



Library
HIGH COURT
LIBRARY

REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CASE NUMBER 35 OF 2021

BETWEEN

MIKE MATIKI..... CLAIMANT

-AND-

REUNION INSURANCE COMPANY LIMITED.....1ST DEFENDANT

SALMAN KHAN T/A KHAN TRANSPORT.....2ND DEFENDANT

CORAM

E. Chapita-Banda, Assistant Registrar

Machika, Counsel for the Claimant

Chida, Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

Though default judgment dated 6th May 2021, the 2nd defendant was adjudged to pay damages for pain and suffering, loss of amenities of life, deformity and disfigurement. This order arose from a motor vehicle accident in which the claimant sustained injuries. He was aboard motor vehicle registration number MH 9295/MH 6073 when the 2nd defendant’s driver failed to negotiate a bend and the vehicle overturned. This is an order on assessment of damages pursuant to hearing which took place on 23rd March 2022 in the absence of the 2nd defendant who never came in spite of due service of the notice on them.

The evidence of the claimant was given by himself. He adopted his witness statement and tendered a police and medical report to the court. The evidence indicates that the claimant sustained bruises on the shoulder, fracture on the left hand and an eye injury. As a result of the accident, the claimant fails to lift heavy objects and has poor eye sight.

A claimant who sustains loss as a result of another’s breach of care is entitled to compensation in damages. Damages are awarded for both pecuniary and non-pecuniary losses. Damages for non-pecuniary loss include ones for pain and suffering, loss of amenities of life and disfigurement.

Pain and suffering were ably described in **Sumana v Hara and another** [1993] 16(2) MLR 843 at page 847 as '*that which is felt by the senses including any discomfort or any aches. Suffering relates to the mental injuries, the actual pain and the negative effect of the injuries on the claimant*'. Awards are also made for loss of amenities. Amenities are '*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*'.

Damages for disfigurement compensate for any changes to a claimant's form or appearance as a result of injuries.

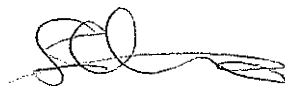
In order to arrive at an appropriate and reasonable award, awards made in other cases with comparable injuries are considered. Counsel for the claimant submitted two comparable cases. **Steven Mwale v Alfred Modra and Prime Insurance Company Limited** Personal Injury Cause No. 323 of 2013 (unreported) in which the claimant sustained a fracture of the index finger; and a cut wound, stiffness and deformity on the index finger. He was awarded K4,300,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement. Counsel also cited **Nellie Manda v Prime Insurance Company Limited** Civil Cause No. 619 of 2009 (unreported) which I never found and now disregard.

In the present case, the claimant sustained a fracture of his arm, bruises on the shoulder and an eye injury. No evidence was brought that he was disfigured though. The sum of Four Million Kwacha is reasonable and it is awarded to the claimant as damages for pain and suffering and loss of amenities of life.

Special damages were not proved and are not awarded.

This order is against the 2nd defendant. At the hearing of the assessment, I asked Counsel to address me on whether they will pursue the 1st defendant and he indicated that if the claimant is happy, they will not pursue the matter further. I must mention however that the assessment herein was not a part assessment and the award of damages made is thus exhaustive. There is therefore no room for another assessment while this order subsists.

Dated 1st of August 2022



E. CHAPITA-BANDA
ASSISTANT REGISTRAR