

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 4087 OF 2002**

BETWEEN :

JAMES RODGER KADANGO SIMIKA.....PLAINTIFF

AND

PRIME INSURANCE COMPANY LIMITED.....DEFENDANT

BEFORE: TEMBO M, ASSISTANT REGISTRAR

Mpando, Counsel for the plaintiff

Order on Assessment of Damages

This is an order of this court on assessment of damages herein. The plaintiff claims damages for personal injuries, costs of repairs to his motor vehicle and also for damages for loss of use of the said motor
suffered by him due to the negligence of the defendants' agent in causing the accident herein.

A default judgment was entered in favour of the plaintiff herein dated 10th January, 2003

and settling the issue of the defendant's liability herein. This assessment is done pursuant to that judgment.

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

In the accident that took place on 28th December, 2001 herein the plaintiff's motor vehicle was hit by the defendant's vehicle. As a result the plaintiff suffered a fracture to his right leg on the femur.

The plaintiff's right leg was cast in a plaster of Paris. The fracture was successfully healed leaving only a limited deformity and restricted knee movement. The medical evidence is that the patient is able to do manual work and carry on with the job he had prior to the accident herein. Apart from suffering personal injury, the plaintiff also suffered damage to his motor vehicle that was involved in the accident herein.

The plaintiff's motor vehicle sustained a cracked windscreen, broken head lamp, broken bumper and indicators and a damaged grill.

The plaintiff took his car for repairs and these repairs cost him K91,537.52. After the accident herein it took the plaintiff seven months to have his car repaired. And during that period he did not use his motor vehicle. It is not clear whether this motor vehicle was being used by the plaintiff for commercial or domestic purposes. For purposes of avoiding the occasioning of injustice to the defendant, and in the absence any other evidence to the contrary, this court shall presume that the motor vehicle herein was only for domestic uses by the plaintiff. So much about the evidence. And now this court shall consider the law relevant to the plaintiff's action.

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 both monetary and non-monetary loss. On the latter loss damages are recoverable for pain and suffering. 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. With regard to the damage suffered by the plaintiff's motor vehicle this court notes that the measure of damages for damage to a chattel is the reasonable cost of repair to the said chattel to put it back to its value before the alleged wrong that caused its damage. See The London Corporation [1935] P. 70.

On the claim for damages for loss of use of the plaintiff's motor vehicle this court notes that our case law has sufficiently guided this court. In Chinema v World Vision International civil cause number 1097 of 1991, Mtegha J. as he then was had this to say:

“It is conceded that the courts are rather conservative in awarding damages for loss of use and the cases do not show a criteria for awarding damages for loss of use”.

He went further to say that:

“I have pointed out that awards for loss of use are not consistent and they depend on the circumstances of each case”.

This court agrees with the views of the learned judge that damages for loss of use should depend on circumstances in each particular case.

Now, this court has considered the injury suffered by the plaintiff. The fracture must have caused him great pain. There is no evidence of any loss of amenities of life. The plaintiff is entitled to damages for pain and suffering. See Livingstone v Rawyards Coal Company (cited above). Such damages are awarded by considering the particular case and also cases of similar nature for purposes of guidance on appropriate awards. See Heil v Rankin (cited above)

This court has therefore considered the plaintiff's injury. And has also looked at awards in cases in which the plaintiff suffered injuries similar to the one herein. One Such case is that of Mbaso v Attorney General . Civil Cause No. 769 of 2001. In that case, in July, 2001, the plaintiff who had a fractured on the left leg was hospitalized for 6 months. His leg was put in a suspended position as part of treatment for 4 months. After treatment the plaintiff could only walk with clutches and for short distances only. The plaintiff in that case was awarded then K80,000.00 for pain and suffering and k60,000.00 for loss of amenities of life.

That case involved more serious injuries than those in the instant case. Upon considering all the circumstances alluded to above this court awards the plaintiff herein K60,000.00 as damages for the pain and suffering occasioned to him herein.

With regard to the damage to the plaintiff's vehicle, the reasonable cost of repair thereto is awardable as damages. See *The London Corporation* [1935] P. 70.

The costs of repair herein are K91,537.52. In the absence of contrary evidence these shall be taken as the reasonable costs. The plaintiff is hereby awarded K91,537.52 as damages for damage to his motor vehicle herein.

On the loss of use of the motor vehicle by the plaintiff herein, this court notes that the plaintiff was deprived of use for a period of 7 months. And damages for loss of use depend on circumstances in each particular case. See *Chinema v World Vision International* (cited above).

It has been presumed that the motor vehicle herein was for domestic as apposed to commercial use. Other cases have been looked at, as a guide only, such as that of *Nchiza and Living Waters Church v Malawi Telecommunications Limited* and *CGU Insurance Limited*.

Civil cause number 1093 of 2002. In that case for loss of use of a motor vehicle for domestic purposes for a period of 8 months, this court awarded K40,000.00 to the plaintiff on 19th May, 2003.

In the circumstances of the present case, this court bearing in mind that the plaintiff lost use for 7 months, awards the plaintiff K50,000.00 as damages for loss of use of his motor vehicle. And finally, costs on this assessment are awarded to the plaintiff as a successful litigant.

Made in chambers at Blantyre thisday of February, 2004

M. A. Tembo

ASSISTANT REGISTRAR