



REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CASE NO. 200 OF 2017

BETWEEN

RUTH MATHIAS.....CLAIMANT

AND

VINCENT CHINANGWA.....1st DEFENDANT

PRIME INSURANCE COMPANY LIMITED.....2nd DEFENDANT

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

Kanyika - of Counsel for the Claimant

Mussa - of Counsel for the Defendants

Mathanda - Court Clerk and Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

This is the court's order on assessment of damages. The issue of liability was settled in favour of the claimant upon an agreement by the parties executed on the 19th of April 2019. The issue of the Defendant's liability having been settled already by the said consent judgment, the duty placed upon this court was to determine the reasonable quantum of damages that would adequately compensate the claimant for the losses and damages herein.

A brief background as discerned from the record indicates that the claimant in this matter took out a writ of summons issued on the 4th of April 2017 against the defendants claiming damages for pain and

suffering, loss of amenities of life, disfigurement, special damages and costs of the action. The action follows an accident involving a minibus in which she was a passenger. In her Statement of Claim, she states that she sues the 1st defendant as the driver while the 2nd defendant as the insurer of motor vehicle in question. He stated that on or about the 7th of December 2016, the 1st defendant was driving motor vehicle registration number NB407 Toyota Hiace Minibus insured with the 2nd defendant from the direction of Salima Turnoff heading towards Chingeni. Upon arrival at or near Balaka Weighbridge, he negligently lost control of the said motor vehicle which then overturned and landed on its tires consequent to which the claimant who was a passenger sustained injuries. It is against this background that she now claims damages for pain, suffering and loss of amenities of life, damages for disfigurement and costs of this action.

The matter came for assessment of damages on the 24th of October 2019. The claimant was the sole witness for her case. She adopted her witness statement in which re-iterated how the accident occurred as outlined in her statement of case. She further averred that she sustained a fracture of the left arm and blunt chest trauma. She was attended to and treated at Balaka District Hospital. She tendered a Medical Report which he marked "RM2". She further states that as a result of the said injuries, she suffered excessive pain and suffering, 30% permanent incapacity and she can only perform manual work with difficulties.

In cross-examination, she reiterated that the fracture was on the left of his arm. She proceeded to show the court where scars where she sustained the fracture. She also stated that she still feels pain when doing strenuous tasks.

Such was the evidence for the claimant. The defendants, on the other hand, did not parade witnesses. Counsel for the defendants adopted his Skeletal Arguments as his final submission in this matter. On the other hand, Counsel for the claimant also adopted his Skeletal Arguments.

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.

In this case, the claimant sustained a fracture of the left arm and blunt chest trauma. Counsel for the claimant called upon the court to consider the following cases:

In the case of **Virginia Makiyi vs. Tawina Chatchuka and Reunion Insurance Company Limited Personal Injuries Cause Number 392 of 2015**, the plaintiff suffered a fractured left tibia and fibula and multiple bruises on the chest. The court awarded her the sum of MK5,000,000.00 as damages for pain and suffering and loss of amenities of life. The award was made on 6th May 2016.

In the case of **Kearnzibel W. S. Fundi vs. M. Nasawa t/a Matours and Prime Insurance Company Limited, Personal Injury Cause Number 143 of 2011**, the plaintiff suffered an open fracture of the medial malleolus (broken ankle). The court awarded him the sum of M5, 000, 000.00 as damages for pain and suffering, loss of amenities of life and disfigurement. The award was made on 29th March 2016.

In the case of **Annie Kutama (through Dorothy Kutama her mother and next friend) vs. Godfrey Million and Prime Insurance Company Limited, Civil Cause Number 920 of 2010**, the plaintiff suffered a fractured left femur, mild head injury with cut wound on the forehead, bruises on arms and shortening of the left leg. The court awarded him the sum of MK 4, 950,000.00 as damages for pain and suffering and loss of amenities of life. The award was made on 23rd October 2015.

In the case of **Austin Julius vs. Rasika Gunawardena & General Alliance Insurance Limited Personal Injuries Cause Number 316 of 2014**, the court categorically emphasized the need for the courts to make a special award for disfigurement. The court in that case had this to say;

“Disability is a limitation to do certain things It is therefore imperative that disfigurement which is consequent to a wrongful act of another has to be compensated.

It was therefore Counsel's submission that in the circumstances of this case, the reasonable compensation would be K5,000,000.00 for pain and suffering, loss of amenities and disfigurement.

On the other hand, Counsel for the defendants called upon the court to consider the following cases.

Lawrence Nohito v Imran Muhammed Civil Cause No. 940 of 2015 in which the plaintiff suffered fracture of the left humerus and experienced headaches and dizziness. The claimant also had scars and weakness on his left arm resulting in difficulty in lifting heavy objects. He was awarded K2,000,000.00 for pain and suffering including disfigurement and K1,000,000.00 for loss of amenities of life. The award was made in 2018.

Land Mawiro v Elias Bakuli and Another Personal Injury Case no.15 of 2015 in which the plaintiff sustained a fracture of the left tibia and was unable to walk long distances without pain. In 2018, the court awarded him K2,500,000.00.

In view of these cases, Counsel for the defendants was of the view that K2,000,000.00 would be reasonable compensation for the claimant for pain and suffering, disfigurement and loss of amenities.

I have perused the medical evidence as to the injuries and the prognosis given in the medical report. I had the opportunity to observe the injury on the arm and the present physical condition of the claimant. I gave meticulous thought to the written submissions filed by both counsel. I considered the relevant aspects of some of the precedents cited by the counsel. I believe that the claimant suffered serious injury. The claimant had to contend with pain and suffering arising from the fracture and two surgeries considering that at first the bones did not heal properly. She was admitted at the hospital for a months and some days. In my view, the period itself shows the intensity of the injury. I take further notice that consequent to the injury she cannot do strenuous tasks.

On the part of the cited cases, I respectfully opine that for an injury that involves a fracture on the leg, an award of K2,000,000.00 is on the lower side considering the pain and suffering experienced and not to mention the inconvenience that comes with the recuperation accompanied by the dressings or fittings which go with fractures. I am fully aware that the basic principle behind award of damages is to put back the claimant to the position he was before the injuries sustained and not to punish. In this case, I believe the case of **Annie Kutama** (supra) is much closer in intensity of the injuries than all the other cases minus the shortening of the leg. I shall also take into consideration that the award was made in 2015 which is

roughly 4 years down the line. All in all, I believe an award of K4,800,000.00 under all heads claimed and proved is sufficient recompense for the claimant for the injuries sustained.

DELIVERED IN CHAMBERS THIS 4th DAY OF NOVEMBER 2019



WYSON CHAMDIMBA NKHATA

ASSISTANT REGISTRAR