

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 55 OF 1993**

BETWEEN

YASMIN MUTSINZE

PLAINTIFF

AND

THE ATTORNEY GENERAL

DEFENDANT

CORAM: MWAUNGULU, J

Mhango, for the plaintiff

For the defendant, absent

Chigaru, Official Interpreter

Mwaungulu, J

ORDER

On 11th January, 1993 the plaintiff, Mrs. Mutsinze took out this action claiming damages for personal injuries. The action is against the Attorney General. There is a further claim for special damages. The plaintiff was injured on 7th May, 1993. There was a riot at Nkolokosa in the run up to the referendum. Police officers opened fire indiscriminately. The plaintiff was shot. She was not part of the riot. She suffered the injuries the subject of this action.

The plaintiff was shot in the arm and in the belly. She was rushed to Queen Elizabeth Central Hospital. The shot in the arm severely damaged the thumb. The bullet through the belly went right through her body. At Queen Elizabeth Central Hospital she was rushed to the theatre. It was found that the thumb and that side of her hand were severely shattered. The remains of the thumb were removed. The wound was cleaned and closed partly. The wound in her right side was explored by probing and a formal operation on her abdomen through a separate incision. This was to ensure that there were no severe internal injuries. There were none. The muscle destruction was within centimetres of vital internal organs.

Fortunately the vital organs were unscathed. The injury could have been fatal. The plaintiff was discharged from the hospital on 15th. She recovered fully from the wounds and the operation. The other fingers were able to come to normal function.

The Chief Surgeon, Dr. King, told the Court that the loss of the thumb is very disabling. The plaintiff is unable to grip properly. The Chief Surgeon puts the permanent disability at 40%. The Chief Surgeon suggested further operation to move her index finger around so that the index finger may take to some functions of the thumb.

Mrs. Mutsinze told the Court that she still feels some pain in the arm and the abdomen. She told the Court that at the hospital she went through a great deal of pain. She sleeps on one side. She cannot do her duties as a wife. She now has employed two servants to help her with the chores. She informed the Court that she has difficulties copulating. She could not say whether that will continue.

In personal injury claims the policy behind damages is, if money can do it, to compensate fully for the loss caused by the new circumstance in which the plaintiff has because of the defendant's wrongful act, whatever that may be. These circumstances are portrayed in the heads of damages which Courts have laid down as representing the sort of considerations that have to be taken into account to fully compensate the plaintiff. Personal injury involves some expense to cover medical bills, transportation, etc., things that the plaintiff would not have paid but for the injuries. Sometimes there could be loss of earnings due to hospitalization. To others injuries may mean a reduction in earnings. For others it may be necessary to make certain outlays to help them in the new situation. For example, an apartment may have to be changed to help the plaintiff to better perambulate. Sometimes it may be necessary to recruit a nurse or muster extra help. Yet for others the injuries may reduce future prospects of employment should they lose the job they are now having. There is also the very prospect of being laid off because one is incapacitated in a way. All these, and the list is not exhaustive, are the sorts of financial loss that the court has to look at when considering pecuniary losses. For pecuniary losses the court is aiming at full compensation. (Tembo -v- City of Blantyre and National Insurance Co. Ltd (1994) Civ. No. 1355; Kamwendo v Attorney General (1995) Civ. No. 840).

There also non-pecuniary losses. These are pain and suffering. These are injuries which courts have recognized as those that they should compensate. That they are incapable of quantification has meant that there cannot be a precise way of awarding them. Moreover, even if it were possible to do that, it would be very difficult to assign a monetary value to the items. Then there is a head of damages styled loss of amenities. Injuries, like old age, can leave one in nostalgia about the things one used to enjoy as part of leisure or preoccupation. A man who enjoys his career may have to live with the gloomy prospect that he cannot do it anymore. These are the sort of things catered for in award for loss of amenities. That these items cannot be quantified means that the awards can only be conventional that is to say, the Court has to look at comparative awards in the jurisdiction or another at the same level of economic and industrial development (Tembo -v- City of Blantyre and National Insurance Co. Ltd.)

Here the plaintiff is aged 26. She is not in employment. She has now employed helpers to help her in the house. The court has not been informed why the plaintiff is not working at

all. There has been no indication that she is looking for work and she cannot find it. If that was the case, though she is not working then court would have estimated her prospects and award accordingly (Meah -v- McCreamer [1985] 1 All E.R.367). The plaintiff has however employed domestic servants to help her in the house. She pays them K60 and K50. The plaintiff has actually employed servants. From the injuries that the plaintiff has suffered to her arm such servants would be necessary for the house. In Daly -v- General Steam Navigation Co. [1981] 1 W.L.R. 120, 127, Bridge, L.J., said:

“One the judge had concluded, as this judge did, that, to put the plaintiff, so far as money could do so, in the position in which she would have been if she had never been injured, she was going to need in future, domestic assistance for eight hours a week, it seems to me that it was entirely reasonable and entirely in accordance with principle in assessing damages, to say that the estimated of employing labour for that time ... was the proper measure of her damages under this head. It is really quite immaterial, in my judgment, whether having received those damages, the plaintiff chooses to alleviate her own housekeeping burden ... by employing the labour which has been taken as the basis of the estimate on which damages have been awarded, or whether she chooses to continue to struggle with the housekeeping on her own and to spend the damages which have been awarded to her on other luxuries which she would otherwise be unable to afford.”

If the cost of labour is known, the award is based on an annuity that takes into account the fact that the plaintiff is earning the money well in advance. The award is such a sum as would from reduction from capital and income on the capital can pay the servants for the time in which it should run. The plaintiff is only 26. Her life expectation is about 55 years. From the cost of labour of K95, the appropriate award for this head is K21, 660.

For pain and suffering, I agree with the suggestion that the injuries here were not very grave. The plaintiff however went through a great deal of pain. The pain was from the injuries themselves and the surgery. The Chief Surgeon speaks of future operation. There is prospect of further pain. Even if the pain and suffering were not pronounced, the plaintiff has all to lose as for things that she enjoyed most. She informs me that before this incident she used to go about her housekeeping. She will not definitely be able to enjoy that any more. I award the plaintiff K30, 000 for pain and suffering and loss of amenities.

There will therefore be judgment for the plaintiff for K52, 258.

Made in open court this 17th Day of September 1997.

D.F. Mwaungulu

JUDGE