IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NUMBER 59 OF 1989

BETWEEN:

WILLARD AMOS MANJOLO ..... PLAINTIFF

and

THE ATTORNEY GENERAL and
RABSON SIBALE ..... DEFENDANT

Coram: D F MWAUNGULU, REGISTRAR OF THE HIGH COURT
Asani, Counsel for the Plaintiff
Counsel for the 1st Defendant absent
Counsel for the 2nd Defendant absent

O R D E R

This is an action for damages following injuries sustained on the 15th of February 1986 when Rabson Sibale, a driver employed by the 1st defendant stopped abruptly. The plaintiff, a passenger in that motor vehicle, sustained a deep cut, 6 cms wide and 4 cm deep on the left upper eyebrow. The plaintiff was rushed to the hospital where he was treated for the injuries. Subsequently, he experienced loss of vision. He went to the hospital again. It was confirmed that he was loosing sight in one eye. Later loss of vision in the other eye was detected. The plaintiff never wore glasses before. He has to now.

At the time of the accident, the plaintiff was a Senior Executive Officer in the Ministry of Women and Children Affairs and Community Services. Before the salary revision, he was earning K5688 per annum. He is now 37 years old.

The plaintiff's job involves a great deal of travelling. He uses a motor bike to travel to different places in Kasungu District. With loss of vision, he has been advised to reduce the use of a motor bike. He has for the most part to go by public transport. As a Social Welfare Officer he is involved in relief of destitution for cross sectional clients, family and child care matters, resolving matrimonial issues at the request of the parties, probation services, juvenile finances to name a few. This involves extensive travelling in the district in which he is operating. The direct consequence of the injuries is that his fitness has been severely reduced.

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The plaintiff wanted to enhance his academic level. He had before the accident obtained a Local Diploma in Law with Aggrey Memorial College. He enrolled with a college in London to obtain an 'A' level for possible entry into University at mature entry. All this has been affected by the loss of sight and deterioration at such a rate.

Judgment was obtained by default. The only issue for consideration is quantum of damages. There is no claim for special damages. Mr. Asani, counsel for the plaintiff has referred to several awards made in our courts. He has also referred to some awards in the United Kingdom on loss of sight. There is only one decision on loss of an eye. It is the case of Kuntaja vs. Kotecha Civil Cause No. 429/84 where K3,000 was awarded for pain and suffering, K9,000 for loss of amenities and K11,000 for loss of earning capacity. I want to make general observations before I make the award. Only one local case has been sited for loss of an eye. No doubt this is the proper guide at least on those awards which are conventional, namely pain and suffering and loss of amenities. The awards from the United Kingdom would be of little consequence in our jurisdiction for the simple reason that there is disparity in the living and economic standards of the United Kingdom and Malawi. Assessment of damages is based on the community in which the plaintiff lives. Elias vs. the Attorney General (1973-74 7 A.L.R. (M) 9). The principle was better expressed by Lord Morris of Both-y-gest in Jag-Singh vs. Toong Fong Omnibus Company 1964 1 W.L.R. 1382:

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

There is, however, something to be gained by looking at the development of principles in the United Kingdom to which we have a close connection in legal thinking and development.

If there is any injury to which the Courts in the United Kingdom, the High Court, the Court of Appeal, and the House of Lords, have gone quite far in fixing conventional awards, it is for loss of an eye. Originally the awards were between £3,500 to £4,000 for the non pecuniary losses. By 1982, the awards had been fixed at about £11,000 for loss of vision in one eye where the other eye had perfect sight. Of course if there were peculiar circumstances beyond loss of an eye the conventional figure was adjusted accordingly. In Postel vs. Belgrave (Blackheath) Ltd. 1982 Mr. Thaker said

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"He is unable to pay for any award which exceeds £10,000. In my view the appropriate award now without any complications and assuming perfect sight in the other eye, would be £11,000. In my view that keeps awards for injuries of this type up to date and keeps them in proper comparison and perspective for other kinds of injury. In my judgment £11,000 is now the proper figure. To this it is said - and rightly in my view - that I ought to increase that sum by reason of the defendant's performance of the plaintiff's left eye. The right eye was the better eye and Mr. Woosely urges - in my view justification - that the normal award whatever it may be, for the loss of sight of one eye ought to be increased for this case."

In the earlier case of Gohery vs. Durham County Council 1978, where the injuries were very peculiar, the Court of Appeal approved an award for total blindness in the eye of £35,000. Lord Justice Stevenson had this to say generally for awards for loss of an eye:

"The £35,000 Mr Orde, on behalf of the defendants, maintains is much too high. He called our attention to the case of Hamp vs. The Sisters of St. Joseph's Hospital, to which the learned judge referred. That decision followed a decision in Goodlife vs. Snyder and Harding, in 1972, by Mr. Justice James, noted in Kemp's second volume, 5-012, in which he awarded £20,000 to a blinded man of 47. Aparently he made some statement as to the bracket for damages for a total blindness which was accepted and adopted by this court in Hamp's case. There, the bracket was stated to be in 1972, £20,000 to £24,000 and treated as still prevailing in 1973 - of course, before inflation started to gallop. It appears that in a case of Carr vs. Wynburn-Mason, in 1976 a learned Judge may still have regarded £24,000 as at any rate within the bracket for total blindness simpliciter. If he did so, I think Mr. Orde concedes that he was wrong, because Mr. Orde admitted that taking account of inflation the bracket today was as much as £30,000 at its lower end, £35,000 at its higher. He sought to persuade us that if we bear in mind that this lady's additional injury to her right arm and wrist aggravated a pre-existing disability, the Judge's figure of £35,000 was much too high. Mr. Lawton for the plaintiff maintained that the £30,000 to £35,000 bracket admitted by Mr. Orde was much too low; the lower end of the bracket, whatever sort of test one applies, must by 1977 be taken to be at least £38,000. He had submitted to the learned Judge that £35,000 for blindness alone was the right figure,

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> bearing in mind that interest would have to be added to that figure. If it be the position that interest does not have to be added to the figure of damages for pain and suffering and loss of amenity, and the House of Lords should decide that, he asks us to hold that £35,000 would be too low. He emphasises, understandbly, the grave extra disability imposed on this plaintiff by the wretched further accident which it is not contented was not attributable to the blindness for which the defendants were responsible. She was for a considerable period after it in plaster. No doubt the depression from which she suffered was at any rate contributed to by the terrifying further accident, and what might at first sight appear to be a minor matter - namely, the resulting transfer of her white stick from her good right hand to the left hand, which was not her dominant hand - was on the evidence a serious matter. Without having to do more than state Mr. Orde's concession, it seems to me quite impossible to suppose that this court could interfere with this figure of £35,000, except possibly to push it upwards. For my part, I would not regard it as in any respect excessive; and I pass to consider the other head of damage which alleged to be too high."

What we see developing in the United Kingdom is a cristalised award for loss of vision reviewed systematically with changes in the value of money and adjusted to particular circumstances of the case. I would think that we ought to develop in that direction. In the case of Kuntaja vs. Kotecha, the total award for non-pecuniary loss was K12,000. This included K3,000 for pain and suffering and K9,000 for loss of amenities. Although the case was decided in 1984 and there has been a measure of oscillation in inflation and a plumetting of the value of the Kwacha, the right approach would not be to increase the award so much. The case of Kuntaja vs. Kotecha was to my mind isolated instance in the sense that no financial award was made specifically for loss of an eye. The most that can be done therefore is to reconstruct a consistency between this award and subsequent awards for loss of an eye against awards for other injuries.

I tried to reconstruct this consistency for non-pecuniary cases in the case of Chisanga vs. Stage Coach (M) Ltd. Civil Cause No. 74/91 at the Principal Registry. Prior to that there was lack of uniformity of awards for personal injuries, partly because before then the awards did not particularise, the head on which the damages were made and excluded invariably other heads such as loss of earning capacity which are regarded as general damages. In that case I looked at the case of Mayendayenda vs. Bangwanji

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where previous awards were revealed. The consistency was achieved by the award of K11,000 for the non-pecuniary losses. I followed Chisanga vs. Stage Coach (M) Ltd. in Kambwiri vs. the Attorney General. The decision of Makono vs. the Attorney General decided by the Deputy Registrar was not before me, although it was decided much earlier, Civil Cause No. 95/89 District Registry K18,000 was awarded for pain and suffering. The injuries there were very critical. On the basis of these authorities I would hold that an award of K13,000 to cover pain and suffering and loss of amenities or loss of vision in one eye would be an appropriate award. There has to be an award for financial loss. In this case you can only award for loss of earning capacity because the plaintiff continues in the same employment. There has been no loss of earnings. In Chisanga vs. Stage Coach (M) Ltd. I considered the principles governing awards on this head of damages. The awards are not conventional. Where there has been a loss of earning and that loss is ascertainable, the Courts have used the multiplicand approach. Where that is not the case, the awards, are in the words of Lord Justice Megaw, "nothing more than a guess to be made". (Eaton vs. Concrete Northern Ltd.) 1979 C.A. No. 30. There is therefore no reliance on previous decisions. The K60,000 award in the Chisanga case should be restricted to the facts there. In that case a man who was running a business lost total use of his right arm. There was some doubt about the earnings postulated in the evidence. I assumed a monthly income of K400.00 and an award of K60,000 was just a guess to be made. Equally, guidance can not be had from Kuntaja vs. Kotecha where K11,000 was awarded. The real question is to decide whether there will be loss of earning. Once that has been decided I have to determine what award should be made. The plaintiff has demonstrated that because of loss of vision he cannot go to places where he should have gone as part of his normal chores as a social welfare officer. He has also demonstrated that at the rate at which he is losing his sight, early retirement can not be ruled out. It may be said that he will continue for the most part of his life in this job and now generally, in the Civil Service, there is a measure of stability in employment. It must be remembered however, that one can not discriminate public servants from other servants. I think the situation should be looked at in terms of ordinary and reasonable employers. In Martin vs. John Mowlen and Company Ltd. 1951, C.A. No. 272, unreported, Lord Justice Denning cited with approval a statement by a trial judge that:

> "Employers must consider their own interests, and as the time comes when anyone has to be stood off, as the expression is quoted ..... they do not stand off the man who is most capable of doing the work - they only stand off the man least capable and the man who has been incapacitated to a certain extent."

I would hold that the prospects of loss of earning here is substantial and real. It may not amount to dismissal, it may manifest itself into early retirement. I award the sum of K12,000 well knowing that this figure is just plucked from the air.

I therefore award in total the sum of K25,000.00.

Made in Chambers this 15th day of May 1992, at Blantyre.

D F Mwaungulu
REGISTRAR OF THE HIGH COURT