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REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CASE NO. 914 OF 2016

BETWEEN

RUTH BELENTINO.....CLAIMANT

AND

HANIF MAHOMMED.....1st DEFENDANT

GENERAL ALLIANCE INSURANCE COMPANY LIMITED.....2nd DEFENDANT

Coram: **WYSON CHAMDIMBA NKHATA (SRM)**

Mwabungulu- of Counsel for the Claimant

Mataka- of Counsel for the Defendant

Chitsulo- Court Clerk and Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

INTRODUCTION

On the 14th of October 2016, the claimant suffered injury upon being hit by a motor vehicle that was being driven by the 1st defendant as he tried to reverse into Churchill Road. The vehicle that was being driven by the 1st defendant was insured by the 2nd defendant. On the 30th of November 2016, the claimant through a writ of summons sued the defendants claiming damages for pain and suffering, loss of amenities of life, disfigurement, loss of earning capacity and costs of this action. On the 17th of January 2019, judgment on liability was entered in favour of the claimant following the parties' agreement. This court was then appointed to assess the losses and damages herein. This is the court's order on assessment of damages.

EVIDENCE

The matter came for assessment of damages on the 11th of March 2019. The claimant was the sole witness for her case. She adopted her witness statement in which she stated that on the 14th of October 2016 she was walking on the right hand side of Churchill Road on the nearside verge of the road from the direction of Limbe Standard Bank going towards Okhai Electronics. Upon arrival at or near Xerographics, suddenly a motor vehicle which was parked at the parking area started reversing and he was hit in the process. She exhibits a copy of a Police Report marked "RB1".

It is her testimony that as a result of the said accident she sustained a fracture of the right elbow, dislocation of the elbow, painful chest and painful left hip. She was taken to the Chiradzulu District Hospital where she was treated. She was admitted from the 18th of October 2016 and discharged on the 27th of October 2016. Her right hand elbow was cast in Plaster of Paris. She exhibits a copy of the Medical Report marked "RB2". She further averred that as a result of the said accident she still experiences pain on the right elbow such that she fails to do some of the farm and house works as she used to do before the injury. She went on to add that she paid K3,000.00 for the Police Report as indicated on the Police Report and she also paid K1000.00 for the Medical Report. She exhibits a copy of the receipt marked "RB3". She therefore prays that she be awarded damages for pain and suffering and loss of amenities of life.

In cross-examination, she stated that she was hit at the left hand side and she fell on her right hand side. She stated that she was fractured and her elbow was dislocated. She stated that it was the same arm that suffered a fracture and a dislocation. She stated that she felt pain on the chest and it took long for the pain to stop. She stated that she went to the hospital on the 14th of October 2016 and went back on the 18th of October 2016 where she was admitted and discharged on the 27th of October 2016. There was nothing in re-examination.

On the part of the defendants, they also paraded one witness Wanangwa Roben Nyirenda. He told the court that he works as Assistant Claims Manager at General Alliance Insurance Company Limited. He adopted his witness statement in which he stated that his job description entails managing claims commenced and brought against the 2nd defendant. He averred that the matter herein involves the 2nd defendant's insured policy number GA1/080/1/004610/2014 for motor vehicle registration number BR2994, Nissan Pick-up S/cab belonging to Delta Auto Services of P.O. Box 31776, Blantyre 3. He exhibits the Insurance Policy agreement marked "WN1". He further averred that the insured's insurance policy limits the 2nd defendant from paying out a sum that is more than the amount of K5,000,000.00 being the cover limit of the insurance policy. He exhibits the Insurance Policy Renewal Endorsement marked "WN2". He concludes by stating that the 2nd defendant can therefore not be made liable to pay an amount exceeding K5,000,000.00 for the claim herein. There was no cross-examination.

SUBMISSIONS BY THE PARTIES

Both parties adopted their Skeleton Arguments as their final submissions. In his submissions, Counsel for the Claimant proposes K10,000,000.00 as reasonable compensation for the claimant for pain and suffering as well as loss of amenities. He invites the court to have recourse to the following case authorities.

- **Vincent Kumbuyo v Prime Insurance Co Ltd Civil Cause No. 2027 of 2010** in which the plaintiff sustained a fracture on the right clavicle (shoulder), fracture of the left humerus (arm), fracture of the pelvis, fracture of the left tibia. He was awarded the sum of K3,500,000.00 on the 3rd of March 2011 for pain and suffering and loss of amenities of life.
- **Friday Mtelera v Nenani Misolo and Prime Insurance Company Limited Personal Injury Cause Number 530 of 2015** where the Plaintiff sustained a fracture of the knee joint of the right leg, fracture of the right lower leg, fracture of the ankle of the right leg, a cut on the left leg and a cut and bruises on the right elbow. This Court awarded the Plaintiff therein the sum of MK7,000,000.00 as damages for pain and suffering, loss of amenities and disfigurement. The award was made on the 16th of February 2017.
- **Zuze Bonjesi v Prime Insurance Company Limited Civil Cause Number 488 of 2008** where the Plaintiff was awarded K7,000,000.00 as damages for pain and suffering and loss of amenities of life for a severe open fracture of the left tibia, massive wounds and cuts to the right leg. The award was made on 17th July 2012.
- **Christina Mande v Charter Insurance Ltd Co., Personal Injury Cause No. 329 of 2016**, in which the plaintiff sustained a fracture of the right femur, dislocation of the right hip joint, cut on head and lost consciousness on the spot of the accident. He also sustained a sprained right hand and a cut on the left hand. The court awarded him the sum of K6,300,000.00 as damages for pain and suffering and loss of amenities of life. The award was made on 11th January, 2017.
- **Rex Walala v Davison Chikuta and Prime Insurance Company Limited High Court, Zomba District Registry, Personal Injury Cause Number 461 of 2011**. The Plaintiff sustained an open fracture of the left tibia, bruises on the left arm and cuts on his face and was awarded K6,500,000.00. This award was made on 20th March 2013.

It was therefore Counsel for the claimant's submission that since the above awards were made the Kwacha has significantly lost value and continues to fall and per **Paulo v Mwakabanga (1991) 14 MLR 409** courts ought to have recourse to inflation.

On the other hand, Counsel for the defendants in his submission is of the view that K2,500,000.00 would adequately compensate the claimant for the injuries she sustained. He therefore cites the following cases:

- **Felix James Kamwana v The Attorney General Civil Cause No. 636 of 2009** where the claimant suffered bruises on the back and neck left eye and right leg and was awarded K600,000.00 as damages for pain and suffering and loss of amenities of life.
- **John Muheka v Francis Katsala and Real Insurance Company Ltd.** Civil Cause number 1649 of 2010, where the plaintiff sustained fracture of the right tibia and fibula, multiple soft tissue injuries with bruises on legs and scalp. His permanent incapacity was assessed at 40%. He was awarded K1,524,500.00 as damages for pain, suffering and loss of amenities of life.
- **Brian Ndawanje vs NICO General Insurance Company Ltd**, civil Cause Number 346 of 2009 where the court awarded the sum of K800,000.00 as damages for pain and suffering to a Plaintiff who sustained a fracture of the right ankle, left pectoral abrasions and soft tissue injuries.
- **Masauka Phiri vs Reunion Insurance Company Ltd**, Civil Cause Number 736 of 2014 where the court awarded the sum of K1,003,000.00 as damages for pain and suffering and loss of amenities to a plaintiff who sustained a fracture of the right arm.

ISSUES FOR DETERMINATION

As earlier alluded to, this court has been called upon to make a determination on the quantum that would reasonably compensate the claimant for the damages and losses suffered.

THE LAW

It is trite that a person who suffers bodily injuries or losses due to the negligence of another is entitled to recover damages. The fundamental principle which underlines the whole law of damages is that the damages to be recovered must, in money terms, be no more and no less than the Plaintiff's actual loss. The principle was laid down in numerous case authorities more particularly by **Lord Blackburn** in the case of *Livingstone v. Rawyards Coal Company (1880) 4 AC 25* in the following terms:

where any injury or loss is to be compensated by damages, in settling a sum of money to be given as damages, 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 loss, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.

However, it ought to be borne in mind that it is not possible to quantify damages for pain and suffering, loss of amenities and deformity as claimed in this matter with mathematical precision. As a result, courts use decided cases of comparable nature to arrive at awards. That ensures some degree of consistency and

uniformity in cases of a broadly similar nature: See **Wright -vs- British Railways Board** [1983] 2 A.C. 773, and **Kalinda -vs- Attorney General** [1992] 15 M.L.R. 170 at p.172. As such this court will have recourse to comparable cases to arrive at the appropriate quantum of damages for the plaintiff.

DISCUSSION

I must begin my discussion by making an observation that the Medical Report indicates that the claimant sustained a contusion to the chest on the left hand side, contusion of the left pelvis, fractured olecranon head and dislocation of the elbow. The claimant herself confirmed the injuries in her examination in chief as well as in cross-examination. I have reason to believe that she suffered serious injury which caused her excruciating pain and suffering. I take note that she went to the hospital on the 14th of October 2016 only to go back four days later to be admitted for a week. I visualise a person who went home and could not bear with the pain and had to go back to the hospital. I am not surprised that she ended up having the hand cast on Plaster of Paris. It is indicated that she is a farmer by occupation. She sustained the injuries mid-October and I believe this is the time she was supposed to be attending to her gardens. That aside, generally, in my view, having a Plaster of Paris for some time is an inconvenience on its own with regarding to the daily hustle and bustle.

I have seen the authorities cited by both parties. I took particular interest in the case of **Christina Mande v Charter Insurance Company Limited (supra)** where injuries include fracture of an arm and atleast a dislocation in the pelvis. The injuries may not be exact as in the case herein but atleast in my view they draw closer in terms of similarity. Apart from that, it is more recent than the other cases cited herein. In the **Christina Mande** case, the claimant was awarded K6,300,000.00 for pain and suffering as well as loss of amenities. I was persuaded to adopt the same but I take note that in that case the claimant actually lost consciousness on the spot and had serious cut wounds as well. In my view, having considered the injuries, the comparable authorities and the devaluation of the Kwacha, K5,500,000.00 would adequately compensate the claimant for the injuries suffered.

On special damages, it is trite law that they must be specifically pleaded and proved (Refer to the case of **Phiri v Daud [1992] 15 MLR 404**). The claimant claims the cost of obtaining the Medical Report and the Police Report being K1,000.00 and K3,000.00 respectively. To the satisfaction of the court, these special damages have been proved by the claimant as there is a copy of a receipt indicating that she paid for the Medical Report. The Police Report on its own indicates that it was paid for. I therefore award the claimant the K4,000.00 special damages as prayed for.

DETERMINATION

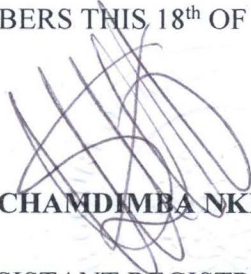
From the foregoing analysis, the damages awarded to the plaintiff can be summarised as follows:

1. The sum of K5,500,000.00 as damages for injuries sustained.
2. The sum of K4,000.00 as special damages.

In total, the claimant is awarded K5,504,000.00 as damages. I must add at this point that there is evidence that the contractual extent of liability of the 2nd defendant as imposed by the Insurance Policy under which the vehicle that was being driven by the 1st defendant was insured is K5,000,000.00. Irrespective of this court's finding, the 2nd defendant's liability shall be K5,000,000.00.

The plaintiff is further awarded costs for the assessment proceedings to be taxed if not agreed by the parties.

MADE IN CHAMBERS THIS 18th OF MARCH, 2019



WYSON CHAMDIMBA NKHATA

ASSISTANT REGISTR