

Republic of Malawi

IN THE HIGH COURT OF MALAWI

CIVIL DIVISION

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 340 OF 2019

Between

RUTH ALICK (A minor suing through GRACE HUWA)CLAIMANT

-and-

YAXLEY KUMWENDA1ST DEFENDANT

LIBERTY GENERAL INSURANCE COMPANY LIMITED..... 2ND DEFENDANT

CORAM: Austin Jesse Banda, Assistant Registrar

Mr. T.J. Mwabungulu, for the Claimant

None, for the Defendants

Ms. F. Makhambera, Clerk/ Official Interpreter

Banda

JUDGMENT ON ASSESSMENT OF DAMAGES

Background

By the Order of the Court dated 25th November, 2019, Judgment on liability in this matter was entered against the Defendants, who were further ordered to pay damages to the Claimant, the damages to be assessed by the Registrar. The Claimant obtained a date for the assessment of damages. The Defendants did not appear either in person or by Counsel, and without word as to their failure, despite due service being effected. I therefore proceeded to hear the Claimant in the Defendants' absence.

Evidence

The only witness for the Claimant was Grace Huwa, the litigation guardian for the minor Claimant. She adopted the witness statement that was filed prior to the assessment hearing and tendered a police report ("Exhibit GH 1"), a medical report ("Exhibit GH 2") and a General Receipt that she was given upon payment to obtain the police report ("Exhibit GH 3"). In her statement, Grace Huwa testified that her daughter was hit by a motor vehicle registration

number SA 9396 Toyota Vitz, at or near Living Waters Church at Chimwankhunda Township in Blantyre.

Grace Huwa further stated that her daughter, Ruth Alick sustained a fracture of the tibia and a painful right leg. She said that the daughter was taken to Queen Elizabeth Central Hospital where she was treated. Her leg was cast in a Plaster of Paris (POP) which she had between 21st March, 2019 and 25th April, 2019. It was her evidence that her daughter experiences pain on the leg, even by the time she made the statement.

Issue

The only issue at hand is the amount of damages that the Claimant should be compensated with under the heads; pain and suffering, loss of amenities of life, deformity and disfigurement.

The Law and Fact

The starting point is that assessment of damages presupposes that damages have been proved and what remains is the measure of the amount of the damages- see the case of **Ngosi t/a Mzumbamzumba Enterprises v. Amosi Transport Co Ltd [1992] 15 MLR 370(HC)**. The rule is that the injured party has provided proof of the damage sustained prior to the assessment hearing- **Yanu Yanu Co v. Ltd v. Mbewe 11 MLR 405 (SCA)**. Damages in a case like this one, are not awarded to punish the defendant or tortfeasor, but to fully compensate the claimant of all the losses that he has suffered as a direct or consequential result of the defendant's wrongful act or omission. 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.

The award of damages for pain and suffering depends upon the claimant's personal awareness of pain, and his capacity for suffering- see **Limpoh Choo v. Camden and Islington Area Health Authority [1980] AC 174 @ 183.**

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 Edition), 1961, p. 624.**

Deformity/ Disfigurement

Damages are paid under the head of disfigurement for the change in the physical form of a person injured either as a result of the impact of the injury or its treatment, such as a scar coming in as a result of surgical operation necessitated by the injury. It is a change in appearance but it is capable of limiting a person from doing certain things as was observed by the court in the case of **Austin Julius v. Rasika Gunawardena and General Alliance Limited, Personal Injury Cause Number 316 of 2014.**

Potani, J, in the case of **Chingámba v. Deerless Logistics Limited Civil Cause No. 2888 of 2007**, 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. In **Zaina Chipala v. Dwangwa Sugar Corporation Civil Cause Number 345 of 1998, High Court, Principal Registry, per Chimasula, J**, it was held that money cannot renew a physical frame that has been battered and shattered. The courts must therefore award a sum that is regarded as reasonable compensation.

The Instant Case and Comparable Cases

The minor Claimant sustained serious injuries as the uncontroverted evidence on file shows. The accident left her with a fracture on the right leg, and the leg was painful. A Plaster of Paris had to be cast on the leg and was there a period of a month and days. It was still painful at the time the mother of the minor Claimant gave her testimony.

In **Malichi v. Prime Insurance Company Ltd, Civil Cause Number 2613 of 2009, High Court, Principal Registry (unreported)**, the claimant suffered a cut wound on the scalp, bruises on the face, swollen head and fracture of the left tibia. He had headaches and limped when walking. He was awarded K4,500,000.00 for pain and suffering and loss of amenities of life, on 29th May, 2012.

There is also the case of **Christine Mande v Charter Insurance Company Personal Cause No. 329 of 2016** where the claimant was awarded MK 6,300,000.00 as damages for pain and suffering and loss of amenities of life after sustaining a fracture of the right femur, dislocation of the right hip joint, cuts on the head and loss of consciousness.

In **Malisewo v. Charter Insurance Company Ltd, Civil Cause No. 915 of 2012**, the claimant was awarded K2,100,000.00 as damages for pain and suffering and loss of amenities of life, and K800,000.00 as damages for disfigurement. In that case the claimant suffered a wound on his head, fracture of the left tibia, soft tissue injuries, and bruises. The award was made on 29th October, 2012.

The Award

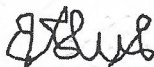
With the comparable cases in mind and the time that has passed and the currency fluctuations that has taken place, and mindful of the circumstance of the Claimant with the injuries she sustained, I award the Claimant **K4, 350,000.00** as damages for pain and suffering, **K1, 000,000.00** as damages for loss of amenities of life and **K1, 500, 000.00** as damages for deformity.

The Claimant also asked for special damages being expenses he incurred in obtaining a police and medical report. These are special damages which require strict proof. There was no evidence adduced of the expenditure to obtain a medical report. I do not make any award there. I make an award of **K3, 000.00** cost of the police report as the Exhibit "GH 3" proves it.

Conclusion

The Claimant is hereby awarded **K6, 853,000.00 (Six Million, Eight Hundred and Fifty Three Thousand Kwacha)** as damages for the personal injuries she suffered at the negligence of the 1st Defendant, as insured by the 2nd Defendant. The Defendants are liable to pay that sum in addition to costs of the assessment of damages which costs are to be assessed by the Registrar if not agreeable between the parties.

Made this 6th day of January, 2020.



Austin Jesse Banda

ASSISTANT REGISTRAR