

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 2083 OF 1999**



BETWEEN:

R.I. HAMDANI PLAINTIFF

AND

THE ATTORNEY GENERAL DEFENDANT

CORAM: POTANI, DEPUTY REGISTRAR
Kara, Counsel for the Plaintiff

ORDER ON ASSESSMENT OF DAMAGES

This is an assessment of damages recoverable by the plaintiff. By a default interlocutory judgement of August 25, 1999, it was adjudged that the defendant herein do pay to the plaintiff damages to be assessed by the court and costs to be taxed if not agreed.

The plaintiff's claim is for damages for loss of his vehicle, Mercedes Benz truck, registration number BK 5556 in a road traffic accident attributed to the negligence of the defendant's servant.



The only evidence available for purposes of the assessment is that of the plaintiff. Such is the position as the defendant never appeared at the hearing of the evidence on the assessment despite having been duly served.

It is the plaintiff's evidence that as a result of the accident giving rise to this action, he took his vehicle to two reputable garages for repair cost quotations. Both garages recommended that the vehicle was beyond repair. He tendered such quotations as EXP2 and EXP3 made by Fernando Motors and Nunes' Panel Beating Services respectively.

As regards the value of the vehicle, it is the plaintiff's evidence that he took the vehicle to Automotive Products Limited, dealers in such type of vehicles for valuation. A valuation report, EXP4, was made and it puts the value of the vehicle at K4,500,000.00.

Further testimony by the plaintiff is that he was using the vehicle for commercial hiring and that on average it would generate a daily income of K14,650.00. He tendered in evidence as EXP5, an invoice dated October 27, 1998, showing the sum of K90,480.00 which he raised as a bill to McConnel and Company for transportation of goods using the vehicle the subject of these proceedings before it was damaged.

It is settled law that in an action for loss of goods, the normal measure of damages is the market value of the goods destroyed at the time and place of destruction. See Mc Gregor on Damages



15th Edition Page 796 paragraph 1283. Thus, the purpose of damages is restitutio in integrum, that is, to put the plaintiff in the same position he would have been had it not been for the accident. see Fernandes v Karfreight Deliveries MSCA Civil Appeal No 48 of 1995 (unreported) and Owners of Dredger Liesbosch v Owners of Steamship Edison (1933) AC 449.

Reverting to the plaintiff case, it is the undisputed evidence of the plaintiff, as supported by the valuation report that the value of the plaintiff's vehicle at the time of the destruction was K4, 500,000. I would, therefore, without hesitation order that the plaintiff be awarded the sum of K4,500,000.00 for loss of the vehicle. The plaintiff having been fully compensated for the damaged vehicle, it only follows that the defendant is entitled to get the wreck.

The plaintiff also seeks to be awarded damages for loss of profits. Counsel for the plaintiff made reference to the cases of The Kate (1899) P. 165, The Empress of Britain (1913) 2 TLR 423 and Leisbosh Dredger v S.S. Edison (1933) Ac 449 as authorities for the proposition that where the plaintiff's goods have been destroyed he or she may be entitled to loss of profits. It is important to note that in the cases cited, the basis for awarding damages for loss of profits seems to be that at the time of the destruction, the vessels were under a contract or required for a contract for an ascertainable amount as opposed to mere speculation of the possibility of future contracts. This distinction was recognised in The Anselma de Larrinaga (1913) 29 TLR 587.

In the instant case, there is no evidence from the plaintiff as to whether at the time of the accident his vehicle was under a standing contract. It would seem the vehicle would only go on hire as and when someone needed it for the transportation of their goods. It is therefore not possible to determine with certainty the profits the plaintiff would have derived from the vehicle by way of hiring charges. It however does not mean that because it is difficult to assess damages for loss of profits precisely, then none should be made see *Chaplin v. Hicks (1911)* 2KB 786 (CA). In my view, taking into account the various contingencies surrounding the plaintiff's business, I would award the plaintiff damages for loss of profits in the sum of K3,000,000.00. The total award is therefore K7,500,000.00.

The plaintiff is also awarded costs of this action.

Made in Chambers this day of April 11, 2000, at Blantyre


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