

IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY

CIVIL CAUSE NO 2424 OF 2003

**BETWEEN:**

LLOYD T. PHIRI .....PLAINTIFF

AND

MATHEWS NDASOWA .....DEFENDANT

**TEMBO, ASSISTANT REGISTRAR**

Chalamanda, Counsel for the Plaintiff

**ORDER ON ASSESSMENT OF DAMAGES**

This is this court's order on assessment of damages for personal injuries suffered by the plaintiff made pursuant to a default judgment entered in favour of the plaintiff dated 6th April, 2004.

The notice of hearing of this assessment was duly served on the defendant. The defendant never appeared at the hearing leaving the plaintiff's evidence totally uncontroverted. The plaintiff herein was hit by the defendant's minibus whilst he was cycling along the Senga Bay – Salima road. In the accident herein the plaintiff sustained several injuries and fell unconscious on being hit by the defendant's vehicle. The plaintiff suffered bruises on his left arm, right arm and right leg. He also suffered a deep cut on his right knee that has left a visibly large scar. The plaintiff's back of the head and his knee got swollen. He was admitted at Balaka district hospital for 9 days. For some

time the plaintiff could only eat soft foods due to soft tissue injuries. Since the accident herein the plaintiff can not play football.

The plaintiff had to replace the bicycle that was damaged herein. That bicycle belonged to his friend. The plaintiff spent K3,800.00 on a second hand bicycle which he bought to replace his friend's bicycle.

The plaintiff herein is clearly entitled to damages for pain and suffering and loss of amenities of life. Such damages being awardable to a person who has suffered injury due to the negligence of another. These damages are awarded to compensate the injured party as nearly as possible as money can do. See **Cassel and Company v. Broome** [1972] A.C. 1027.

The injuries suffered by the plaintiff in a particular case have a decisive effect on the assessment of such damages. See **Chidule v. Medi** MSCA Civil Appeal Number 12 of 1993. The court nevertheless seeks guidance on the level of awards from decided cases of similar nature to the one under consideration. This is to ensure some degree of consistency in civil justice in cases of similar nature see **Wright v. British Railways Board** [1983] 2 A.C. 773.

But this court does not find any evidence of the plaintiff's loss of earning's or loss of earning capacity.

This court has noted some cases in which plaintiffs suffered soft tissue injuries similar to those suffered herein.

In **Numbwe v Stage Coach Ltd** Civil Cause Number 1816 of 1999 the plaintiff suffered cut wounds on the left side of his face and also on one of his fingers on his left hand and was awarded K20,000.00 damages for pain and suffering and loss of amenities of life in October, 1999. In another case of **Nyasulu v. Attorney General** Civil cause Number 571 of 2001 the plaintiff who suffered a large bruise on his lower right leg, cut wounds on 2 toes and cut wounds on 3 fingers was awarded K40,000.00 damages for pain and suffering and loss of amenities of life on May 2003. Upon considering the plaintiff's injuries herein that were of a more serious nature; that the plaintiff fell unconscious for some time and further that the Kwacha has lost some value since the awards alluded to above this court awards the plaintiff K100,000.00 damages for pain and suffering and loss of amenities of life. The sum of K3,800.00 spent on the replacing the bicycle herein is also awarded to the plaintiff.

Costs of this action are for the plaintiff.

**MADE** in Chambers at **BLANTYRE** this July, 2004.

M A Tembo

**ASSISTANT REGISTRAR**