

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 1723 OF 2002**

BETWEEN:

ENESI GAWANANI.....PLAINTIFF

VERSUS

MAJID MUHOMED1ST DEFENDANT

PRIME INSURANCE2ND DEFENDANT

CORAM: M A TEMBO, ASSISTANT REGISTRAR

Movette, for the Plaintiff

ORDER ON ASSESSMENT OF DAMAGES

This is an order on assessment of damages for personal injuries sustained by the plaintiff as a result of an accident attributed to the negligence of the 1st defendant who was insured by the 2nd defendant. The assessment was done pursuant to a default judgment dated 2nd July, 2002 entered in favour of the plaintiff herein.

Although the defendants were duly served with a notice of hearing of the assessment they never appear. That left the plaintiff's evidence totally unchallenged.

The brief testimony of the plaintiff was that as a result of the accident herein the seats of the minibus she was traveling in got disjointed after colliding with the 1st defendant's minibus.

And that the plaintiff suffered an injury to her right arm for which she got out – patient treatment for a month at Zomba General Hospital. The plaintiff further testified that due to want of improvement of the condition of the hand she eventually had to undergo surgery on that arm. The plaintiff stated that despite the surgical operation her arm still generates pain that she can not use it to hoe.

The plaintiff introduced in evidence the medical report given to her as the hospital which is marked as Ex P.1. Item 9 of EX P. 1 states that the plaintiff shall not lose use of the arm herein. And item 18 of the same EXP. 1 states that the plaintiff will be able to perform manual work using the affected arm.

The court is therefore of the view that it shall not award any damages for loss of amenities of life there being no medical evidence to support the plaintiff's allegation that she can not enjoy the use of her arm.

Pain and suffering shall be the only head under which the court shall make an award. Pain and suffering is an aspect of life which the court can not quantify with mathematical precision. But the courts have developed an approach whereby experience delivered from making of awards in cases of broadly similar nature is used to arrive at any particular award. This ensures' that there is general uniformity and consistency in awards made in cases of broadly similar nature. See Wright v British Railways Board [1983] 2 ALL ER 773.

The court considers that the plaintiff herein must have undergone pain and suffering resulting in surgery to remove what could be described as a blood clot in her arm.

The court also considered the case of Adam Mtepatapa v David Lalley t/a Lalley Transport Civil Cause No. 3383 of 1997 (unreported) in which and plaintiff who got injured could not stretch his arm or use it effectively was awarded the sum of K65,000.00 as damages for pain and suffering and loss of amenities of life.

The court notes that since that award was made the Kwacha has since depreciated in value.

In the instant case the court is of the view that an award of K40,000.00 for pain and suffering herein is fair and adequate. The same is awarded as damages to the plaintiff for pain and suffering herein. The plaintiff is also awarded costs of this action.

MADE in Chambers at Blantyre this 11th day of November, 2002.

M A Tembo

ASSISTANT REGISTRAR OF HIGH COURT AND SUPREME COURT OF APPEAL