



**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL CAUSE NO. 531 OF 2007**

BETWEEN

CHARLES SAIDI PHIRI ..... PLAINTIFF

-AND-

J. KALINGA ..... 1<sup>ST</sup> DEFENDANT

TRANS RUKURU BUS SERVICE ..... 2<sup>ND</sup> DEFENDANT

**CORAM : T.R. Ligowe : Assistant Registrar**

Salima : Counsel for the Plaintiff

Munyenembe : Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

The plaintiff commenced action against the defendants by writ of summons claiming damages for personal injuries and costs of the action. The facts as claimed are that he as a passenger on the 1<sup>st</sup> defendant's bus registration number MZ 5443 operated by the 2<sup>nd</sup> defendant. On 2<sup>nd</sup> March 2007 the driver of the said bus so negligently drove it that an accident occurred. As a result of the accident the plaintiff suffered injuries and damages to his person.

No defence having been given by the defendant the plaintiff entered a default judgment for the damages claimed to be assessed, and this is the assessment of the damages.

The defendants did not attend the appointment for assessment of damages despite having been duly served with the notice. No reason for non attendance having been furnished, the court proceeded in their absence.

The plaintiff gave evidence by way of his witness statement which he adopted in full. He was born on 6<sup>th</sup> June 1979. He is married and has one child. He works with Kanengo Northgate Project as a Stores Controller/ Driver. His evidence confirms what is in the statement of claim. The accident occurred around 3.00 hours in the morning as the bus was passing through Rumphi District. It hit the embankment and suddenly overturned. The plaintiff states that immediately after the accident he lost one of his fingers on his right hand and two others were severely damaged. He felt so much pain and lost a lot of blood. He was taken to Karonga District Hospital where he was admitted for three days. Then he was transferred to Kamuzu Central Hospital where he was admitted for another three days. The three fingers were completely amputated. The fourth finger still stands but can not function properly due to breaking of ligaments. He exhibited a medical report which shows he sustained a crushed right hand with traumatic amputation of the mid finger, ring finger and little finger; Massive degloving injury of the whole hand especially the palm and the thumb and index fingers sustained laceration. He was treated by way of operation by debridement and revision of amputation, intravenous antibiotics, pain killers and wound dressings. The medical report describes the injury as serious leading to permanent incapacitation of the right hand.

He has also given evidence with respect to special damages he sustained in terms of medical expenses, transport costs, telephone costs and cost of a police report connected to his injury. Special damages have to be

specifically pleaded, but that has not been done in this case. I am therefore constrained and so I can not grant them.

A person who suffers bodily injuries due to the negligence of another is entitled to the remedy of damages. Such damages are recoverable for both pecuniary and non pecuniary losses. The principle underlying the award of the damages is to compensate the injured party as nearly as possible as money can do it. See **Cassell and Company v. Broome (1972) AC 1027**. The pecuniary losses include loss of earning capacity and related benefits and medical expenses and related expenses which I have found can not be granted in this case. The non pecuniary head of damages are pain and suffering, loss of amenities of life and loss of expectation of life. Pain and suffering is attributable to the plaintiff's injury or to any necessary surgical operations and mental anguish such as that suffered by a person who knows that his expectation of life has been reduced or who being severely incapacitated, realizes the condition to which he has been reduced. Loss of amenities is attributable to deprivation of the plaintiff's capacity to engage in some sport or pastime which he formerly enjoyed and; loss of expectation of life, considerable diminishment of his expectation of life.

The plaintiff in this case is entitled to the non pecuniary damages which cannot be quantified in monetary terms by use of a mathematical formula but by use of experience and guidance afforded by awards made in decided cases of a broadly similar nature. See **Wright v British Railway Board [1983] 2 AC 773**. I take into account the cases cited to me by counsel for the plaintiff. In **Duncan Chongo v. De Cabs Bus Service & NICO Ltd** Civil Cause No. 2847 of 2000 the plaintiff sustained a fractured hand and could not use it as before after recovery. The court awarded him K180 000 for pain and suffering. In **Nazigamba v. Plastic**

**Industries (Mw) Ltd** Civil Cause No. 479 of 2000 the plaintiff lost three fingers and could not use his hand. He was granted K40 000 for loss of amenities. Having in mind the cited cases and the circumstances of the plaintiff herein, I award him K400 000 being for pain and suffering, loss of amenities of life and disfigurement. I also award him costs of the action.

Made in chambers this 22nd day of November 2007.

T.R. Ligowe

**ASSISTANT REGISTRAR**