

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 2152 OF 2002

BETWEEN:

HENRY KAMWANA2ND PLAINTIFF

LEONARD NGUSENGWA3RD PLAINTIFF

AND

SHIRE HIGHLANDS HOTELDEFENDANT

CORAM: TEMBO, ASSISTANT REGISTRAR

Tukula, Counsel for the Plaintiffs

ORDER ON ASSESSMENT OF DAMAGES

This is the courts' order on assessment of damages pursuant to a default judgment in favour of the plaintiffs herein for damages for pain and suffering, loss of amenities of life and loss of earning capacity. The judgment is dated 12th November, 2002. The notice of hearing of assessment of damages herein was duly served on the defendant. But the defendant did not make an appearance on the date of hearing of this assessment. That left the plaintiff's evidence totally uncontroverted.

Both plaintiffs herein got involved in an accident on 4th July, 2001 which was caused by the negligence of an agent of the 2nd defendant. Both plaintiffs sustained injuries.

The 1st plaintiff sustained a dislocated wrist joint and a cut wound on his hip. He suffered a further cut on his right leg. The 1st plaintiff was treated as an out-patient at Queens Central Hospital. The 1st plaintiff therefore suffered pain as a result of her injuries.

The 1st plaintiff's can not use his right hand as before the accident herein as it has since become weaker. The wrist is still painful. The 1st plaintiff used K2,000.00 and K350.00 to pay for the police report and medical report respectively. A further K700.00 was spent by the 1st plaintiff on transportation. The 1st plaintiff also uses K1,200.00 per month on a pain killer known as endorcid.

With respect to the 2nd plaintiff he sustained a swollen right wrist joint which, sometimes, is painful. And the 2nd plaintiff can not have using his right hand. The 2nd plaintiff spent K2,000.00 on a police report, K350.00 on a medical report and K700.00 on transport to Balaka where he obtained the above reports.

This court notes that the law of tort avails the remedy of damages to a person injured by the negligence of another so as to compensate the injured party. See **Livingstone v. Rawyards Coal Company** (1880) 5 A.C 25.

The present claim relates to loss of non-monetary nature. It is not possible to quantify such loss in monetary terms with mathematical precision. So the courts use decided cases of a comparable nature as a guide in arriving at the monetary compensation appropriate to a particular case. That ensures that some degree of uniformity and general consistency of civil justice in cases of a broadly similar nature. See **Wright v. British Railways Board** (1983) 2 A.C 773.

This court notes that the 1st plaintiff and the 2nd plaintiff is each entitled to damages for pain and suffering and loss of amenities of life suffered herein. But the court does not find any evidence supporting the claim for loss of earning capacity and both plaintiffs shall not be awarded damages under that head.

This court has considered the injuries suffered by each plaintiff herein. This court has also considered recent cases of a comparable nature to the instant one and the awards made therein. One such case considered by this court is that of **Limited v. Bakelines Limited** Civil cause Number 2279 of 2001 in which the plaintiff suffered cuts to his hand and head and also internal head injuries as a result of a violent fall. The plaintiff in that case was awarded K65,000.00 for pain and suffering and K25,000.00 for loss of amenities of life on 1st November, 2002.

In the premises obtaining in the present case this court awards the 1st plaintiff K45,000.00 as damages for pain and suffering and loss of amenities of life and for past and future medical expenses. The expenses incurred by the 1st plaintiff for transport, medical report police report and also awarded to the 1st plaintiff in the sum of K3,050.00.

This court awards the 2nd plaintiff the sum of K20,000.00 as damages for pain and suffering and loss of amenities of life. A further K3,050.00 is awarded to the 2nd plaintiff for expenses of obtaining the medical report and police report plus transport from Blantyre to Balaka where the reports were obtained.

Costs of this action are for the plaintiffs.

Made in Chambers at Blantyre this August, 2003.

M A Tembo

ASSISTANT REGISTRAR