

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 741 OF 2001**

BETWEEN:

ATIMA MPHONDA.PLAINTIFF

AND

M. MAPANDO.....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 default judgment entered in favour of the plaintiff on 30th April, 2001 for damages for personal injuries sustained by the plaintiff in an accident caused by the negligence of the defendants agent. The accident took place on 8th August, 1998. The plaintiff duly served the notice of hearing of this assessment on the defendant who did not appear at the hearing of the assessment. That left the plaintiff's evidence unchallenged.

In the accident herein the plaintiff sustained several serious injuries. She lost all her upper teeth and 6 lower teeth. She also suffered cuts and a fracture on the upper mandible leaving a permanent scar on the upper lip. The plaintiff must have underwent a lot of pain as a result of her injuries and from the treatment thereof. Further the plaintiff suffered chronic back pain as a result of the accident. The plaintiff can now not eat hard

foodstuffs. She can also not engage in farming as before due to backaches.

The plaintiff's teeth had to be replaced by artificial teeth. She paid K17,600.00 for these artificial teeth.

The plaintiff's loss herein is both monetary and non-monetary in nature. Namely non-monetary loss for the personal injuries and monetary loss for the actual money spent in relation to her injuries.

The plaintiff is entitled to damages having suffered personal injuries due to the defendant's negligence. See *Cassel and Company v. Broome* (1972) A. C. 1027. The damages are aimed at compensating the plaintiff for her injuries as nearly as possible as money can do. See *Livingstone v. Rawyards Coal Company* (1880) AC 25.

It is not possible to quantify the non-monetary loss in monetary terms with mathematical precision. So this court draws guidance from decided cases of a comparable nature to arrive at the appropriate compensation due to the plaintiff. That also ensures some degree of general consistency and uniformity in civil justice in cases of a broadly similar nature. See *Wright v. British Railways Board* (1983) 2 A.C 773. This court though considers each case on its own merits to avoid sacrificing justice at the instance the overzealous desire to maintain consistency in awards.

This court has considered the plaintiffs injuries which are serious. The plaintiff must have undergone a lot of pain. She also lost use of amenities of life like eating food of her choice and farming. This court has also considered recent awards made in the High Court in cases of similar nature to the instant one.

One such case being that of *Kadzola v Malawi Union of Savings and Credit Cooperatives Limited* Civil Cause Number 3715 of 2000. In that particular case a plaintiff who had suffered fractured mandibles and whose teeth could no longer withstand hard foodstuffs was awarded K40,000.00 damages for loss of amenities of life in March,2002.

This court does not though lose sight of the fact that the Kwacha has since depreciated in value since the awards this court has referred to. And further that the injuries sustained in the instant case are more serious than the ones suffered in the case referred to above.

In the circumstances of the present case this court awards the plaintiff the sum of K250,000.00 damages for pain and suffering ,loss of amenities of life and disfigurement.

The plaintiff has spent K17,600.00 on artificial teeth. That is an expense directly incurred as a result of the accident herein. The sum of K17,600.00 is therefore awarded to the plaintiff.

Costs of this action are for the plaintiff who has wholly succeeded herein.

Made in Chambers at Blantyre this May, 2004.

M A Tembo

ASSISTANT REGISTRAR