

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY**

CIVIL CAUSE NO. 1645 1996

BETWEEN:

M VIOLAPLAINTIFF

AND

CAPS LTDDEFENDANT

CORAM: TEMBO, ASSISTANT REGISTRAR

Banda, Counsel for the Plaintiff

ORDER ON ASSESSMENT OF DAMAGES

This is this court's order on assessment of damages for loss of profits by the plaintiff arising from the damage to his car caused by the 1st defendant's agent who was insured by the 2nd defendant. The assessment was done pursuant to a consent judgment between the parties dated 8th November, 2000.

The notice of hearing of this assessment was duly served on the defendants who never appeared at the hearing of this assessment. That left the plaintiff's evidence totally uncontroverted.

Since the accident herein the plaintiff had been deprived of use of his motor vehicle for 60 months up to the date when he was paid a cheque for repair costs to his motor vehicle. The period being from the time of the accident on 9th May, 1996 to 8th May, 2001.

The plaintiff is therefore clearly entitled to loss of profits herein. See **Banda v. Attorney General** Civil cause No. 1727 of 1993. But as held in the same case of **Banda v. Attorney General** it would result in double compensation if interest was awarded on such lost profits. And so this court shall not make an award of interest on lost profits.

At the time of the accident herein the plaintiff had engaged his motor vehicle herein in a haulage contract in which he was getting K4,000.00 per day. He would work the vehicle for 20 days in a month making a gross income of K80,000.00.

And the plaintiff would spend a total of K5,262.15 on wages for his driver and an assistant as well as on fuel and other running expenses. The plaintiff would therefore net a profit of K74,737.85 per month.

In the month of the accident herein of May, 1996 the plaintiff had 16 days to work before the end of the month and so he lost 16 days of income for that month of the accident. He would have earned K64,000.00 less expenses namely wages and other running expenses. That meant K64,000.00 less K1,500.00 wages and K2,859.00 giving a net income of K59,641.00 for the month of May, 1996.

Since then for remaining 60 months the plaintiff lost income of K4,484,271.00

The total lost income therefore becomes K4,543,912.00. That sum is awarded to the plaintiff as damages for loss of profits herein.

Costs of this action are for the plaintiff.

Made in Chambers at Blantyre this June, 2004.

M A Tembo

ASSISTANT REGISTRAR