

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CIV/T/34/2019

In the matter between:

MATHIBELA KATSANE

PLAINTIFF

and

LIBE MAKINTANE

DEFENDANT

Neutral Citation: Mathibela Katsane and Libe Makintane (CIV/T/34/2019)
[2022] LSHC 9

CORAM : F.M. KHABO J.

HEARD : 30th November, 2021

DELIVERED : 07th February, 2022

JUDGMENT

Summary

Claim for damages - Motor vehicle collision - Allegedly due to defendant's sole negligence - Negligence proven - Claimant awarded costs for the repair of his motor vehicle; for pain and suffering; and interest at the current prime lending rate as prescribed by the Central Bank of Lesotho - Medical expenses claimed not proven and, therefore, not granted.

ANNOTATIONS

CITED CASES

1. National University of Lesotho and Another v Thabane LAC (2007-2008) 476
2. Commissioner of Police v Neo Rantjanyana C of A (CIV) 11/2010
3. Pitt v Economic Insurance Co., Ltd 1957(3) SA 284
4. Bay Passenger Ltd v Franzen 1975(1) SA 269
5. Koloi Mphekeleli v Thabiso Sello and Others CIV/T/827/2013
6. Liteboho Leuta v Kobe Motors (Pty) Ltd CIV/T/412/2018
7. Xing Long Enterprise (Pty) Ltd v Zhong Sing (Pty) Ltd C of A (CIV) 61/2016
8. WBHO Construction (Pty) Ltd v Mphenetha C of A (CIV) 25/2005

BOOKS

Gauntlett JJ., in Corbett - The Quantum of Damages in Bodily and Fatal Injury Cases - Vol. 1, 4th ed., Juta, 1995

The claim

- [1] In this action Plaintiff claims damages against Defendant in the following terms:
- (a) Payment of damages in the sum of Fifty Thousand Maloti (M50 000.00) for repairs on Plaintiff's motor vehicle;
 - (b) Payment of One Thousand Maloti (M1 000.00) for medical expenses;
 - (c) Payment of Twenty Thousand Maloti (M20 000.00) for pain and suffering;
 - (d) Interest thereon at the rate of 11% per annum from the date of delivery of judgment to the date of final payment;
 - (e) Costs of suit;
 - (f) Further and/or alternative relief.
- [2] The Defendant had been served with summons but did not file any notice of appearance to defend. Subsequently, the Plaintiff approached this Court during an uncontested motion roll on 18 October, 2021 for a default judgment. The Court was satisfied on the day that Plaintiff established liability on the part of the Defendant in damages. As regards quantum, particularly the claim for pain and suffering, the court gave a directive that

Counsel for the Plaintiff file submissions and address it the following Monday the 15th October 2021. The submissions were filed with this court on 10th November 2021, and the court addressed on 30th November, 2021 whereupon judgment was reserved.

Facts leading to the action

- [3] In his Declaration to the Summons as well as affidavit filed *in lieu* of evidence, the Plaintiff referred to the events of 23rd September, 2018. He alleges that on that date at or near Ha Mokete, Butha-Buthe a collision occurred between his car, a white Toyota bearing registration number CV 379 and another driven by the Defendant, a white Toyota van with registration number CK 283. Plaintiff further alleges that the collision occurred because of the negligent driving of the Defendant who:
- (a) failed to keep a proper look out;
 - (b) failed to apply the brakes timely or failed to apply them altogether;
 - (c) drove at an excessive speed under prevailing circumstances; and
 - (d) drove under a very heavy influence of alcohol.
- [4] As a result of the above, Plaintiff says he suffered damages in the amount of Fifty Thousand Maloti (M50 000.00) being the difference between the pre-accident value and the salvage value of the wreck. Moreover, he sustained serious bodily injuries, sought medical attention and suffered a loss of One Thousand Maloti (M1 000.00) in medical expenses. Plaintiff goes on to say that he suffered severe emotional and physical pain in the amount of Twenty Thousand Maloti (M20 000.00).

The evidence

- [5] In support of his claim, Plaintiff has filed of record the following annexures:
- (a) Annexure 'A' which is a certificate of registration in respect of a Toyota Corolla belonging to him;
 - (b) Annexure 'B' an accident report authored by the Lesotho Mounted Police Service (LMPS). The report is in relation to a motor van registration number CK 238 driven by Libe Makintane, the Defendant herein, and a motor car registration number CV 379 driven by the Plaintiff. According to this report, Plaintiff was travelling from Ha Shepeseli and Defendant was from Red A direction. While they were at or near Ha Mokete, Defendant lost control of his vehicle, went to

Plaintiff's lane, and collided with his car. As a result, both cars were damaged and both drivers sustained injuries. Plaintiff's car was damaged on the windscreen, bonnet, right vender, right headlight, left head light, grill, front bumper, right side mirror, right front and rear tyres, air bags, rear bumper and left taillight;

- (c) Annexure 'C' is an invoice issued out to the Plaintiff, in the amount of Twenty Seven Thousand, Two Hundred and Seventy Maloti (M27 270.00); and
- (d) Annexure 'D' is a police medical form in terms of which Plaintiff suffered laceration on the right knee which was slightly swollen as well as chest pains. The medical report indicates that the degree of force inflicted was considerate, light danger to injury to life, the degree of immediate disability light and the degree of long-term disability, partial.

There is no annexure relating to medical costs. Counsel for the Plaintiff, Adv., Mashopha extended an explanation in court that he could not get hold of the receipt.

Liability

- [6] On the basis of the annexures presented in evidence, particularly, the detailed accident report by LMPS this court finds, on a balance of probabilities, that Defendant is liable to Plaintiff in damages.

Quantum

- [7] In his written submissions, Plaintiff's Counsel referred this court to what was said in *National University of Lesotho and Another v Thabane*¹ that, it is now well established that although the trial court exercises a measure of unfettered discretion in determining an award of damages, it must ensure that the award is essentially fair to both parties and should have regard to previous awards in comparable cases. Similar sentiments were shared by the Court of Appeal in *Commissioner of Police v Neo Rantjanyana*.² The apex court went further and recognised that while the assessment of damages is always a difficult exercise the trial court must have regard to all relevant factors which have a bearing on the matter, such as the plaintiff's status, their position in society, reputation and the nature of damages at issue. The same court also cited with approval authorities

¹ LAC (2007-2008) 476 at 481

² C of A (CIV) 11 of 2010

such as *Pitt v Economic Insurance Co. Ltd*³ as well as *Bay Passenger Ltd v Franzen*.⁴ In determining the award of damages in *casu* this court is doing nothing outside the principles laid out in the aforementioned authorities. The court will now deal with the headings separately as claimed in the summons.

Repairs on motor vehicle

- [8] Under this heading Plaintiff claims payment of Fifty Thousand Maloti (M50 000.00). He says that this is the difference between the pre-accident value and the salvage value of the wreck. No valuation has been done to assist this court as to the pre- and post-accident value of Plaintiff's vehicle and as such the court is at a loss as to how he worked out the difference he claims. However, he has presented an invoice for the purchase of car parts, paint and labour in the amount of Twenty-Seven Thousand, Two Hundred and Seventy Maloti (M27 270.00) and that is the amount he is awarded in relation to the claim of damages for repairs on his motor vehicle.

Medical expenses

- [9] Plaintiff claims payment of One Thousand Maloti (M1 000.00) for medical expenses. There is, however, no proof of same. He appears to have sought medical attention at Butha - Buthe government hospital but he failed to tender proof of any payment. In the absence of proof for the M1 000.00, his claim fails.

Pain and suffering

- [10] Plaintiff claims payment of Twenty Thousand Maloti (M20 000.00) for pain and suffering. He defines such damages as referring to an award given by the court to the plaintiff for physical and or emotional pain due to injury, illness or loss. He says such damages are meant to assist the plaintiff with the pain inflicted by the defendant. In *COMPOL v Rantjanyana (supra)* a claim for pain and suffering was said to be made on the basis of the wrongful infliction of bodily or personal injuries. Plaintiff's claim under this heading is premised on the allegation that during winter days he suffers tremendous pain on the knee and finds it difficult to bend his knees and the M20 000.00 will assist him in seeking medical attention. Plaintiff also relies on what Majara J., as she then was, said in *Koloi Mphekeleli v Thabiso Sello and Others*⁵ that, in order to determine a fair amount for pain and suffering, the court is at liberty to

³ 1957(3) SA 284

⁴ 1975(1) SA 269

⁵ CIV/T/827/2013

take into account the evidence of the plaintiff as well as other factors such as past awards in comparable cases and the economic situation of Lesotho and must be wary not to award too high an amount especially for a non-patrimonial claim.

- [11] Plaintiff's own evidence in this regard is injury to his knee and chest. He supports his M20 000. 00 claim by a similar award in ***Liteboho Leuta v Kobe Motors (Pty) Ltd***⁶ wherein plaintiff in that case had suffered some injuries as a result of a motor collision. My brother Moahloli J., quoted from the work of Corbett in Quantum of Damages in Bodily and Fatal Injury Cases,⁷ wherein the learned author wrote "before the damages payable to the injured person can be assessed it is necessary that the court should determine factually what injuries were suffered by the plaintiff as a result of the defendant's wrongful act." Injuries suffered by the present Plaintiff are detailed out in annexure "D" were without doubt caused by the conduct of the Defendant. A claim of Twenty Thousand Maloti (M20 000.00) is reasonable under the circumstances, and is accordingly granted.

11% interest

- [12] The Plaintiff also claims interest at the rate of 11% per annum from the date of delivery of judgment to the date of final payment. However, Plaintiff has not told this court the basis for his 11% claim. In ***Xing Long Enterprise (Pty) Ltd v Zhong Sing (Pty) Ltd***⁸ the Court of Appeal held that "there is no legal or statutory rate of interest relating to *mora* interest in Lesotho. Accordingly, the principle governing *mora* interest in Lesotho is that the rate of interest to which a judgment creditor may be entitled to is determined by reference to market conditions prevailing in respect of offers of interest on funds invested with commercial banks operating in Lesotho." This principle was earlier enunciated in the case of ***WBHO Construction (Pty) Ltd v Mphenetha***⁹ where the court pointed out that interest is computed from the "date of judgment to date of payment at the appropriate average of the serving rates provided by the Central Bank."

Order

1. The Defendant is ordered to pay damages to the Plaintiff in the amount of Forty-Seven Thousand, Two Hundred and Seventy Maloti (M47 270.00);

⁶ CIV/T/412/2018

⁷ Gauntlett JJ., in Corbett - The Quantum of Damages in Bodily and Fatal Injury Cases - Vol. 1, 4th ed., Juta, 1995 at p.30

⁸ C of A (CIV) 61/2016

⁹ C of A (CIV) 25/2005

2. The Defendant is further ordered to pay interest to the Plaintiff at the rate of 8.56¹⁰ per annum, a rate currently provided by the Central Bank of Lesotho;
3. There is no order as to costs.

F.M. KHABO

JUDGE

For Appellant : Adv., Mashopha - Malokotsa and Associates

For Respondent : No appearance

¹⁰ www.centralbank.org.ls (downloaded 07/02/2022)