

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 2199 OF 2003**

BETWEEN:

BEATRICE MBEWEPLAINTIFF

AND

**T KAOMBA t/a KAOMBA INVESTMENT.....
.....DEFENDANT**

CORAM: TEMBO, ASSISTANT REGISTRAR

Ngwira, 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 28th September,2003, for damages for personal injuries sustained by the plaintiff in an accident caused by the negligence of the defendant's agent. The accident took place on 2nd March,2001. 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 lost her consciousness and only regained it after several hours when she realized she was at Kasungu District Hospital. In the accident herein the plaintiff sustained several injuries as a result of the minibus passenger seats crashing on her. She suffered a cut wound on the right elbow and scratches on the right hand which have healed leaving scars. She further suffered a cut on her nose from

shattered glass. Apart from these injuries the plaintiff also suffered fractures on both legs. She suffered a compound fracture of the right tibia and fibula and a closed fracture of the left tibia and fibula. Depressions are visible where the plaintiff's legs were crashed. As a result of the accident herein the plaintiff was admitted to Kasungu Hospital and later Mzuzu Central Hospital for a period of slightly over 3 months. The plaintiff has been experiencing problems walking long distances, she can no longer walk such distances. The plaintiff alleged that she can no longer engage in her tomato selling business in which she used to make weekly profits of K3,000.00. That allegation on specific profit alleged was not substantiated but the fact remains that she was engaging in the business. She is since capable of engaging in business as per her medical report. She therefore lost earning capacity only during the time she was in hospital and shortly thereafter as she was recuperating.

The plaintiff also spent K2,000.00 on a police report on her accident. The plaintiff nevertheless did not substantiate her claim to medical and transport expenses.

This court wishes to mention that the plaintiff herein simply pleaded that she was claiming damages without specifying what heads of general damages she was seeking. This court having heard the evidence has formed the view that for damages the plaintiff was seeking general damages for pain and suffering, loss of amenities of life and loss of earning capacity. So counsel is reminded to break down such heads of general damages to ease the duty of this court as well in assessing damages.

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 of the overzealous desire to maintain consistency in awards. See *Heil v Rankin* [2000] 2 W.L.R. 1173.

This court has considered the plaintiff's injuries. Counsel for the plaintiff was ordered to file submissions on the quantum of damages but did not do so and this court shall proceed to assess the same without counsel's submissions. This court has also considered awards made in cases in which the plaintiffs suffered injuries similar to those suffered by the plaintiff herein.

One such case is that of *Mbaso v Attorney General* civil cause number 769 of 2001. In that particular case the plaintiff suffered a fractured leg and head injuries. As a result he could only walk with crutches. He was in hospital for 4 months during which time his leg was suspended and also cast in a plaster of paris. He also could as a result not engage in

his produce business. On 5th July,2001 the plaintiff in that case was awarded K80,000.00 for his pain and suffering, K60,000.00 for loss of amenities of life and K50,00.00 for loss of earning capacity.

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. This court also considers the fact that the plaintiff in the instant case has substantively healed of her fractures as opposed to the plaintiff in the case cited above.

In the circumstances of the present case this court awards the plaintiff the sum of K120,000.00 for pain and suffering, K100,000.00 for loss of amenities of life and K80,000.00 for loss of earning capacity.

The sum of K2,000.00 spent by the plaintiff on the police report is also awarded to the plaintiff.

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

Made in Chambers at Blantyre this 18th May, 2004.

M A Tembo

ASSISTANT REGISTRAR