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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO.943 OF 1989



BETWEEN:

AUGUSTINE MOMBA PLAINTIFF

- and -

ALFRED MILANZI DEFENDANT

CORAM: MWAUNGULU, REGISTRAR

Ching'nde, Counsel for the Plaintiff
Absent, Counsel for the Defendant

O R D E R

On the 6th of October, 1993 I awarded general damages totalling K64,000.00 comprising K30,000.00 for pain and suffering and lost of amenities, K4,000.00 for disfigurement and K30,000.00 for loss of earning capacity. The plaintiff, Augustine, Momba was claiming damages following an accident that occurred on the 8th of October, 1988 when the plaintiff, while riding a bicycle on Blantyre/Mangochi road, was hit by the defendant who was driving a motor vehicle Registration BG 5731. Judgment was obtained by default. It was an interlocutory judgment. Damages had to be assessed. I heard evidence on the 6th of October. I reserved ruling.

The plaintiff had, according to the medical report, very serious injuries. He had serious fracture to the skull. An X-ray picture has been tendered. He also had injury to the left ear. The left eye ruptured. It has been removed. He had another fracture on the arm. There is also X-ray picture for that injury.

The effects of these injuries are well testified to by the plaintiff. He now only uses one hand, and that with extreme difficulty. He is not able to read. There is an artificial eye

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on the left eye. He hardly hears through one of the ears. He has extreme difficulty in using his right hand. There are deep and sort of obscene scars on the face. They are very very conspicuous. In fact, the muscle around the eye has been pulled so that, on mere glance, he appears as if he is squinting.

According to the medical report he has suffered permanent incapacity. The doctor assesses this at 80%. While as he is fit for manual work the doctor certifies that he might not be able to continue as a student.

The plaintiff is now 24 years of age. The accident occurred when he was 20. He was still in school at the time. There is no evidence of performance in school. He does not go to school any longer anyway. He attributes this to the injuries he sustained.

The plaintiff was admitted to hospital on the 8th of October, 1988. This was at Mangochi. He was released on the 22nd of October, 1988. He was asked to go to Queen Elizabeth Central Hospital where treatment for the ear and the eyes was continued. He attended as an out-patient though.

When Courts award general damages for personal injuries they aim to compensate the victim, if money can do it, for all that he has suffered and all that will follow as a circumstance of what has happened. In order to guide themselves Courts have conceptually formed heads of damages. These heads of damages are not exhaustive. They, however, reflect the sort of things that Courts consider in order to satisfy themselves that they have adequately and reasonably compensated the plaintiff. The awards are made with the prime view that the defendant can walk tall in the community and say to his neighbours that whatever the plaintiff has suffered the amount of compensation the defendant has given reasonably compensates the plaintiff.

The first head covers general damages. The Courts aim at compensating for the pain and suffering following the injuries. In addition, injuries entail that the victim will not be able to enjoy the pursuits of leisure and work as he used to do before the injuries. The Courts will, therefore, award for loss of amenities. There is no yard stick for awarding these general damages for the items which the Courts endeavour to compensate are incapable of quantification in monetary terms. The awards are, therefore, conventional. Courts look at the awards that have been given in comparable injuries.

The pain and suffering that the plaintiff endured in this case is considerable. He was in hospital for 14 days. He had serious injuries to the head and the arm. He lost one of his eyes. He also had injuries in the ear. Treatment continued for

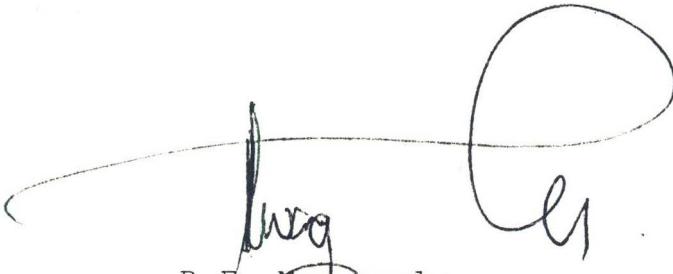
quite sometime although later as an out-patient. He still has some pain in the arm. He is likely to continue suffering because he has now to contend with a lost eye and diminishing sight. Again he will not be able to pursue leisure. He has lost one eye. He has considerable problems with seeing. He does not hear anymore through one ear. The injury has resulted in considerable problems for the plaintiff. I award K30,000.00 for pain and suffering and loss of amenities, with a substantial part accounting for loss of amenities.

The disfigurement in the plaintiff's face is very conspicuous. I award K4,000.00 for general damages for disfigurement.

Personal injuries normally entail financial loss. Where the plaintiff is working, the injury may entail reduction in earnings. Even if there is no reduction in wages, the Courts have to consider the prospects of loss of employment or even reductions in the earnings in the future. As is the case in the present, situation where the victim is not at work, the Court has to consider the possibility that the victim might not be employed in the future. The Courts have to consider the chance. If there is a substantial possibility Courts have to award damages to the victim. The medical report shows that the plaintiff's incapacity is 80%. The medical report also indicates that the plaintiff will not be able to continue with school. There is, therefore, substantial risk of financial loss. Where, like here, the victim was still young and in school it is difficult to award damages using the multiplier/multiplicand approach. Courts, therefore, award for loss of earning capacity. The awards are not conventional. They are, to borrow a phrase, "plucking of a figure in the air". The plaintiff is 20 years of age. He was very young at the time of the injury. I award K30,000.00 for loss of earning capacity.

In all, therefore, I award K64,000.00.

MADE in Chamber on this 19th day of October, 1993 at Blantyre.



D.F. Mwaungulu
REGISTRAR OF THE HIGH COURT OF MALAWI