



**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL CAUSE NO. 84 OF 2004**

BETWEEN

SAMUEL CHIFOMBOTI ..... PLAINTIFF

-AND-

HASSAN MDOKA .....DEFENDANT

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

Okota Nyamulani : Counsel for the Plaintiff

Njirayafa : Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

The plaintiffs claim is for damages for pain and suffering arising from personal injuries that he sustained following an accident that occurred on or about 5<sup>th</sup> January 2002. He also claims costs of the action.

The particulars of the injuries are that the plaintiff sustained wounds on the scalp with rusty scar extending from the head to the occipital area. He also sustained a wedge compression fracture of thoracic spine at the level of T11 and a deep cut at the centre of the head.

The hearing of the evidence on the assessment proceeded in the absence of the defendant who despite having been served with the requisite notice elected not to attend the hearing. Such being the case, the plaintiff's evidence was undisputed and unchallenged.

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.

Normally the pecuniary damages are supposed to be pleaded and proved specifically but that has not been done in this case. There is no evidence given as to the plaintiff's earning capacity and any expenses he incurred due to the accident. So I award him nothing on that head. However I can award him the non pecuniary damages. Such damages 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.

Looking at the broad spectrum of the awards made in the recent personal injury claims, and bearing in mind the level of personal incapacity and the inconvenience that the plaintiff continues to suffer as per his examination in chief, I think K 250 000 is fair compensation for pain and suffering, loss of amenities of life and loss of expectation of life. I award the plaintiff that much plus costs of the action.

Made in chambers this 25<sup>th</sup> day of April 2008

T.R. Ligowe

**ASSISTANT REGISTRAR**