages.

Having heard the plaintiff, the duty placed upon this court was to determine the reasonable quantum of damages that would adequately compensate the Plaintiff for the claimed cost of replacing his motor vehicle and loss of use of the said vehicle.

The law of Torts provides that a person who suffers bodily injuries or loss due to the negligence of another is entitled to recover damages. The purpose of awarding damages is to compensate the injured party as nearly as possible as money can do. That is to say, to place the Plaintiff in a position he would be had he not suffered the damage (See **Livingstone v Rawyards Coal Company (1880) 5 AC 25**). This is what is termed the principle of *restitutio intergrum*.

With regard to cost of replacing the motor vehicle, the position of law is that where an item has been damaged and is in an irreparable state, the court will award as damages the cost of repairing the same. On the other hand, where the item is beyond repair, the court will award as damages, the cost of replacing the item, see **Hara vs Malawi Housing Corporation**, 16(2)MLR 527 and **Tea Brokers (Central Africa)Ltd vs Bhagat** (1994)MLR,339. In the present case, the evidence which is not in dispute shows that the motor vehicle was in a irreparable state and the court is therefore obliged to award as damages, the cost of replacing it.

It must be noted, however, that such damages fall within the category of special damages and as per the legal requirement, these should be pleaded and strictly proved. In the present case, the cost of repairing the said vehicle has been pleaded and there is a quotation that was tendered by the plaintiff to the sum of K5,000,000.00 and has a deduction of K500,000.00 and the amount comes to K4,500,000.00. I thought it is pertinent to mention that the person who did the evaluation was not paraded to testify and elaborate on how he arrived at the said value. It is worth noting that there is only one quotation presented to the court. Essentially, there is no basis for comparison. Further to this, the plaintiff in his witness statement indicates that the market value of the vehicle at the time of the accident was K1,300,000.00 and it is now K5,500,000.00.

I went through the file in order to find the basis of pegging the value of the vehicle at K1,300,000.00 before the accident. The only document that had such information though not made part of this assessment exercise is a letter from Prime Insurance Company Limited to the plaintiff's legal representatives which reads in part:

We kindly advise that our policy limit is MK1,000,000.00 and Pre-accident Value of your insured vehicle is MK1,300,000.00 and Salvage Value is MK300,000.00 as per assessors report attached.

The letter was written on the 19th of October 2016. The quotation that was presented to this court was made on the 3rd of November 2017. The question I had was whether the value had now tripled less than a year later. Observably, there is no mention that K1,000,000.00 was already paid off by the 2nd defendant. As already stated above, the purpose of awarding damages is to compensate the injured party as nearly as possible as money can do, that is to say, to place the plaintiff in a position he would be had he not suffered the damage.

That notwithstanding, I noticed that the skeletal arguments on paragraph 4.3 recognises the K1,300,000.00 being the value of the vehicle and further subjects the amount to a 30% depreciation bringing down the value to K910,000.00. I find it is only expedient for this court to make this award.

With regard to loss of business, it is also in evidence that the plaintiff in the present case would have been realizing a net sum of K15,000.00 every day. He claims that the same translates to K450,000.00

per month. The plaintiff further claims the minibus has not been operational for 10 months. He therefore claims K4,500,000.00 being loss of use. I proceed to award the plaintiff the sum of K4, 500,000.00.

From the foregoing, the damages awarded to the plaintiff can be summarised as follows:

1. The sum of K910,000.00 as damages for cost of replacing the plaintiff's motor vehicle.
2. The sum of K4,500,000.00 as damages for loss of use of the plaintiff's motor vehicle.

In total, therefore, the plaintiff is awarded the sum of K5, 410,000.00 in all heads of damages pleaded and proved. The plaintiff is further awarded costs of the action.

DELIVERED IN CHAMBERS THIS 3rd DAY OF APRIL 2018


WYSON CHAMDIMBA NKHATA

ASSISTANT REGISTRAR