

IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CASE No. 185 OF 2005

BETWEEN

SANDRAM LIGOWE.....PLAINTIFF

-AND-

MAXWELL SOLOMON.....1ST DEFENDANT

MPHATSO KANKHUMBA.....2ND DEFENDANT

CORAM: MANDA, **SENIOR DEPUTY REGISTRAR**

Kalasa for the plaintiff

Kankhumba (2nd Defendant) (in person)

Msiska Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

The plaintiff's action was for damages for pain and suffering and loss of amenities. The issue of liability was already settled by way of default judgment, which was granted by the court on the 21st day of June 2005. in that judgment the plaintiff was awarded damages for pain and suffering, damages for negligence, the replacement value of his damaged bicycle, the cost for obtaining a police report and costs of this action.

The action arose out of a collision which occurred between a vehicle owned by the second defendant and driven by the 1st defendant and the plaintiff, who at that time was on his bicycle. The accident took place on 20th day of March 2001, at Capital Hotel, in City Centre. It was adjudged by the police on

examination of the scene that the accident was caused due to the negligence of the first defendant who turned into Capital Hotel at the same time the plaintiff was approaching the turn. Indeed it was clear in the situation that the plaintiff did have the right of way.

Following the accident, the plaintiff suffered some bruises to his head and some blunt trauma to his right shoulder. The plaintiff also had soft tissue trauma. This was per the medical report that he tendered in court. However in his evidence in court, the plaintiff stated that he also had suffered a severed ear and an open wound on his shoulder. In the circumstances the court did rely on the medical report, which I should mention, did assess the plaintiff's permanent incapacitation to be at 25%.

The defendant, who did attend the assessment hearing, did not dispute the facts presented or indeed deny any liability in this matter. All he seemed to state was that he is not a man of great means as the vehicle in question broke down, and that that was the end of his Taxi business. Briefly these were the facts.

Having outlined the facts, I now turn to the issue of damages to be awarded to the plaintiff. It was stated in **McGregor on Damages, 15th Edition, p. 855**, that in an action based on the tort of negligence resulting in physical injury, as in the present case, damages are recoverable by the injured party. Damages awarded in such actions are for pain, suffering, and loss of amenities of life and also, at times, loss of earning capacity and life expectation. As these aspects have no monetary value, the awards made have generally been described as being conventional. That however does not mean that the awards made should be at the whims of the assessor. Indeed courts try to achieve general uniformity and consistency by making awards within a wide spectrum in broadly similar cases. (See **Wright v British Railway Board [1938] A.C. 1173 AT 1177**). In essence then, the purpose of awarding damages is to compensate the injured party as

nearly as possible in monetary terms. I should also state that where the plaintiff intends to claim for special damages, the same are required to be specifically pleaded.

In the present action what falls to be assessed, in my view, are general damages for pain and suffering and loss of amenities of life, which I believe are to be awarded due to the defendant's negligence, as such there is no need to also award the defendant separate damages for negligence. Having said that, it is noted that even though the medical report stated that the plaintiff will not be able to perform his work as carpenter, however as it turns out the plaintiff was able to get another job as a carpenter which is paying him more than what he was earning at the time of the accident so he has not been affected in terms of earning capacity.

Having taken all this to consideration and also the principle that the aim of damages is to compensate the victim and not punish the defendant, it is the view of this court that an award of K50 000, would be fair compensation for the plaintiff's pain and suffering and accordingly the courts does award him that amount. In addition, the court also awards the plaintiff costs off this action.

Made in Chambers this.....day of2007

K.T. MANDA
SENIOR DEPUTY REGISTRAR