

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 3687 OF 2001

BETWEEN :

D. KWAITANA MALOMBE..... 1ST PLAINTIFF

L NYANGULU.....2ND PLAINTIFF

AND

G.H. CHIKHO T/A BEE LINE MINI BUS..... DEFENDANT

BEFORE: TEMBO M, ASSISTANT REGISTRAR

Mulele, Counsel for the plaintiff

Order on Assessment of Damages

This is an order of this court on assessment of damages herein. The plaintiffs claim damages for personal injuries suffered by him due to the negligence of the 1ST defendants' agent in causing the accident herein.

A default judgment was entered in favour of the plaintiff herein dated 3rd October, 2002 and settling the issue of the defendant's liability herein. This assessment is done pursuant to that judgment.

The plaintiffs took out a notice of assessment of damages which was served on the defendants. But the defendants never appeared at the hearing of this assessment leaving the plaintiffs' testimony uncontroverted.

In the accident herein the 1st plaintiff sustained injuries. He suffered a fractured right collarbone. He also suffered a fracture on the leg, namely the right tibia and fibula, which was cast in a plaster of paris. He now feels pain if he remains standing for a considerable time.

In the accident herein the 2nd plaintiff suffered several injuries. A metal pierced her head just above her left eye causing a deep cut in her scalp. So she had neck and facial bruises. She also crashed her right leg resulting in bruises.

The 2nd plaintiff was admitted to Lilongwe central hospital where she spent the period between 15th December, 1998 to 14th March, 1999.

As a result of the accident herein the 1st plaintiff who is a farmer can no longer engage in farming activities as she used to before the accident. She can also not walk long distances without experiencing pain on her leg. Her left eye also has some dimly visions. Her upper chest area still swells.

It is settled law that a person who has suffered damage due to the negligence of another is entitled to recover damages against that other. The aim of awarding damages is to compensate the injured party as nearly as possible as money can do. See *Livingstone v Rawyards Coal Company* (1880) A.C. 25.

The plaintiff's claim relates to non-monetary loss. On this aspect of loss damages are recoverable for pain and suffering and loss of amenities of life. It is not possible to quantify such aspects of loss in monetary value with mathematical precision. As a result courts use decided cases of comparable nature as a guide in arriving at awards. That ensures some degree of uniformity and general consistency in civil justice in cases of a broadly similar nature. See *Wright v British Railways Board* [1983] 2 A.C. 773. But at the same time each particular case is considered on its merits to avoid occasioning injustice by the Zealous maintainance of consistency and general uniformity in cases of a broadly similar nature. See *Heil v Rankin* [2000] 2 WLR 1173.

This court has considered several cases of similar nature to the instant one for guidance on the level of awards. In *Simkonda v Prime Insurance Company* civil cause number 310 of 2002 the plaintiff suffered soft tissue injuries in the form of bruises on his head, right side ribs and on both hands. That plaintiff also suffered cut wounds on the abdomen. That plaintiff was awarded K45,000.00 as damages for pain and suffering and loss of

amenities of life. That award was made on 31st December, 2002.

In another case of Marko and Chakwamba v Mafingo t/a Nzeru nchuma Transport civil cause number 1466 of 1999 the 1st plaintiff who suffered a fractured left tibia, a deformed wrist joint, a deep cut on the leg and multiple wounds on the back and legs was awarded K100,000.00 damages for pain and suffering. In the same case the 2nd plaintiff who suffered a fractured collar bone and a ruptured knee joint was awarded K150,000.00 damages for pain and suffering and loss of amenities of life. These awards were made on 2nd September, 2003.

This court does not lose sight of the fact that the Kwacha has lost some value since the awards alluded to herein.

Upon a careful consideration of all the circumstances obtaining in the present case this court awards the 1st plaintiff the sum of K50,000.00 as damages for pain and suffering and loss amenities of life.

And this court also awards the second plaintiff the sum of K155,000.00 damages for pain and suffering and loss of amenities of life herein.

Costs of this action are also awarded to the plaintiffs who have wholly succeeded in the present case.

MADE in chambers at Blantyre this 6th May, 2004.

M. A. Tembo

ASSISTANT REGISTRAR