

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NUMBER 1148 OF 2003

BETWEEN:

KETTIE BANDA1ST PLAINTIFF

RAPHAEL SAILA2ND PLAINTIFF

AND

FRANCIS LIMBULO1ST DEFENDANT

D. M. KUMWENDA2ND DEFENDANT

CORAM : TEMBO, ASSISTANT REGISTRAR

Movette, Counsel for the Plaintiff

Defendants present in person and unrepresented

ORDER ON ASSESSMENT OF DAMAGES

This is this court's order on the assessment of damages herein.

The assessment was done pursuant to a default judgment entered in favour of the plaintiff's for damages for pain and suffering and loss of amenities of life.

The plaintiffs herein got involved in an accident on 11th January, 2003 whilst traveling in a vehicle belonging to the 2nd defendant. The 1st defendant who was driving the 2nd defendant's vehicle negligently drove the motor vehicle resulting in the accident herein. In that accident the 1st plaintiff and 2nd plaintiff suffered various injuries.

The 1st plaintiff suffered a fractured right femur and a fractured left humerus she also suffered bruises on her face and chest. The 1st plaintiff was admitted at Queens Central Hospital for about 2 months for treatment from 11th January, 2003 to 6th March, 2003. Her wounds had to be dressed and treated. Her fractures had to be treated as well. A skeletal pin traction treatment was administered on the femur for 7 weeks. And the left humerus was cast in a plaster of Paris. After the treatment the 1st plaintiff's right leg has been shortened by 1½cm. She therefore walks with a limp in the right leg. The 1st plaintiff can not lift heavy objects with her left upper arm. The 2nd plaintiff also suffered severe injuries. He had a fracture on the base of his skull. His right eye was completely crushed and was consequently removed. The 2nd plaintiff also suffered severe bleeding through his nose, both ears and the mouth.

As a result of the injuries herein the 2nd plaintiff's memory is very low and he is forgetful. The 2nd plaintiff who is by profession a painter can no longer operate effectively using ladders in the painting business. He therefore can not fully take part in his usual livelihood.

The law is clear that a person who suffers bodily injury due to the negligence of another is entitled to recover damages. The aim of awarding damages is to compensate the injured party as nearly as possible as money can do and not to punish the tortfeasor. See **Cassel and Company v Broone** 1972 A.C. 1027. The damages recoverable under the head of general damages for personal injuries are those for pain and suffering, loss of amenities of life and disfigurement. It is impossible to quantify such aspects of loss in money terms with mathematical precision. As a result courts use decided cases as a guide in arriving at appropriate awards in a particular case. That ensures some degree of general uniformity and consistency in awards made in cases of a broadly similar nature. See **Lipenga v Vassilatots Brothers** civil cause number 616 of 1998 (unreported). This court had occasion to consider awards made in cases of similar nature to the instant one. In **Chimwala v Issa** civil cause number 1590 of 2000 the plaintiff who suffered a fractured forearm and multiple bruises on the face and knees was awarded K80,000.00 as damages for pain and suffering and loss of amenities of life. This award was made on 14th November, 2002. And in **Mbaso v Attorney General** civil cause number 769 of 2001 the plaintiff suffered a fractured left leg and remained in hospital for 6 months. Upon being discharged that plaintiff could only walk using crutches. He was awarded K80,000.00 for pain and suffering and K60,000.00 for loss of amenities of life on 5th July, 2001. In **Matewere v**

Group Five International civil cause number 1009 of 1999 the plaintiff who suffered severe headaches that affected his sight, a painful arm and the loss of a job was awarded K75,000.00 as damages for pain and suffering, loss of amenities of life and loss of earning capacity. That award was made on 15th June, 2001.

This court does not lose sight of the fact that the kwacha has since depreciated in value since the awards referred to above were made. With regard to the 1st plaintiff this court is of the view that she has considerably healed as she can now engage in sports. She nevertheless remains with the shortened right leg that must still impact on her life. The left arm has also been weakened. She must have lost the full use of the same and thereby lost some amenities of life. In the circumstances this court awards the 1st plaintiff the sum of k175,000.00 as damages for pain and suffering and loss of amenities of life.

With regard to the 2nd plaintiff his injuries were very severe. He does not enjoy a good memory. His eye sight was affected by the loss of one eye such that he can not fully realise his trade as a painter.

Upon consideration of all the circumstances herein, this court awards the 2nd plaintiff the sum of K300,000.00 as damages for pain and suffering loss and amenities of life. That award is made after considering all the material support given by the defendants to the 2nd plaintiff. Costs of this action are for the plaintiffs who have wholly succeeded herein.

Made in Chambers at Blantyre thisMay 2004.

M. A. Tembo

ASSISTANT REGISTRAR

