



**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL CAUSE NO. 1032 OF 2007**

BETWEEN

MADALITSO FOLOPEZI ..... PLAINTIFF

-AND-

PATRICK NDAU .....1<sup>ST</sup> DEFENDANT

PRIME INSURANCE COMPANY LTD ..... 2<sup>ND</sup> DEFENDANT

**CORAM : T.R. Ligowe : Assistant Registrar**

Ottober : Counsel for the Applicant

Kaferaanthu : Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

This order follows a default judgment the plaintiff obtained on 8<sup>th</sup> January 2008 for the defendant to pay him K26 936 being special damages and general damages for pain and suffering plus costs of the action. The K26 936 comprises K12 500 replacement value of a damaged bicycle, K10 500 money lost at the scene of the accident, K2 000 cost of a police report and K1 936 for medical expenses at Kamuzu Central Hospital.

The facts of the case are that the plaintiff a businessman and farmer at the material time, was on 16<sup>th</sup> July 2007 lawfully cycling his bicycle from Biwi Triangle towards Lilongwe Market along Kamuzu Procession Road when just near Community Centre Ground the first defendant's driver Blessings Mbira driving with the first defendant's authority, negligently drove the first defendant motor vehicle Registration No. BN 8320 and hit the plaintiff causing him to be blown off the bicycle and hit the ground. He sustained a deep cut wound on his left lower arm and left cheek and his bicycle got extensively damaged.

Hearing on the assessment of the damages was done in the absence of the defendants as they did not attend despite having been dully served with the notice of appointment. The plaintiff's evidence therefore went unchallenged.

He was treated as an in patient for soft tissue injury for one day at Kamuzu Central Hospital. He tendered a medical report which shows his permanent incapacity was assessed at 5%. He still feels pain in the arm.

A person who suffers bodily injuries due to the negligence of another is entitled to the remedy of damages. Such damages are recoverable for both pecuniary and non pecuniary losses. The principle underlying the award of the damages is to compensate the injured party as nearly as possible as money can do it. See **Cassell and Company v. Broome (1972) AC 1027**. The pecuniary losses include loss of earning capacity and related benefits and medical expenses and related expenses. The non pecuniary head of damages are pain and suffering, loss of amenities of life and loss of expectation of life. Pain and suffering is attributable to the plaintiff's injury or to any necessary surgical operations and mental anguish such as that suffered by a person who knows that his expectation of life has been reduced or who being severely incapacitated, realizes the condition to which he has been reduced. Loss of amenities is

attributable to deprivation of the plaintiff's capacity to engage in some sport or pastime which he formerly enjoyed and; loss of expectation of life, considerable diminishment of his expectation of life.

No evidence has been given in this case as regards the plaintiff's earning capacity and related benefits and so the court would not be in a position to award damages for pecuniary losses in that regard. Medical expenses are part of the K26 936.

What remains are the non pecuniary damages. Those ones cannot be quantified in monetary terms by use of a mathematical formula but by use of experience and guidance affordable by awards made in decided cases of a broadly similar nature. See ***Wright v British Railway Board [1983] 2 AC 773***. Counsel for the plaintiff cited ***Mussa Ng'oma, Evelina Chifisi and Paul Chifisi v. NICO General Insurance Co. Ltd. and F.A. Lambart Transport***, Civil Cause No. 342 of 2003 where the first plaintiff suffered laceration on the scalp, bruises on the right forearm and his incapacitation was assessed at 5%. The court awarded him K250 000. In the present case I would think the same amount fairly compensates the plaintiff. So I award him K250 000 for pain and suffering and loss of amenities of life.

In total the plaintiff has to be paid K276 936 plus costs of the action.

Made in chambers this 1<sup>th</sup> day of July 2008.

T.R. Ligowe

**ASSISTANT REGISTRAR**