

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 3608 OF 1999

BETWEEN:

O R J MATIMBAPLAINTIFF

AND

L MAONGA1ST DEFENDANT

PRIME INSURANCE COMPANY LTD 2ND DEFENDANT

CORAM: TEMBO, ASSISTANT REGISTRAR

Tukula, Counsel for the Plaintiff

ORDER ON ASSESSMENT OF DAMAGES

This is the court's order on assessment of damages pursuant to a judgment of the High court in favour of the plaintiff for damages for personal injuries suffered by the plaintiff herein.

The notice of hearing of this assessment was duly served on the defendant who did not make an appearance at the hearing. That left the plaintiff's testimony uncontroverted.

The plaintiff aged 32 years suffered an open cut wound which was 2 cm deep spanning 7 cm from the big toe on the right foot up to the area just below her right knee. An ugly scar spanning a corresponding area is clearly visible.

The plaintiff was admitted to Kasungu District Hospital for 3 days where her open cut wound was stitched closed. The wound had to be dressed regularly. The medical evidence revealed that the plaintiff can do manual work and so this court does not believe her assertion that she can not carry on with her farming activities since the accident herein.

The plaintiff herein is clearly entitled to damages for pain and suffering as the wound was very painful as was treatment therefore. The scar left by the wound shall result in limited movement in the plaintiff's mid-toe on her right foot. The plaintiff is therefore also entitled to damages for loss of amenities of life though not so serious.

Such damages are aimed to compensate the plaintiff as nearly as possible as money can do. See **Cassel and Company v. Broome** (1972) A.C. 1027. The loss suffered by the plaintiff herein is non-monetary in nature and so it is impossible to quantify the same in monetary terms with mathematical precision.

As such this court is guided by awards made by this court in cases of a broadly similar nature to the instant one in order to arrive at the appropriate level of compensation. That ensures consistency in civil justice in cases of a broadly similar nature see **Wright v. British Railway Board** (1938) A. C. 1173.

Among others this court looked at the case of **Nkulichi vs. Latif and Prime Insurance Company Limited** Civil Cause Number 2476 of 1998 in which K35,000.00 was awarded to the plaintiff therein as damages for cut wounds to both legs and bruises on the right hand. That award was made on 17th November, 1999. Since then the value of the Kwacha has depreciated.

In the present case the plaintiff's injury took long to heal due to infections thereto. The cut wound herein is also considerable with dimensions of 7 cm long 2 cm deep. The scar left by the cut is glaringly considerable as well.

In the circumstances this court awards the plaintiff the sum of K70,000.00 as damages for pain and suffering and loss of amenities of life and disfigurement to the plaintiff herein.

Made in Chambers at Blantyre this 2nd September, 2003.

M A Tembo

ASSISTANT REGISTRAR