

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 3098 OF 2001

BETWEEN:

GEORGE RONALDPLAINTIFF

AND

DR. GEORGE NTAFUDEFENDANT

CORAM: TEMBO, ASSISTANT REGISTRAR

Chisale, Counsel for the Plaintiff

ORDER ON ASSESSMENT OF DAMAGES

This is this court's order on assessment of damages herein for personal injuries suffered by the plaintiff in an accident caused by the defendant's agents. The assessment is done pursuant to a default judgment entered in favour of the plaintiff dated 17th July, 2002. The notice of hearing of this assessment was duly served on the defendant who never appeared at the hearing. That left the plaintiff's evidence totally uncontroverted.

The plaintiff herein got involved in a minibus accident on 31st August, 1999. The accident was caused by the negligence of the defendant's driver.

In the said accident the plaintiff sustained several injuries. The plaintiff's right lower leg suffered a fracture namely of the tibia and fibula. The same lower leg suffered big cuts that have left visibly big scars. The plaintiff's chest muscles were also compressed. He was treated as an in-patient at Thyolo District Hospital for 11 days. Since the accident the plaintiff can no longer carry heavy things because of the ensuring pain in his chest area

every time he attempts to carry such things. He can also no longer run or play football.

Clearly the plaintiff must have suffered a lot of pain and suffering from his injuries as well as from the treatment thereof. The plaintiff has also undoubtedly lost enjoyment of some amenities of life like sports.

This court has considered submissions made by Counsel on the law as well the quantum of damages herein. As rightly submitted by counsel for the plaintiff, a person who has suffered damage due to the negligence of another is entitled to damages whose aim is to compensate the injured party as nearly as possible as money can do. See **Livingstone v. Rawyards Coal Company** (1880) A. C. 25. The plaintiff is indeed entitled to damages herein for pain and suffering and for loss of amenities of life. Such loss is incapable of quantification in money in terms with mathematical precision since they are non-monetary in nature.

And as a result courts seek guidance from decided cases of similar nature in arriving at the appropriate award. See **Wright v. British Railways Boards** (1983) A.C. 773.

This court has considered the severity of the plaintiff's injuries herein as well as decided cases referred to by Counsel for the plaintiff. One such case being that of **Marko and Chakuamba v. Masingo t/a Nzerunchuma Transport** Civil cause Number 1466 of 1999. In that case the 2nd plaintiff suffered a fractured right collar bone. He also suffered a ruptured left knee which subsequently got infected and stiff. He could as a result not lift heavy objects. The sum of K150,000.00 was awarded to that plaintiff for pain and suffering and loss of amenities of life. That award was made 2nd September, 2003.

This court has also considered the case of **Mbaso v. Attorney General** Civil cause Number 769 of 2001 in which the plaintiff suffered a fractured leg which was left in a plaster of Paris. The plaintiff therein remained in hospital for 4 months. A sum of K140,000.00 was awarded for pain and suffering and loss of amenities of life and a further sum of K80,000.00 was awarded for disfigurement. That award was made in July, 2001.

This court notes that the injuries suffered in the **Mbaso Case** are more serious in nature than the ones suffered herein.

The value of the Kwacha has also since depreciated since the award made in the **Mbaso Case**. In the circumstances of this case this court awards the plaintiff the sum of K200,000.00 damages for pain and suffering and loss of amenities of life and

disfigurement.

Costs are for the plaintiff.

Made in Chambers at Blantyre this May, 2004.

M A Tembo

ASSISTANT REGISTRAR