

2nd Dec 1990

BBB

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO.759 OFF 1990



BETWEEN:

MALITA PAULO PLAINTIFF

AND

L.J. MWAKABANGA DEFENDANT

CORAM: MWAUNGULU, REGISTRAR
Nyimba, Counsel for the Plaintiff
Kholowa, Court Clerk

RULING

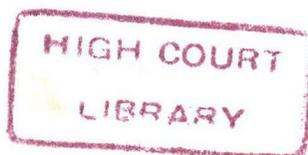
On the 8th May, 1991 I heard evidence from the plaintiff, Ms. Paulo, in an action against the defendant, Mr. Mwakabanga, in which the plaintiff claims damages for personal injuries sustained on the 8th of June, 1984. The defendant was convicted under the Road Traffic Act. Judgment was obtained in default of notice of intention to defend. The Court was convened to assess damages.

The plaintiff suffered compound fractures on her right leg. There were severe injuries to the right leg. There were several surgical operations. She went to theatre for wound debridement. She also had external metal fixations. There was bone grafting: bone tissue was removed from the pelvis to induce healing to the fibula.

The direct result of these injuries is that she is now a disabled person, she uses crutches. There is permanent incapacity assessed at 10%.

The injuries sustained are described as very serious. She was in hospital for 21 months. She feels a lot of pain. The lower part of the leg swells from time to time. If that happens, wounds develop.

Before the injury the plaintiff was working for ADMARC, grading beans. She earned K8.00 per week. She is not doing that any more.



There is a serious omission in the statement of claim and the writ itself. In claims for personal injuries, the age of the plaintiff is a very crucial consideration. That is why now, as a practice direction, the plaintiff's age must be included in the statement of claim.

The plaintiff is supposed to be compensated for all the loss she has sustained. Normally courts award damages for pain and suffering and loss of amenities, the non-pecuniary losses. If there is prospect of pecuniary loss, courts award damages in order to forestall the prospects of such loss. For the non-pecuniary losses, the awards are generally conventional. There can never, in theory and practice, be a proper monetary value for these losses. It is, however, very difficult and impossible to replace the loss of an eye, for purposes of conversation, with another eye. Money is the only way in which such awards can be made. To avoid wayward disparate awards, the awards are conventional. Courts make subsequent awards on the basis of awards previously made in similar circumstances. Courts, however, have to regard change in the value of money to avoid awards being ridiculous when the value of the Kwacha changes. Moreover, the awards to be looked at are the awards of the same jurisdiction as the court or jurisdictions with proximate levels of economic or social development. In Singh v. Toong Tong Omnibus Co. (1964) 1 WLR 182, 1385 Lord Morris of Borth-y-Gest said:

"To the extent to which regard should be had to the range of awards in other cases which are comparable, such cases should, as a rule, be those which have been determined in the same jurisdiction or in a neighbouring locality where similar social, economic and industrial conditions exist."

In Kimothia v. Bhamra Tyre Retreaders and Another (1971) EALR, Justice Law said:

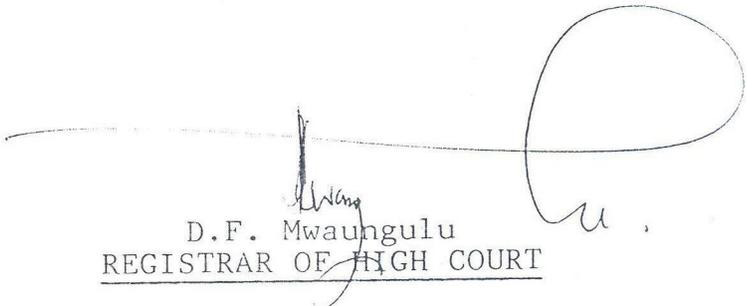
"In my view awards made by various courts, although helpful as a guide, do not necessarily represent the standards which prevail in Kenya where the conditions relevant to the assessment of damages such as wages, rents and costs of living generally, may be very difficult."

There have been a number of awards in our courts in recent months, awards which have not been sanctioned by the Supreme Court. When the Master sits on assessment of damages he sits as judge. These awards would be certified as such. In Mayendayenda v. Bhagwanji, Civil Cause No.2 of 1988 in the District Registry, I awarded K11,000.00 for pain and suffering and loss of amenities to a plaintiff who had fractured a left femur and had multiple cracks in the knee. I made a similar

award recently in Chisanga v. Stagecoach (Malawi) Limited, Civil Cause No.74 of 1991 at the Principal Registry. A couple of days ago I made a similar award in Kambwiri (an infant) v. The Attorney General. I award K12,000.00 in this case. Obviously in this case the plaintiff spent a lot of time in hospital. She was therefore put in considerable pain. Her age has not been stipulated in the statement of claim; this is very crucial for loss of amenities. Without even apportioning the awards in terms of pain and suffering and loss of amenities, I would think that the larger part of this award is for pain and suffering which, of course, includes future pain and suffering.

I will also have to make an award for loss of earning capacity. The evidence shows that the plaintiff was earning K416.00 per annum before tax. The proper approach would have been to use the multiplier/multiplicand approach. The plaintiff's age has not been stipulated. It is very difficult, therefore, to arrive at the correct multiplier. There is, however, no doubt about loss of earning capacity; the plaintiff has actually ceased working. The plaintiff appeared to me to be well over middle-age. There is nothing to suggest that she could not have continued working on this sort of job for a considerable length of time. The fact that the age has not been stipulated means that the most that can happen is to fathom a figure. I award K2,000.00 for loss of earning capacity.

MADE in Chambers this 2nd day of December, 1991 at Blantyre.


D.F. Mwaungulu
REGISTRAR OF HIGH COURT