



**REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 448 OF 2001**

BETWEEN

MAFENYETSER A TRANSPORT COMPANY LIMITED**1ST PLAINTIFF**
 NATIONAL INSURANCE COMPANY LIMITED**2ND PLAINTIFF**

and

LAND TRAIN HAULAGE**1ST DEFENDANT**
 ROYAL INSURANCE COMPANY LIMITED**2ND DEFENDANT**

CORAM: N USIWA USIWA, DEPUTY REGISTRAR

Mr R Sautiof Counsel for Plaintiff
 Mr D M Bandaof Counsel for the Defendant
Mrs D MteghaOfficial Interpreter

ORDER ON ASSESSMENT OF DAMAGES

This is an order on assessment of damages for an accident which occurred on 30th November, 1996, at Chifunga Trading Centre along Mwanza road. This resulted in the First plaintiff's bus being severely damaged. The plaintiffs claimed for damages in negligence, special damages and costs of repairs.

The First Plaintiff's bus was grounded for over seven months whilst undergoing repairs, which were duly paid for by the first Plaintiff.

Hon Justice Sikwese on 3rd December 2013 delivered her judgment and found that the Defendants were liable but the liability was reduced by 50% due to contributory negligence on the part of the 1st Plaintiff's agent.

ISSUES



The main issue to be decided is the quantum of damages payable for loss of revenue when the bus was grounded.

THE LAW AND ANALYSIS

A person who suffers injury due to the negligence of another is entitled to damages. The aim of awarding damages is to put them in a position they could have been in, as nearly as money can.

The cardinal principle in awarding damages is *restitution in intregrum*. That is, the law will endeavor, so far as money can do, to place the injured person in the same situation he was before the injury complained of.

Lord Blackburn in the case of *Livingstone vs Rawyards Coal Co. (1880) 5 AC 25* stated as follows:

"where any injury is to be compensated by damages in setting the sum of money to be given as damages, you should, as nearly as possible get at the sum of money which will put the party who has been injured in the same position he would have been in if he had not sustained the injury for which he is claiming compensation".

In *Ngosi t/a Mzumbazumba Enterprises vs H. Amosi Transport Co. Ltd (1992) 15 M LR 370 (HC)*, the court stated the following in regard to assessment of damages:

"Assessment of damages or value under O.37 of the Rules of the Supreme Court presupposes that damages have been proved. The only matter that remains is the amount of value of the damages;"

Where the Plaintiff's goods have been damaged, the basic pecuniary loss is the diminution in their value which is normally measured by the reasonable cost of repairs. see *Darbshire vs Warran (1963) 1 WLR 1067*.

Where the Plaintiff's goods have been damaged, he may be allowed damages for loss of profits. Or where no specific loss of profits can be shown, he may be

awarded damages for general loss of use. See *The Risoluto (1883) 8 P.D 109*; McGregor H, *McGregor on Damages, (16th edn) para 71 on p. 45*

Loss of profits is also recoverable on the loss of use of a profit earning chattel where the plaintiff proves such a loss: *D.N. Zulu vs Right Price Wholesalers & Charter Insurance Company Limited HCJCC 1260 of 2001*.

General Damages and Special Damages

It is trite that where there is evidence of loss or injury suffered by a person claiming damages such person is entitled in law to an award of general damages as the court may determine to be reasonable in the circumstances to compensate such person for such loss or injury. *Nazi/Omar t/a Cotton Centre vs. Securicor Malawi Ltd and H. Khan t/a Eye guard Services*.

"General damages are such as the law will presume to be the direct and natural or probable consequence of the action complained of. Special damages on the other hand are such as the law does not infer from the nature of the course - (Per Lord Macnaghten in *Stoms Brucks AktieBolag vs Hutchinson (1905) A.C 515*

Special damages must be specifically pleaded and proven. In the case of *Phiri vs Daud (1992) 15 MLR 404 (HC)* the court was of the view that the claim for loss of profits could not be allowed, as these were special damages that had to be specifically pleaded and strictly proved. But during the period when the vehicle was with the defendant, the Plaintiff lost profit and therefore the use of the vehicle. The court awarded damages.

Reasonable Award of damages

The law is trite, where a party does not strictly prove special damages or loss reasonable compensation for his loss will be awarded. This was properly stated by the learned Banda, J. In *Renzo Benetollo vs Attorney General and National Insurance Co. Ltd Civil Cause No. 279 of 1993 (HC)*. He said:

"I am not satisfied that the Plaintiff has not proved his special damages and in the circumstances, I must consider what would be reasonable compensation for his loss".

Justice Chatsika buttressed the same point in the case of *Mdumuka vs Mphande 7 M LR 425* where he said:

"Two courses are open to me in the instant case; either to award what I consider to be reasonable damages or to award damages to the defendant in principle and refer the matter to an independent arbitrator to assess the quantum. I do not think the second course necessary since I consider that the court in the instant case can award damages which would be considered reasonable having regard to the circumstances of this case"

The point Justice Chatsika is making is that a wronged party cannot be deprived of the right to recover damages just because damages are difficult to assess or ascertain.

SUBMISSIONS AND FINDINGS

During cross-examination, the Plaintiff ' s witness admitted that he came to court, among others, to demand loss of revenues as their insurance had already paid damages. So we tend to agree with the defence that in the case at hand, the damages payable are for loss of revenue or profits during the time when the bus was undergoing repairs. Loss of revenue was pleaded by the Plaintiff.

However I would not agree with the Defence that the plaintiff should lose everything because "The Plaintiff has not produced any document or proof to show the actual date when the vehicle was admitted to the garage for repairs and how long it took for the bus to be repaired." The Plaintiffs witness stated that the period was seven months and the demanded K5million for that.

The Plaintiff herein suffered damage as a result of the accident. The plaintiff was not only inconvenienced but was also put in a position that made it incur expenses, such as the cost of repairs in order to put back he vehicle on the road.

The Plaintiff claims to have spent K546,318.00 in repair costs to put the vehicle back on the road.

Because of the accident, the plaintiff lost profits during the period which the bus was grounded. The bus was a 65 seater vehicle which was carrying passengers from Blantyre to Harare and back. The sum of money realized per month, after expenses, for a trip from Blantyre to Harare is said to be K416,000.00 , the bus was grounded for 7 months, as such, the Plaintiff lost a total of about K3,000,000.00

Further, the plaintiff lost business from the Blantyre-Harare route since the occurrence of the accident and are therefore entitled to be compensated for such loss, I think.

Then the parties herein do not agree on the plaintiff's prayer of an award of an award of K10,000,000.00 as adequate and reasonable compensation for the negligence. As a result the Defence alleges that the Plaintiff has failed to present an account of expenses ordinarily associated with the running commuter bus service as such there is no basis upon which the court can make a finding that the Plaintiff lost revenue in the sum of K1,472,753.75 as pleaded or K5,000,000.00 as alleged by the Plaintiff ' s witness.

In conclusion I would like to remind myself that here I am dealing with an accident that occurred about 20 years ago. The Hon Judge found both the Plaintiff and Defendant liable at 503 each; about 17 years later, on 3 December 2013. The defence is not disputing the loss of profit by the Plaintiff's damaged bus, except in exact computations. But the Court should not fail to award a reasonable compensation to the plaintiff. After some time, it has been generally agreed that what used to be reasonable money ten years ago may not be the same today. I therefore think that an award of K12,000,000.00 would be a just and reasonable compensation to the Plaintiff. But this should be halved according to the finding of 503 contributory negligence by the Judge.

I therefore order the Defendants to pay the first Plaintiff a lump sum of K6,000,000.00 within 14 days of this Order. The Costs must also be borne by each party.

Made in Chambers this 8th day of June 2016

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Deputy Registrar