



HIGH COURT
LIBRARY

The Judiciary

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

MISCELLANEOUS CASE NUMBER 109 OF 2016

(Being Civil Cause No. 1565 of 2015 in the CRM Court sitting at Blantyre)

Between

PAUL MATEYU..... CLAIMANT

-and-

MUNTAZ HAMDANI.....DEFENDANT

CORAM: Austin Jesse Banda, Assistant Registrar

Mr. F. Chikavumba, for the Claimant

None present, for the Defendant

Ms. M. Galafa, Clerk/ Official Interpreter

Banda A.R.

ASSESSMENT ORDER

1. Background

This matter was commenced by the claimant in the Chief Resident Magistrate’s Court in Blantyre by summons issued on 21st May, 2015. In the statement of claim, the claimant stated that he was pressed against the wall by a motor vehicle owned by the defendant, whose driver, a Mr. Chikakuda was negligent in reversing the vehicle without keeping a proper look out. Judgment was entered in default of the defendant making a reply to the claims.

The claimant later made an application to the High Court to transfer the matter from the magistrate’s court to the High Court. The claimant through counsel decided that the

quantum of damages in the case would likely go beyond the jurisdiction of the magistrate after he was furnished with a medical report that revealed the extent of the injuries that he sustained. The application was granted by honourable Justice Tembo on 2nd March, 2017. The claimant brought a notice of appointment with the registrar for assessment of damages. The defendant did not avail himself, nor did his legal counsel despite due service being effected on him. I proceeded to hear the claimant in the defendant's inexplicable absence.

2. Evidence

The claimant was the only witness in the assessment hearing. Paul Mateyu told the court that he was pressed against the wall by the vehicle owned by the defendant which was negligently driven in reverse by the defendant's employee. He said as a result he sustained injuries. He had a pelvic fracture, that made it impossible for him to walk or sit such that he could only sleep on one side of his body. He also had injury to the urethra.

Mr. Mateyu said that he was first taken to Balaka District Hospital before he was referred to Zomba Central Hospital. Metal rods were inserted in his pelvic area to help the bones get back to their normal position. He had a catheter inserted below his stomach, which he showed in court, to assist him urinate as he could not do it the normal way. He stayed in hospital for not less than three weeks. He was later on referred to Queen Elizabeth Central Hospital in Blantyre where the metal rods were removed and he was given clutches to assist him to walk.

Paul Mateyu said that at the time of giving his testimony he was still experiencing pain in the pelvic region whenever he walks a distance and that he was still using a catheter to urinate due to the injury to the urethra. He also said that he was unable to enjoy sex with his wife. The claimant further said that he was unable to play football as he used to and he could not carry on his grocery business and brick laying which he used to do. He tendered a medical report from Queen Elizabeth Central Hospital. He prayed that the court makes an order that the defendant compensates him for the injuries he sustained as a result of the negligence of the defendant's driver.

3. Issue

At the assessment of damages, the assumption is that the issue of liability for damage has already been resolved and the issue that remains to be determined by the court is the amount of damages that the defendant must pay as compensation to the claimant. The only issue to determine is the amount of damages to be paid to the claimant by the defendant, under the heads as follows: pain and suffering; disfigurement; and loss of amenities of life, as pleaded.

4. Analysis of 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, 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 intergrum*.”

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**

Disfigurement

The claimant also prays for damages for disfigurement. Disfigurement refers to changes in the physical bodily frame that has been caused by the injuries in an accident. In the

case of **Chingámba v. Deerless Logistics Limited Civil Cause No. 2888 of 2007**, Potani, J 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.

Comparable Cases and This Case

In **Kachaso v Kondowe & Others Civil Cause No. 320 of 2009**, the plaintiff sustained a big cut wound at the back of the head, closed fracture of right humerus, open fracture of right lower leg near ankle, closed fracture of pelvis. The Court awarded him MK5,600,000.00 as damages for pain and suffering and loss of amenities of life. The award was made on 16th October, 2009.

In the case of **Foster Kasokota v Davis Simenti and Prime Insurance Company Limited**, the claimant sustained a fracture of the pelvis and a dislocated left shoulder. He was awarded a sum of K3,900,000.00 as damages for pain and suffering and loss of amenities of life. The award was made on 11th December, 2012.

In the case of **Shadreck Mateyu v. Anderson Matache and Prime Insurance Company Limited, Personal Injury Number 324 of 2017**, the court awarded the sum of K2, 500,000.00 as damages for pain and suffering, and K1, 000,000.00 as damages for loss of amenities of life, and K1, 000,000.00 as damages for disfigurement. The claimant had sustained a fractured pelvis, had bruises over the face and hips, had bladder contusions which resulted in him passing out bloody urine, and he had a painful pelvis and a painful left eye, and was admitted at Queen Elizabeth Central Hospital for 8 days. This award was made on 27th June, 2018.

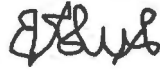
Considering the above cited comparable cases, I find that the Shadreck Mateyu case is more relevant to this case. It has similar type of injuries and it is barely a month older than this very assessment. I have considered that the claimant here-in though is still using a catheter to pass out urine. He has lost the pleasure of enjoying sex in his marriage. He stayed in the hospital two more weeks than in the Shadreck Mateyu case. All that point to the fact that the injuries in this case were greater than those in the Shadreck Mateyu case. The court was not informed that the catheter use and impotency were permanent. That is a very essential fact in determining damages here-in. Probably the status quo is not permanent, believing that if it were not so the claimant, who was ably represented by counsel, would have testified as such.

In light of the foregoing, I award the claimant **K3, 585, 000.00** damages for pain and suffering, **K1, 995,000.00** damages for loss of amenities of life, and **K1, 300,000.00** as damages for disfigurement.

5. Conclusion

The defendant is hereby ordered to pay the sum of **K6, 880,000.00** as damages for personal injuries suffered by the claimant. The defendant is also ordered to pay costs for the assessment.

Made this 25th day July, 2018.



Austin Jesse Banda

ASSISTANT REGISTRAR