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REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CASE NUMBER 184 OF 2020

BETWEEN

VIZYALONA VIZYALONA..... CLAIMANT

-AND-

JAMES DAUDI1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED2ND DEFENDANT

CORAM

E. Chapita-Banda, Assistant Registrar

Kalanda, Counsel for the Claimant

Chida, Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

The claimant was cycling along the Nchalo - Blantyre Road when he was hit by motor vehicle registration number MH 542 Nissan Caravan Minibus. The claimant sued the 1st defendant as the driver of the motor vehicle and the 2nd defendant as its insurer at the time of the accident alleging negligence on the part of the 1st defendant.

Liability of the defendants was settled through a default judgment dated 16th July 2020 through which the defendants were ordered to pay damages for pain and suffering, loss of amenities of life and disfigurement as assessed by the Registrar.

The court set the 7th March 2022 as the date for the hearing of the assessment of damages. The defendants were never present on the day although they were duly served and the court proceeded in their absence.

This is an order pursuant to the hearing on assessment of damages.

The Evidence

Evidence for the claimant was presented through a witness statement which the claimant, who was the sole witness, adopted.

His evidence was brief. He states that on 17th November 2019, he was involved in an accident and he sustained the following injuries as a result: fracture of the cervical spine number 4; bruises on right chest and head; swelling of the face; and debridement and wound dressing.

He added that his permanent incapacity was assessed at 19 %.

Damages for Pain and Suffering and Loss of Amenities of Life

A claimant who has suffered loss as a result of a defendant's negligence is entitled to compensation. The damages awarded to the claimant are meant to compensate for the loss suffered. Damages are awarded for both pecuniary and non-pecuniary losses. For non-pecuniary losses courts have made awards for pain, suffering and loss of amenities. See **Lindani v Mlenga and another** (1992) 15 MLR 199.

In **Sumana v Hara and another** [1993] 16(2) MLR 843 at page 847, the High Court elucidated 'pain and suffering'. The honourable judge stated:

"Pain and suffering are ordinary words. Pain refers to that which is felt by the senses, the discomfort, the ache, etcetera. Suffering refers to the mental injuries and the actual pain and the overall effect of the injury now and for the future."

On amenities the judge had this to say:

"Amenities are really the things that the injury will deprive enjoyment of. In one case it would be loss of leisurely pursuit, in other cases it would just be the enjoyment of work, all these come under the epithet, "amenities".

Damages for Disfigurement

Damages for disfigurement were initially awarded as part of damages for pain and suffering owing to the suffering a claimant went through as a result of being disfigured. See **Mwasinga v Stagecoach (Mal) Ltd** 1993 16 (1) MLR 363. Later they began to be awarded separately. In **Matenje v Beams** (1992) 15 MLR 253, the court awarded damages for disfigurement as a separate head of damages when the claimant got scarred as a result of a dog bite.

Damages for disfigurement are awarded to compensate for a change in a claimant's physical form or appearance as a result of injury. See **Francis Chikoti v United General Insurance Company Limited**, Personal Injury Cause No.1958 of 2016.

Quantum of Damages

Although no amount of money can replace a bone, limb or an ear, the general principle on damages for personal injury cases is to place a claimant in a position he would have been in if not for the tort.

Lord Blackburn in **Livingstone v Rawyards Coal Company** (1880) 5 App 25 was quoted in **Namwiyo v Semu** (1993) 16(1) MLR 369 as having given the following rationale for damages:

"That sum of money which will put the party who was been injured, or who has suffered, 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."

In determining the amount of damages payable, Courts are guided by awards made in previous comparable cases. The awards made must take into account the changes in the value of the money, if any.

Counsel for the claimant cited cases for the court to consider and went further to provide the copies of the judgments cited which I must commend. I have gone through them all.

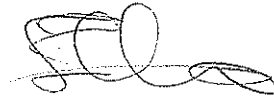
He cited **Francis Chikoti v United General Insurance Company Limited**, Personal injury cause Number 730 of 2016, the court awarded the claimant the sum of K3,553,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement. This award was made in 2018 and to a claimant who lost four teeth, had facial wound, bruises on his legs and hand as well as a rib dislocation.

In **Sgt Jacob Hara v Ibrahim Meke and General Insurance Ltd**, the claimant was awarded K15,000,000.00 as damages for pain and suffering and loss of amenities of life. In this matter, the claimant sustained a swollen face and injuries on his left leg, right knee and leg. He also had a neck fracture.

Considering the injuries sustained by the claimant herein which were not severe, K3,500,000.00 is reasonable and it is awarded as damages for pain and suffering and loss of amenities of life. With the evidence before me and upon assessment, I find it reasonable to make no award on disfigurement. I doubt the claimant was disfigured to warrant a separate award.

Costs which were awarded to the claimant, including the costs of these proceedings, will be assessed if not agreed between the parties.

Dated 14 day of Aug 2022



E. CHAPITA-BANDA

ASSISTANT REGISTRAR