



The Judiciary

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 67 OF 2017

Between

ISSAH IDRISAH CLAIMANT

-and-

DANIEL KENNEDY NDAWALA1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED2ND DEFENDANT

CORAM: Austin Jesse Banda, Assistant Registrar

Mr. Nkhata, for the Claimant

Mr. Chisale, for the Defendants

Ms. Galafa, Clerk/ Official Interpreter

Banda

ORDER ON ASSESSMENT OF DAMAGES

Background

On 1st October, 2018, by the consent of the parties, it was adjudged that the defendants were liable and that they were to pay damages to the claimant as pleaded in the statement of claim. It was further adjudged that the 2nd defendant's liability would be limited to K5,000,000.00 as was stipulated under the policy of insurance from which the 2nd defendant became a party to this proceeding, entailing that the 1st defendant would pay any part of the award in excess. It was agreed, and endorsed by the Honourable Judge Chirwa that assessment of damages be before the Registrar. I heard the parties for the purposes of assessment of damages on 31st January, 2019.

Evidence

The claimant was the only witness in the hearing. He adopted his witness statement that had been filed earlier. In his statement he stated that he was driving a minibus registration number BLK 77 from Blantyre heading to Lunzu when he collided with a motor vehicle registration number NU 5968 which was driven by the 1st defendant going in the opposite direction. He said the police report showed that the 1st defendant who was at the material time insured by the 2nd defendant was at fault for overtaking improperly.

The claimant said as a result of the collision he suffered a dislocation of the left hip, a cut on the forehead and another cut on the eye lid and multiple bruises on the left leg. He further said that he was treated at Queen Elizabeth Central Hospital (QUECH) where there was a closed reduction of his hip in the theatre and he was given pain killers. He said that he was admitted at the hospital from 17th July, 2016 to 2nd August, 2016 and thereafter he was treated as an outpatient. He attached a medical report as proof that he was injured and treated at QUECH.

The claimant stated that he has developed permanent scars and he experiences persistent pain in affected areas. He stated that he has difficulties walking and running and his ability to do manual work including driving a motor vehicle with manual transmission. He further said the degree of permanent incapacity was assessed at 13%. He prayed to be compensated.

In cross examination, the claimant stated that it is difficult for him to get work as a minibus driver as he can only drive comfortably automatic transmission motor vehicles. He said he experiences pain and discomfort in his leg when he drives a manual vehicle. He further stated that he was treated with ropes pulling the dislocated hip back in position for two uncomfortable days where he was in the same position whole time. He lastly said that he was not fully healed and he awaiting review of the condition of his hip, but that the medical practitioner who was attending to him advised him to accept his situation that he may be forever deformed.

Issue

The only issue at this stage of this proceeding is the amount of damages that the claimant must be compensated with.

Analysis of Law and Fact, and Determination

In the case of **Admiralty Commissioners v. S.S. Valeria [1922]AC 242 @ 248** the general principal on which damages are assessed was laid down as follows:

“... In calculating damages, you are to consider what is the pecuniary sum which will make good to the sufferer, so far as money can do, the loss which he has suffered as the natural result of the wrong done to him.”

