

**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NO. 2463 OF 1999**

**BETWEEN:**

**LOVENESS CHIPETA ..... PLAINTIFF**

**AND**

**WITNESS NENO.....DEFENDANT**

**CORAM: POTANI, REGISTRAR**

Chisale, Counsel for the Plaintiff

**RULING**

This is an assessment of damages pursuant to a default judgment obtained by the plaintiff. The plaintiff's action arises from a road traffic accident which occurred on August 4, 1996. It was the plaintiff's evidence that as a result of the accident, she got injured on the left arm and left leg. The left arm got fractured while on the leg, she sustain a big cut wound. She tendered in her evidence a medical report, Exhibit P1, which describes the injuries she suffered, the treatment she underwent and the effects of the injuries. The medical report states that the plaintiff was in hospital from August 4, 1996, to February 28, 1997, which translates into about 6 months. On her present condition, the plaintiff had it that she still experiences pains on the left arm and leg. She cannot walk long distances.

The defendant did not subject the plaintiff's evidence to any cross examination. Her evidence, therefore, stands undisputed.

The law of tort avails the remedy of damages to a person who suffers bodily injury due to the negligence of another. The aim of awarding damages, it must be remembered, is to compensate the injured party as nearly as possible as money can do and not to punish the party in the wrong and *Cassell and Company vs. Broome* (1972) AC 1027 is a case in point.

Over the years, courts have recognized major heads in respect of which damages are recoverable in cases of personal injuries as being pain and suffering, loss of amenities of life and loss of expectation of life. Observably, these are aspects that cannot be quantified in monetary terms by use of any known mathematical formula. The approach courts have

taken is to use experience and guidance afforded by awards made in decided cases of a comparable nature as Lord Diplock put it in Wright vs. British Railways Board (1983) 2 AC 773 as follows:

Non-economic loss ..... is not susceptible of measurement in money. Any figure at which the assessor of damages arrives at cannot be other than artificial and, if the aim is that justice meted out to all litigants should be even handed instead of depending on the idiosyncrasies of the assessor, whether jury or judge, the figure must be basically a conventional figure derived from experience and from awards in comparable cases.

There can be no doubt from the available evidence, especially regarding the nature and effects of the injuries suffered by the plaintiff that she underwent remarkable pain and suffering. The period of close to 6 months that she was hospitalized is a clear indication of the gravity of the injuries she sustained. Indeed, the plaintiff had it that up to now, she still feels pains on the affected areas. It is also clear that because of the effects of the injuries, the plaintiff's left arm and leg do not function as effectively as they used to. As she was giving her evidence, the plaintiff showed the court her left arm which is slightly bent and has a protrusion. She, therefore, is entitled to an award for loss of amenities of life.

In his submission, counsel for the plaintiff cited a number of cases including that of Munlo vs. Attorney General Civil Cause No. 1188 of 1998 (unreported) for the court's guidance on the award to be made. In that case, the plaintiff suffered a fractured left femur and was hospitalized for 3 months. She was awarded K50,000.00. The award was made in September 1998. Counsel submitted that since that award, the local currency has undergone some remarkable devaluations. He further noted that the injuries in this case are more grave than those in the Munlo case.

I have given the present case thoughtful consideration and I have also given counsel's submissions the consideration they deserve. I do bear in mind that each case and indeed the present case, has circumstances peculiar to itself. As noted earlier, the injuries the plaintiff suffered and their effects are quite considerable. It is my view that the plaintiff would be fairly and adequately compensated if she is awarded K80,000.00 for pain and suffering and K50,000.00 for loss of amenities of life. The total award amounts to K130,000.00.

Costs of this action are to be borne by the defendant and such costs to be taxed if not agreed by the parties.

Made in Chambers this day of January 31, 2003, at BLANTYRE.

**H S B Potani**  
**REGISTRAR**