

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO 405 OF 2001**

BETWEEN:

FRANK LESLIE HARAWA PLAINTIFF

AND

WHEELS OF AFRICA (MW) DEFENDANT

CORAM: POTANI, REGISTRAR

Salima, Counsel for the Plaintiff

Kadwa, Counsel for the Defendant

ORDER ON ASSESSMENT OF DAMAGES

This is an action instituted by the plaintiff, Frank Leslie Harawa, against the defendant, Wheels of Africa (Malawi) Limited. The action arises from a road traffic accident attributed to the negligence of the defendant's driver as a result of which the plaintiff's vehicle got damaged. In the statement of claim, the plaintiff is claiming the sum of K433,761.79 being repair costs, damages for loss of use and costs of the action. A judgment on admissions was entered in favour of the plaintiff on May 31, 2001. Subsequently, the plaintiff took out a notice of assessment of damages.

According to the plaintiff, he is a Malawian resident in the Republic of South Africa (RSA). The accident giving rise to this action occurred when he, together with some South African friends, came to Malawi to attend a brother's funeral. As a result of the accident, which occurred before he attended the funeral, his vehicle got considerably damaged. He took it to Lotus Motors Limited and Automotive Products Limited for repair cost quotations. At Lotus Motors, it was Mr Steven Nkhata, PW2, who assessed the cost of repairing the damaged vehicle and he tendered his quotation as Exhibit P5 for the sum of K490,231.89. Mr Stewart Liabunya, PW3, is the one who assessed the vehicle at Automotive Products and he came up with the repair cost quotation for the sum of K433,761.79. He tendered his quotation as Exhibit P7.

The plaintiff further testified that due to the damage caused to his vehicle, he was greatly inconvenienced as he had to travel by public transport to attend the funeral. His friends from South Africa could not go with him. Instead, they remained in Blantyre waiting for him to come back from the funeral while one of them had to leave earlier for South Africa. The plaintiff spent R640.00 for the travel fare for the friend who had to return

earlier. For those who remained in Blantyre, he spent about K6000.00 for their upkeep. He himself spent K3000.00 to travel to the funeral. He also had it that because of the expenses he incurred which also included K2000.00 for police report as shown in exhibit P2, K1000.00 for the quotation he got from Lotus Motors as shown in Exhibit P3 and K1,819.58 for the quotation issued by Automotive Products as shown in exhibit P4 he run out of money and had to borrow K8,000.00 from his mother. He also had to call for more money from the RSA because he and his friends stayed in Malawi longer than they had planned in order to sort out matters relating to the damaged vehicle.

One witness, Alexander Chimwaza, Operations Supervisor for the defendant gave defence testimony. Briefly, his evidence was that after the accident giving rise to this action, one of his superiors, in his presence, took photographs tendered as exhibit D1(a) and 1(b) depicting the state of the car after the accident. Thereafter, the defendant arranged for an assessment of the damage caused on the plaintiff's vehicle to be done by an Insurance Assessor after being not satisfied with the repair cost quotations the plaintiff obtained from Lotus Motors and Automotive Products. He tendered the assessment report at exhibit D1 showing a repair cost of K97,229.28.

Both counsel furnished the court with written submissions which I have very much considered. Before going further, I wish to observe that in his submission, more specifically paragraph 3.1, counsel for the plaintiff took cognizance of the legal position that special damages must not only be specifically pleaded but must also be strictly proved and reference was made to the case of Yanu Yanu Bus Company vs. Mbewe. Counsel, however, did not provide the citation of the case. Be that as it may, the law is indeed as counsel put it in his submission. Observably, in his evidence, the plaintiff sought to adduce evidence of certain aspects such as expenses for securing a medical report, money paid to have repair cost quotations and other expenses that have not been specifically pleaded in the statement of claim. I would hasten to say that I shall ignore his evidence on those items of expenditure not pleaded and particularized in the statement of claim.

Going through counsel's respective submissions it come out clearly that the real bone of contention is which of the repair cost estimates between those sourced by the plaintiff and that sourced by the defendant represent a true reflection of the expenses the plaintiff would suffer to have his car repaired. I must admit that looking at the evidence before me in its entirety, it is a matter that has given me some anxious moments. This, I say, because to begin with, looking at the damaged vehicle as depicted in exhibit D1 (a) and 1(b) one gets the impression that the damage was not as extensive as to cost in excess of K400,000.00 as the quotations obtained by the plaintiff show. Of course, I bear in mind that counsel for the plaintiff in cross examining the defendant's witness sought to attack the propriety of admitting the photographs exhibit D1(a) and 1(b) in evidence as the witness admitted that he was not the one who took the photographs. What I would wish to say on this point is that the witness clearly stated that he saw the vehicle immediately after it got damaged and was present when the photographs were being taken. I am therefore, of the view that it is perfectly in order to allow the photographs in evidence. The other hurdle I am faced with relates to the Insurance Assessor's assessment of the repair cost tendered as exhibit D2 by Alexander Chimwaza, DW1. Dw1 admitted in cross examination that he was not the author of the assessment report I would, therefore,

disregard its contents. I therefore only have the repair cost quotations from Lotus Motors and Automotive Products, one the hand, and the damaged vehicles photographs, on the other hand, on which to decide how much the plaintiff should be paid for his damaged vehicle.

It is imperative to note that both counsel, in their submissions, acknowledge that Automotive Products are the sole authorized dealers of vehics of the type of the plaintiff's damaged vehicle. I would therefore, for purposes of this assessment, reject the quotation from Lotus Motors. The quotation from Automotive Products puts the repair costs at K464,954.00. I made some attempt to relate this cost with the damage caused to the vehicle as depicted in exhibit D1(a) and 1(b) but unfortunately it is difficult to really discern the precise damage the vehicle suffered. As against that, I really have no basis on which to doubt the correctness of the assessment made by Automotive Products Limited. As being local dealers of the type of vehicles like the one the subject of these proceedings, they are better placed in ascertaining the cost of repairing such vehicles in the event of an accident. I would consequently order that the plaintiff he paid the sum of K433,761.79 as damages for repair costs.

Then there is the claim for loss of use. It is important to bear in mind that the damaged vehicle was a private as opposed to a commercial vehicle. On this aspect, I am guided by the remarks of Mtegha J in *Chinema vs. World Vision International* Civil cause Number 1097 of 1991. There is no evidence in this case as to the period the plaintiff was deprived of the use of the vehicle. There is just the evidence of the inconveniece the plaintiff suffered. I consider an award of K40,000.00 for loss of use to be fair and adequate. This brings the total award to K473,761.79.

Costs of this action to be bone by the defendant and such costs to be taxed if not agreed by the parties.

Made in chambers this day of February 5, 2003, at BLANTYRE.

H S B Potani
REGISTRAR