



**IN THE HIGH COURT OF MALAWI
LILONGWE REGISTRY
CIVIL CASE NO. 717 OF 2020**

BETWEEN:-

Rhoda Banda (Minor Suing through Veronica Yabwino, her mother and next friend)..... CLAIMANT

-AND -

Steven Chikwakwa.....1ST DEFENDANT

Prime Insurance Company Limited.....2ND DEFENDANT

Coram:

Brian Sambo, Assistant Registrar

Mrs. Mapemba Chikopa, of counsel for the Claimant

Defendants, absent and unrepresented

Mr. Kumwenda, Law Clerk/Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

Introduction

The present assessment follows a default judgment obtained by the Claimant on 5th of November, 2020 for the following;

- i. Damages for pain and suffering
- ii. Damages for loss of amenities of life.
- iii. Damages for disfigurement
- iv. Special damages and
- v. Costs of the action.

The Claimant had duly filed and served all attendant processes upon the Defendants as required under O. 5 r 7 of the Courts (High Court) (Civil Procedure) Rules, 2017 and there was proof of service to that effect. The Defendants never filed and served any response within the prescribed time limit, according to O. 12 r 6 of the Courts (High Court) (Civil Procedure) Rules, 2017.

BRIEF FACTS

The facts of this case are simple enough. On or around 31st May, 2020 a minor by the name of Rhoda Banda was crossing the road on foot, from left to right, near Chilanga Trading Centre in the district of Kasungu, when a motor vehicle Registration Number CK 8345, being driven by the 1st Defendant, and insured by the 2nd Defendant hit her. The accident occurred because of the negligent driving by the 1st Defendant; as he was over-speeding while not alert for other road users.

As a result of the impact, the minor sustained cut wounds on her forehead, on her lower lip and under her chin. She also sustained multiple bruises on her face, trunk anterior and legs. She had other soft tissue injuries and experienced general body pains.

EVIDENCE DURING ASSESSMENT OF DAMAGES

The Claimant was the only witness in her case. She testified that since the accident, her daughter was always in pains as most parts of her body were

affected by the impact. She said, at the time of the accident, her daughter was 5 years old and in standard 1, and now she was 6 years old but still in standard 1 because she was unable to go to school. The witness tendered a Medical Report and a Police Report for her daughter; marked PEX 1A and PEX 1B, respectively.

ISSUE

The hearing was conducted to assess the amount of damages payable by the Defendants covering the heads outlined above.

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, the Claimant underwent pain and suffering during and after the accident. She sustained multiple cuts and soft tissue injuries on her head and legs. Minor surgical operation was also conducted upon the minor; as she was sutured on her cut wounds. Being a minor 5 years of age, the pain and suffering associated with these wounds cannot be underestimated. The Claimant testified that her daughter continued to experience such pains.

The Claimant further prayed for damages for loss of amenities of life. It is in the evidence that, as a result of the injuries, the child is not able pursue her education, effectively because she is in constant pains.

Counsel for the Claimant, in his skeletal arguments proposed a total award of MK5, 000,000.00 being damages covering all heads. This is much on the higher side considering the fact that the claim for disfigurement has not been supported. Even counsel's skeleton arguments do not cover the claim of damages for disfigurement. It is, therefore not for the court to assume that there should be disfigurement on the body of the minor. The evidence before me does not disclose anything with respect to disfigurement. I will not, therefore consider this claim.

I am also mindful that, in order to achieve consistency and uniformity, courts of law would also want to consider comparable judicial precedent.

In **Macdonald Mhone vs. Prime Insurance and another**, Civil Cause No. 93 of 2016, in which the Claimant suffered terrible pain on his head after sustaining a fracture and deep cut wounds, **MK2, 000,000.00** was awarded as damages for pain and suffering.

In **Javious Enerst v Steven Levison & Prime Insurance Company**, civil cause no. 92 of 2014, the plaintiff was awarded on 22nd March 2018, **MK6, 000,000.00** for sustaining fractured tibia of left leg, multiple bruises, multiple cuts on the upper and lower extremities and dislocated shoulder.

In **Mica Banda vs. Fabiano & others**, Civil Cause No. 82 of 2013, the court on 4th May 2018 awarded the plaintiff the sum of **MK3, 500,000.000** for sustaining Massive bruises on his scalp, Bruises on his face, back and posterior chest.

On 30th day of August 2018 the court in **Joseph Manyumba v Kondwani Phiri & Other**, Civil cause no. 533 of 2013, awarded the plaintiff the sum of **MK3 500 000.00** as damages for all heads on the fact that he sustained a dislocation of right elbow.

Considering the comparative case law above, and the circumstances of this case, I award the Claimant **MK3, 776,000.00** being total damages.

SPECIAL DAMAGES

Generally, special damages are specifically pleaded and strictly proven. See **General Farming Limited v Chombo (1996) MLR 16**. There is undisputed evidence on the record to the extent that the Claimant spent a total of **MK24, 000.00** towards the Medical Report and the Police Report. This amount should be recovered by the Claimant.

I also had time to examine the court record and appreciate the level of effort put forth by counsel for the Claimant. Costs are for the Claimant, obviously. This is a 2020 case, and it ended with a default judgment. We are in the Covid-19 Pandemic time, and it is also in the interest of the court to enforce the government policy to control and prevent the spread of the pandemic by way of minimizing the frequency of court meetings. It is not necessary for the court to meet again with parties on this case for assessment of costs. The court record in my hands is enough for me to determine the level of party and party costs attendant. I am also aware that costs fall within the discretion of the court. On this, I award **MK1, 200,000.00** being total party and party costs.

In total, the Defendants shall pay **MK5, 000,000.00**. This whole amount is payable within 7 days from today.

Made in chambers today Wednesday the 25th day of August, 2021.



Brian Sambo
Assistant Registrar