



REPUBLIC OF MALAWI
 IN THE HIGH COURT OF MALAWI
 LILONGWE DISTRICT REGISTRY
 CIVIL CAUSE NUMBER 650 OF 2016

BETWEEN

FRANK ISAAC.....CLAIMANT

AND

JOSEPHY KABOTOLO.....1ST DEFENDANT

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

CORAM: KAPASWICHE	: ASSISTANT REGISTRAR (AR)
Kaphantengo	: Counsel for the Claimant
Defendants	: Absent/ Unrepresented
Mr. Kumwenda	: Clerk/ Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES
BACKGROUND

This is a claim for damages for pain and suffering; loss of amenities of life and disfigurement; costs of repairing the bicycle; costs for police report and medical report as well as costs of the action. This assesment of damages follows entering of summary judgment on the 25th of April 2018. default judgment against the defendants on the 28th day of August 2020. The matter was scheduled for hearing of assesment of damages on the 3rd day of November 2021. On this day the court proceeded to hear the matter in the absence of the defence as they were served and they did not give any reasons for their failure to attend court on the scheduled date. The claimant deponed a

witness statement which he adopted in court. Skeleton arguments were also filled and the claimant in essence claims MK7,500,000, 000.00 as total compensation for all the three heads of the claims.

THE EVIDENCE

The claimant was the only witness in the present case. His evidence was that on 30th March 2016, he was hit by a motor vehicle insured by the 2nd defendant and due to the said accident; he suffered severe bodily injuries including a fractured right humerus, a deep cut on the head and bruises on the back. The medical personnel inserted a nail inside the broken humerus to bring it together and he was put on plaster of paris for six weeks. He was treated at Kamuzu central hospital. His bicycle valued at MK35, 000,00 got extensively damaged as a result of the accident and he was using this bicycle in his business of selling sweet potatoes. He still feels pain on his right hand and that he cannot lift heavy objects and he fails to use the said hand for the purposes of farming.

THE LAW ON DAMAGES

The law generally provides 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.

Be that as it may, 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.

SUBMISSIONS AND ANALYSIS

In this case, Counsel for the claimant cited cases for the court to consider as comparable awards under the different heads of the claims in question.

DAMAGES FOR PAIN AND SUFFERING

'Pain' is used to suggest physical experience of pain caused by consequent act upon the injury while 'suffering' relates to the mental elements of anxiety, fright, fear of future disability, humiliation, embarrassment, sickness and the like as was held in **City of Blantyre v. Sagawa** [1993] 16 (1) MLR 67 (SCA).

DAMAGES FOR LOSS OF AMENITIES OF LIFE

The head of loss of amenities of life is awarded to cater for loss of all things that the claimant used to be able to do, see and experience and that these things can no longer be seen or be done or be experienced due to the impact of the injury in question. In the case of **Mtika v Chagomerana t/a Trans Usher** (1997) 2 MLR 123, 126; the court explained loss of amenities of life in the following terms;

“there is loss known as the loss of amenities of life. This covers the loss caused by the injury in that the plaintiff will be unable to pursue the leisure and pleasures of life that he used to enjoy but for the injury”

DAMAGES FOR DISFIGUREMENT

Damages for disfigurement are awarded for some form of permanent scars or deformity left on the body of the victim as was held in the case of **Tabord v. David Whitehead and Sons (Mw) Ltd**, (1995) 1 MLR 297 (SCA).

In the present case, the claimant prayed for a total sum of MK7,500, 000.00 as damages for pain and suffering, loss of amenities of life and disfigurement. Five cases were cited in support of the prayer in question. The first case was the case of **Kachaso v. Kondowe and Others**, Civil Cause No. 320 of 2009 where a sum of MK5,600,000.00 was awarded for pain, suffering and loss of amenities. The plaintiff in that case had multiple fractures and a cut wound on the head. The second case was **Nellie Manda vs Prime Insurance Company Ltd**, Civil Cause No. 619 of 2009. In that case, the claimant suffered a fractured humerus and on the 25th April 2012 the court awarded him MK6,500,000.00 for pain and suffering and loss of amenities of life.

I have also carefully considered the other decisions cited by Counsel for the claimant in his submissions. In the present case, the claimant suffered bodily injuries which included fracture of the right humerus, a deep cut on the head and bruises on the back. The hospital inserted a nail inside his broken humerus to bring it together.

FINDING

Having considered the precedents cited before me and the circumstances of the present case, it is my considered view that a sum of MK2,900,000.00 is sufficient recompense on all heads of claims made by the claimant. Judgment is accordingly entered in favour of the claimant in the sum of MK2,900,000.00. The claimant is further awarded costs of this action.

MADE IN CHAMBERS THIS.....^{16th} DAY OF December 2021



ANTHONY PITILIZANI KAPASWICHE

ASSISTANT REGISTRAR