



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

Personal Injury Cause Number 736 of 2015

BETWEEN:

AUBREY SOLOMONI.....1ST PLAINTIFF
MARGRET BWANAUSI.....2ND PLAINTIFF
ADIJA RASHID.....3RD PLAINTIFF
ZAINABU LAYISONI.....4TH PLAINTIFF
HARRY MASAULI.....5TH PLAINTIFF
AND
JEREMIAH ISAAC BANDA.....1ST DEFENDANT
REUNION INSURANCE COMPANY LIMITED.....2ND DEFENDANT
NEWTON TEWESA.....3RD DEFENDANT

CORAM: A KANTHAMBI: ASSISTANT REGISTRAR
Mr Chakuwawa: Counsel for Plaintiff of Messrs Hanniford & Associates
Mr N Alide: Counsel for the 2nd Defendant of Messrs M&M Global
1st and 3rd Defendant: Unrepresented (Absent)
Mr PW Chitsulo: Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

INTRODUCTION AND BACKGROUND

This is an order for assessment of damages pursuant to a default judgment issued on 26th October 2015 by the Honorable Registrar. It was adjudged that the Defendants do pay the Plaintiffs: damages for pain and suffering, damages for loss of amenities of life and costs of the action.

This action was commenced on 3rd September 2015 pursuant to a road accident that occurred on 21st October 2014 at Chonde along the Zalewa Road. The Plaintiffs were passengers in motor vehicle that was crashed into from behind whilst stationary by a car owned by the 1st Defendant, insured by the 2nd Defendant and driven by the 3rd Defendant. This crash caused the vehicle to roll forward and hit another stationary motor vehicle that was in front of it. The collision resulted in serious injuries sustained by the Plaintiffs.

EVIDENCE

There are five Plaintiffs in this matter and each Plaintiff testified before court. Each Plaintiff's evidence will be reproduced in turn.

Aubrey Solomoni - 1st Plaintiff

Aubrey Solomoni lives in Chirimba and sells cooking oil at Blantyre Market. Solomoni adopted his witness statement as evidence in chief and it states:

6. I **Aubrey Solomon** an adult of PO Box 8, Mimosa **STATE** as follows:

- 6.1 I am the 1st Plaintiff in this matter.
- 6.2 On or about 21st October 2014, I was involved in a road traffic accident involving a motor vehicle registration number CZ 4939 which was owned by the 3rd Defendant, driven by the 1st Defendant and insured by the 2nd Defendant.
- 6.3 As a result of the accident I sustained the following injuries:
 - i. Painful chest
 - ii. Cut on the face
 - iii. I suffered permanent incapacity of 10%.
- 6.4 The majority of the injuries above are confirmed by the medical report exhibited hereto and marked **"PW1"**

7. I verily believe that the statement herein given by me is true to the best of my knowledge and belief.

Signed: (fingerprint)

AUBREY SOLOMON

Solomon tendered a medical report which stated: 'Date: 01/12/2014; RE: Aubrey Solomon; Address: PO Box 8 Mimosa; Age: 29 years. Date admitted: N/A; Date Discharged: N/A; Treated as an outpatient from: 21/10/2014. Nature of injuries: 'Chest pains, cut on the face; Name of Doctor who treated patient: A Chirwa; What surgical operation or other treatment were accorded to the patient: Suturing, wound dressing, analgesics; What is the result of the surgical operation or treatment: healing with scarring; Has patient suffered permanent incapacity: Yes; Percentage – 10%; Is Patient fit for manual work – Yes; Will patient be able to perform previous job – Yes; Is the patient required for further examination? – N/A; Any further remarks (eg effect of drugs, treatment of injury) – He will be depending on analgesics; Stamped by Queen Elizabeth Central Hospital on 01 Dec 2014.

In viva voce evidence, Solomon told the court that he was injured on the chest and could feel pain in his ribs. He sustained a cut below the eye and cannot lift heavy objects. The court noted a black mark for a bruise. Solomon sustained bruises but no fractures.

In cross examination Solomon told the court that he was admitted to the hospital for two days. The previous year, he returned to the hospital some time after being discharged. Solomon could not say why the medical report did not indicate that he had been admitted. Solomon confirmed that he had been represented by Mwangulube & Co before he was represented by Hanniford & Associates.

Margret Bwanausi - 2nd Plaintiff

Margaret Bwanausi lives in Chirimba and is employed by G4S. She adopted her witness statement as her evidence in chief and it states:

13. I **Margret Bwanausi** an adult of PO Box 720 **STATE** as follows:

- 13.1 I am the 2nd Plaintiff in this matter.
- 13.2 I am a Watchlady.
- 13.3 On or about 21st October 2014, I was involved in a road traffic accident involving a motor vehicle registration number CZ 4939.
- 13.4 As a result of the accident I sustained the following injuries:

- i. Painful legs
- ii. Painful head
- iii. Painful neck
- iv. Painful back
- v. Multiple bruises on both legs
- vi. Multiple bruises on head
- vii. Multiple bruises on neck
- viii. Multiple bruises on back
- ix. I suffered permanent incapacity of 12%.

13.5 The majority of the injuries above are confirmed by the medical report exhibited hereto and marked **"PW2"**

14. I verily believe that the statement herein given by me is true to the best of my knowledge and belief.

Signed: (signed)

MARGRET BWANAUSI

Dated this 22 day of 01 2016

Bwanausi tendered a medical report which stated: 'Date: 01/12/2014; RE: Margaret Bwanausi; Address: c/o G4S PO Box 720, Blantyre; Age: 36 years. Date admitted: N/A; Date Discharged: N/A; Treated as an outpatient from: 21/10/2014. Nature of injuries: 'painful, bruised legs, head, neck and back'; Name of Doctor who treated patient: A Chirwa; What surgical operation or other treatment were accorded to the patient: wound dressing, analgesics; What is the result of the surgical operation or treatment: healing with scarring; Has patient suffered permanent incapacity: Yes; Percentage – 12%; Is Patient fit for manual work – Yes; Will patient be able to perform previous job – Yes; Is the patient required for further examination? – N/A; Any further remarks (eg effect of drugs, treatment of injury) – She may depend on analgesics; Stamped by Queen Elizabeth Central Hospital on 01 Dec 2014.

In viva voce evidence, Bwanausi told the Court that she was injured on her legs and had bruises on the legs and arms. She had a severe headache and pain in the back and was failing to bend on the day of the accident. She also had chest pains.

In cross examination, Bwanausi told the court that she was treated at Queen Elizabeth Central Hospital but she was not admitted. She went back to the hospital because her legs were hurting but could not remember the exact date when she went back. She was given medication for an infection. She obtained the medical report from the hospital a month after the accident. She paid MK10,000.00 for the medical report but she did not have the receipt during the hearing.

Adija Rashid – 3rd Plaintiff

Rashid is a housewife from Chirimba. She adopted her witness statement as evidence in chief and it states:

20.1 **Adija Rashid** an adult of PBag 67 **STATE** as follows:

20.1 I am the 3rd Plaintiff in this matter.

20.2 On or about 21st October 2014, I was involved in a road traffic accident involving a motor vehicle registration number CZ 4939.

20.3 As a result of the accident I sustained the following injuries:

- i. Backache

- ii. General body pains
- iii. I suffered permanent incapacity of 10%.

20.4 The majority of the injuries above are confirmed by the medical report exhibited hereto and marked **"PW3"**

21. I verily believe that the statement herein given by me is true to the best of my knowledge and belief.

Signed: (signed)

ADIJA RASHID

Dated this 28 day of 01 2016

Rashid tendered a medical report which stated: 'Date: 01/12/2014; RE: Aubrey Solomon; Address: P/Bag 67 Blantyre; Age: 43 years. Date admitted: N/A; Date Discharged: N/A; Treated as an outpatient from: 21/10/2014. Nature of injuries: 'Backache, general body pains; Name of Doctor who treated patient: A Chirwa; What surgical operation or other treatment were accorded to the patient: analgesics; What is the result of the surgical operation or treatment: may develop arthritis 2 degree to trauma; Has patient suffered permanent incapacity: Yes; Percentage – 10%; Is Patient fit for manual work – Yes; Will patient be able to perform previous job – Yes; Is the patient required for further examination? – N/A; any further remarks (eg effect of drugs, treatment of injury) – She may be depend on analgesics; Stamped by Queen Elizabeth Central Hospital on 01 Dec 2014.

In viva voce evidence, Rashid told court that she was injured on the back, waist and had general body pains. She has residual pain in the waist and on the back.

In cross examination she told court that she did not pay for the medical report. She could not remember the date when she obtained the medical report. She got the medical report from the doctor after being asked how she was feeling and she told him.

Zainab Lyson – 4th Plaintiff

Lyson is unemployed and lives in Chirimba. She adopted her witness statement as evidence in chief and it stated:

27. I **Zainabu Lyson** an adult of P/Bag 67 **STATE** as follows:

- 27.1 I am the 4th Plaintiff in this matter.
- 27.2 On or about 21st October 2014, I was involved in a road traffic accident involving a motor vehicle registration number CZ 4939.
- 27.3 As a result of the accident I sustained the following injuries:
 - i. Multiple bruises on upper and lower limbs
 - ii. General body pains
 - iii. I suffered permanent incapacity of 15%.
- 27.4 The majority of the injuries above are confirmed by the medical report exhibited hereto and marked **"PW4"**

28. I verily believe that the statement herein given by me is true to the best of my knowledge and belief.

Signed: (signed)

ZAINABU LAYISON

Dated this 28 day of 01 2016

Layisoni tendered a medical report which stated: 'Date: 01/12/2014; RE: Aubrey Solomon; Address: P/Bag 67 Blantyre; Age: 40 years. Date admitted: N/A; Date Discharged: N/A; Treated as an outpatient from: 21/10/2014. Nature of injuries: 'Chest Bruised upper and

lower limbs, general body pains; Name of Doctor who treated patient: A Chirwa; What surgical operation or other treatment were accorded to the patient: wound dressing, analgesics; What is the result of the surgical operation or treatment: healing with scarring; Has patient suffered permanent incapacity: Yes; Percentage – 15%; Is Patient fit for manual work – Yes; Will patient be able to perform previous job – Yes; Is the patient required for further examination? – N/A; any further remarks (eg effect of drugs, treatment of injury) – She may depend on analgesics; Stamped by Queen Elizabeth Central Hospital on 01 Dec 2014.

In viva voce evidence Lyson told the court that she sustained injuries on her back, waist, chest, neck and head. As well as a cut on the right leg.

In cross examination, Lyson told the court that she had forgotten the date when she obtained the medical report. She obtained the medical report personally and did not pay to obtain it.

Harry Masauli – 5th Plaintiff

Harry Masauli is a driver who resides in Chirimba. He adopted his witness statement as his evidence in chief and it states:

34. I **Harry Masauli** an adult of PBag 67 **STATE** as follows:

34.1 I am the 5th Plaintiff in this matter.

34.2 On or about 21st October 2014, I was involved in a road traffic accident involving a motor vehicle registration number CZ 4939.

34.3 As a result of the accident I sustained the following injuries:

i. Backache

ii. Headache

iii. General body pains

iv. I suffered permanent incapacity of 8%.

34.4 The majority of the injuries above are confirmed by the medical report exhibited hereto and marked “PW5”

35. I verily believe that the statement herein given by me is true to the best of my knowledge and belief.

Signed: (signed)

HARRY MASAULI

Masauli tendered a medical report which stated: ‘Date: 01/12/2014; RE: Aubrey Solomon; Address: PO Box 2899 Blantyre; Age: 36 years. Date admitted: N/A; Date Discharged: N/A; Treated as an outpatient from: 10/12/2014. Nature of injuries: ‘Backache, headache, general body pains; Name of Doctor who treated patient: A Chirwa; What surgical operation or other treatment were accorded to the patient: analgesics; What is the result of the surgical operation or treatment: N/A; Has patient suffered permanent incapacity: Yes; Percentage – 8%; Is Patient fit for manual work – Yes; Will patient be able to perform previous job – Yes; Is the patient required for further examination? – N/A; any further remarks (eg effect of drugs, treatment of injury) – He will be depending on analgesics; Stamped by Queen Elizabeth Central Hospital on 01 Dec 2014.

In viva voce evidence he told the court that he sustained injuries on the back, head and had general body pains.

In cross examination, Masauli stated that he was treated at Queen Elizabeth Central Hospital. After being treated, he went back to the hospital to get a medical report. He averred that he collected the medical report the day after the accident on 22nd October 2014.

Masauli averred that the medical report was stamped on 1st Dec 2014 because when he went in October he didn't have money to pay for it. He paid K10, 000.00 for it in Dec 2014 but did not have the receipt with him on the day of hearing.

SUBMISSIONS BY COUNSEL FOR THE PLAINTIFF

Counsel for the Plaintiff filed written submissions for the Court's consideration. Counsel cited the following comparable awards:

- **Paul Matsimbe v Patricia Kapachira and another** Civil Cause Number 585 of 2009 where the Plaintiff was awarded K2, 000,000.00 on 10th June 2010 as damages for deep cut wounds on the head, cuts on the nose, chin and lower lip.
- **Patricia Bannet v Alfred Lizimba** Civil Cause Number 811 of 2011 where the Plaintiff was awarded K2, 000,000.00 on 3rd September 2012 for soft tissue injuries involving bruises on the body and a sprained hip.
- **Nelson George v Anne Makuluni and another** Personal Injury Cause No 417 of 2012 where the Plaintiff was awarded MK2,000,000.00 on 3rd August 2013 for bruises and abrasions on both shoulders as well as deep cut on the left leg.
- **Muhammad Mpulula and another v B Ali and others** Personal Injury Cause Number 351 of 2013 where the Plaintiff was awarded MK 3,000,000.00 on 12th February 2014 for multiple cut wounds on the chest, ribs, right arm, bruises and swollen thigh.

Counsel submitted that the injuries suffered by the Plaintiffs are comparable to those suffered by the Plaintiffs in the above cited cases. Time has elapsed since the awards were made during which the Kwacha has greatly depreciated in value.

Counsel concluded with the submission that each plaintiff be compensated with the sum of MK 4 million each.

THE LAW ON ASSESSMENT OF DAMAGES

The High Court in **Ngosi t/a Mzumbamzumba Enterprises v H Amosi Transport Co Ltd** [1992] 15 MLR 370 (HC) set the basis for assessment of damages:

'Assessment of damages.....presupposes that damages have been proved. The only matter that remains is the amount or value of the damages.'

The rule is that prior to assessment, the injured party has provided proof of damage sustained – **Yanu-Yanu Co Ltd v Mbewe** (SCA) 11 MLR 405. Even in the face of difficulties in assessing damages, the Plaintiff is not disentitled to compensation – **Mkumuka v Mphande** (HC) 7 MLR 425.

The cardinal principle in awarding damages is '*restitutio in integrum*' which means, in so far as money can do it, the law will endeavour to place the injured person in the same situation as he was before the injury was sustained – **Halsbury's Laws of England** 3rd Ed. Vol. II p.233 para 400.

This principle was further enunciated in **Livingstone v Raywards Coal Co** (1880) 5 App Cas 25 at 39, where Lord Blackburn said:

‘...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.’

The law distinguishes general damages and special damages as follows – general damages are such as the law will presume to be the direct natural or probable consequence of the action complained of. Special damages, on the other hand, are such as the law will not infer from the nature of the course - **Stros Bucks Aktie Bolag v Hutchinson** (1905) AC 515. In determining the natural consequences, the court considers if the loss is one which any other claimant in a like situation will suffer – **McGregor on Damages** p23 para 1-036.

Special damages must be specifically pleaded and must also be strictly proved - **Govati v Manica Freight Services (Mal) Limited** [1993] 16(2) MLR 521 (HC). A Plaintiff who claims special damages must therefore adduce evidence or facts which give satisfactory proof of the actual loss he or she alleges to have incurred. Where documents filed by the Plaintiff fail to meet this strict proof then special damages are not awarded – **Wood Industries Corporation Ltd v Malawi Railways Ltd** [1991] 14 MLR 516.

Although perfect compensation is impossible, what the plaintiff should get is fair and adequate compensation - **British Commission v Gourley** (1956) AC 185. Since it is difficult to assess damages involving monetary loss, courts resort to awarding conventional figures guided by awards made in similar cases and also taking into account the money value. Lord Morris buttresses this contention in **West v Shepherd** (1964) AC 326 at 346 where he states: *‘money cannot renew a physical frame that has been battered and shattered. All judges and courts can do is to award a sum which must be regarded as giving reasonable compensation.’*

The court bears in mind the sentiments laid out in **Steve Kasambwe v SRK Consulting (BT) Limited** Personal Injury Cause Number 322 of 2014 (unreported):

‘At times the court is faced with situations where the comparative cases have been rendered obsolete because of the devaluation of currency and inflation. It would not achieve justice if the court insisted on the same level of award as was obtaining in the previous cases. In such situation, when deciding the new cases, the court must take into account the life index, i.e. cost of living and the rate of inflation and the drop-in value of the currency. The court must therefore not necessarily follow the previous awards but award a higher sum than the previous cases.’

COMPENSATION

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. See: **Ian Goldrein et al, Personal Injury Litigation,**

Practice and Precedents (Butterworths, 1985) 8 and ***City of Blantyre v Sagawa*** [1993] 16(1) MLR 67 (SCA).

The 1st Plaintiff sustained a painful chest and cut on the face. The plaintiff had to undergo suturing which in and of itself is additional pain to a wound. This court therefore awards the 1st Plaintiff the sum of **MK250,000.00** as damages for pain and suffering.

The 2nd Plaintiff sustained painful bruises on legs, head, neck and back. The Plaintiff had to get the wounds dressed when attended to at the hospital. The Plaintiff must have experienced pain when the wounds were inflicted and when cleaning the wounds. With this in mind, the court awards the 2nd Plaintiff **MK200,000.00** as damages for pain and suffering.

The 3rd Plaintiff sustained a backache and general body pains. She was treated with analgesics (painkillers). Compared to the 1st two Plaintiffs, this Plaintiff sustained fairly minor injuries. For these reasons, this court awards the 3rd Plaintiff **MK120,000.00** as damages for pain and suffering.

The 4th Plaintiff sustained bruised upper and lower limbs and general body pains. The wounds she sustained had to be dressed at the hospital and she was given analgesics (painkillers). The Plaintiff must have experienced pain when the wounds were inflicted and when cleaning the wounds. With this in mind, this court awards the 4th Plaintiff **MK200,000.00** as damages for pain and suffering.

The 5th Plaintiff sustained a backache, headache and general body pains. This Plaintiff was treated with analgesics (painkillers). Compared to the other 4 Plaintiffs, this Plaintiff sustained fairly minor injuries. For these reasons This court, therefore awards the 5th Plaintiff, the sum of **MK120,000.00** as damages for pain and suffering.

Loss of Amenities

The expression 'loss of amenities of life' simply means loss of faculties of pleasures of life resulting from one's injuries. Damages for loss of amenities of life are awarded for the fact that the plaintiff is simply deprived of the pleasures of life, which amounts to a substantial loss, whether the plaintiff is aware of the loss or not. See: ***Poh Choo v Camden and Islington Area Health Authority*** [1979] 2 All ER 910 and ***City of Blantyre v Sagawa*** [1993] 16(1) MLR 67 (SCA) at 72.

The 1st Plaintiff told the court that he sustained a cut on his right eye and can no longer lift heavy objects due to the injuries he sustained. This Plaintiff sustained a painful chest which has resulted in his inability to lift heavy objects. With this in mind, this court awards the Plaintiff **MK100,000.00** as damages for loss of amenities of life.

The 2nd Plaintiff sustained painful bruises on the legs, head, neck and back. The Plaintiff confirmed to the court that she feels residual pain in her legs and had to go back to the hospital after the initial treatment because her legs were still painful. For these reasons, this court awards the 2nd Plaintiff the sum of **MK150,000.00** as damages for loss of amenities of life.

The 3rd Plaintiff sustained a backache and general body pains. At the time of hearing, the 3rd Plaintiff told the court that her back still gives her problems as it is yet to heal properly. For these reasons, this court awards the 3rd Plaintiff the sum of **MK50,000.00** as damages for loss of amenities of life.

The 4th Plaintiff sustained multiple bruises on the upper and lower limbs and general body pains. She had to have the wounds dressed. No evidence was proffered as to the effect that the injuries have had on the 4th Plaintiff's life today. It is trite that a Plaintiff's assertions must be proved and no evidence was led to show how the 4th Plaintiff's amenities of life had been affected. For these reasons, this court awards the 4th Plaintiff **nothing** as damages for loss of amenities of life.

The 5th Plaintiff sustained a backache, headache and general body pains. He was treated with analgesics and no evidence was proffered as to the effect that the injuries had on his life today. It is trite that a Plaintiff's assertions must be proved and no evidence was led to show how the 5th Plaintiff's amenities of life had been affected. For these reasons, this court awards the 5th Plaintiff **nothing** as damages for loss of amenities of life.

DISPOSAL

The 1st Plaintiff is hereby awarded MK250,000.00 being damages for pain and suffering and MK100,000 for loss of amenities of life. The total award for the **1st Plaintiff is MK350,000.00;**

The 2nd Plaintiff is hereby awarded MK200,000.00 as damages for pain and suffering and MK150,000.00 for loss of amenities of life. The total award for the **2nd Plaintiff is MK350,000.00;**

The 3rd Plaintiff is hereby awarded MK120,000.00 as damages for pain and suffering and MK50,000.00 for loss of amenities of life. The total award for the **3rd Plaintiff is MK170,000.00;**

The 4th Plaintiff is hereby awarded MK200,000.00 as damages for pain and suffering and nothing for loss of amenities of life. The total award for the **4th Plaintiff is MK200,000.00;** and

The 5th Plaintiff is hereby awarded MK120,000.00 as damages for pain and suffering and nothing for loss of amenities of life. The total award for the **5th Plaintiff is MK120,000.00.**

Costs will be taxed, if not agreed by the parties.

Each party is at liberty to appeal to the Supreme Court of Appeal within the requisite time frames.

Ordered in Chambers on the 10th day of January 2018 at the Chichiri Courthouse, Blantyre


A Kanthambi

ASSISTANT REGISTRAR