

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 1846 OF 2003

BETWEEN:

ALEXANDER MJOJO.....
PALINTIFF

AND

GAFFER SULEIMAN1ST
DEFENDANT

PRIME INSURANCE COMPANY LIMITED2ND
DEFENDANT

CORAM : KALEMBERA, DEPUTY REGISTRAR
Mambulasa, Counsel for the Plaintiff

ORDER ON ASSESSMENT OF DAMAGES

By writ of summons and statement of claim the plaintiff commenced this action against the defendants claiming damages for personal injuries and costs. The defendant having failed to file a notice of intention to defend the action the plaintiff obtained a default judgment on the 19th day of August 2003 where it was adjudged that the defendants do pay the plaintiff damages for personal injuries to be assessed and costs of this action. Hence this order on assessment of damages.

During the hearing on the assessment of damages the defendants despite being duly served with the notice of adjournment chose not to attend. The evidence was therefore heard in their absence. There was only one witness, the plaintiff himself. The plaintiff's evidence which was undisputed and unchallenged was that he is aged 49 years old and working for National Herbalium in Zomba. He informed the court that on 17th February, 2002 he was traveling in a minibus from Lilongwe to Zomba when they were involved in a road accident between Liwonde and Songani at a place called Meadows **(Ref. Ex AM 1 – Police Report)** It was further his testimony that he suffered serious injuries and had a fracture of the right tibia, lost four teeth, had some mental instability and lost consciousness. He was admitted to Zomba Central Hospital from 17th February, 2002 to 21st March 2003. It was further his testimony that since that accident he is usually forgetful, he is now assigned to the registry since he does not have the strength to work as before and his leg gets swollen after walking long distances.

It has already been noted herein that there is a default judgment entered in favour of the plaintiff. This court is therefore only being called upon to assess damages arising from the accident. As to the measure of damages the general rule is obtained in the speech of Blackman in **Livingstone –v- Rawyards Coal Company** [1880] 5 App Cas 25 at page 39 where the measure of damages for compensation purposes was defined as follows.

“that sum of money which will put the party who has been injured or who has suffered, 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”

I am mindful though that it is always a very difficult exercise to try to come up with compensation which will totally compensate the plaintiff with money for the injuries sustained and for the incapacity occasioned by the fault and negligence of the defendant **Livingstone –v- Rawyards Coal Company** (Supra); **Ruo Tea Estate and Others –v- Owen Mwalwanda**, MSCA Appeal No. 25 of 2000.

Courts, though, strive to award meaningful compensations and awards in comparable cases are always a welcome guide. Nevertheless courts ought to be mindful that no two cases are similar as each case is peculiar to itself. Lord Morris in **West –v- Shepherd** [1964] AC 326 at page 346 succinctly stated the position as follows:

“..... By common assent awards must be reasonable and must be assessed with moderation. Furthermore it is eminently desirable

that as far as possible comparable injuries should be compensated by comparable awards. When all this is said, it still must be that the amounts which are awarded are to a considerable extent conventional. Actual compensation in personal injury cases is therefore impossible.”

In the matter at hand the plaintiff suffered serious injuries and the medical report Ex ‘AM 2’ put the rate of his incapacity at 40% and he informed the court that he still experiences the effects of the injuries.

In the case of **J. E. Chinthuli –v- Prime Insurance Company**, Civil cause no. 1490 of 1997 the plaintiff was awarded the sum of K80,000 for pain and suffering and loss of amenities of life. The award was made in 1998 and the plaintiffs rate of incapacity was 60%. In the case of **Derek Namagonya –v- P. Saidi t/a Dusiya Minibus**, Civil Cause No. 1753 of 1997 the plaintiff who suffered 50 % incapacity was awarded a total of K70,000 for pain and suffering and loss of amenities of life and disjudgment. The award was made in 1997.

In the matter at hand I have considered the serious injuries suffered by the plaintiff and I have further noted that the plaintiffs rate of incapacity is 40%. Considering the cases referred to herein and further considering the devaluations of our currency since these awards were made I hereby award the plaintiff K95,000 for pain and suffering plus costs.

Made in Chambers this 23rd day of April 2004.

S. A. Kalembera

DEPUTY REGISTRAR