



**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**  
**PERSONAL INJURY CAUSE NO. 02 OF 2016**

**BETWEEN**

**AARON CHIKUSE ..... PLAINTIFF**

**AND**

**BRIGHT MALOPA .....DEFENDANT**

**CORAM : HER HONOUR MRS. BODOLE, ASSISTANT REGISTRAR**

Kapoto, of Counsel for the Plaintiff

Gondwe, of Counsel for the Defendant

Ms. Kazembe, Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

**Introduction**

The plaintiff brought proceedings against the defendant claiming damages for costs of repairs in the sum of K1,450,000.00 or such other sum as would be sufficient to put the motor vehicle damages to full repair, loss of use of the motor vehicle, breach of contract and costs of this action. Judgment on admission was entered

for the plaintiff on 31<sup>st</sup> January, 2017. The matter has now come for assessment of damages.

### The Evidence

In 2015, motor vehicle registration number KU 5322 Nissan Xtrail belonging to the plaintiff was damaged in an accident by motor vehicle registration number NU 7884 belonging to the defendant. At the time of the accident, the defendant was driving his motor vehicle. As a result of the accident, the plaintiff's motor vehicle got severely damaged and cost of repairs was assessed at K1,800,000.00. The defendant proceeded to report the accident to his insurers who upon receiving the assessment of cost of repair remitted to the plaintiff the sum of K1,000,000.00 as their policy remit towards the cost. They advised the plaintiff to claim the balance of K800,000.00 from the defendant.

On 21<sup>st</sup> August, 2015, the plaintiff and the defendant entered into a vehicle repairs agreement where it was agreed that the defendant will repair the plaintiff's motor vehicle at a total cost of K1,800,000.00 within a period of 14 days. The plaintiff had to remit the sum of K1,000,000.00 which he received from the defendant's insurers to the defendant to commence repairs. The plaintiff remitted the sum of K650,000.00 to the defendant to start repairing the motor vehicle and the balance of K350,000.00 was to be remitted once the motor vehicle had been fully repaired. The agreed period of 14 days elapsed and the defendant never repaired the motor vehicle. The motor vehicle was with the defendant for 16 months i.e. from August, 2015 to December, 2016 when the plaintiff towed it from there to a garage to be repaired.

The plaintiff decided to repair the motor vehicle. He bought the spare parts for the motor vehicle within two days from the day he towed it to the garage as the spare parts are locally found. The garage then repaired the motor vehicle. He tendered in evidence receipts which showed that he expended money amounting to K2,360,500.00 to repair the motor vehicle. During cross-examination, he testified that the receipts are not MRA receipts because companies which operate below K9,000,000.00 are not given MRA EFD machines as was the case here.

During the time that he had no motor vehicle, the plaintiff hired a taxi from J.B. Taxi Service for his transportation. He tendered the receipts. During cross-examination, it was noted that the receipts did not indicate the registration number of the motor vehicle. The plaintiff stated that it was an oversight of the owner. He had been hiring the motor vehicle for his use as he had no motor vehicle at that time.

The matter has now come for assessment of damages for cost of repairs and loss of use of the motor vehicle.

### General Law on Damages

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 – **Elida Bello v Prime Insurance Co. Ltd** Civil Cause No. 177 of 2012 (unreported).

The damages cannot be quantified in monetary terms by use of a mathematical formula but by use of experience and guidance afforded by awards made in decided cases of a broadly similar nature – **Wright v British Railway Board [1983] 2 AC 773**. The court, however, considers the time the awards were made and currency devaluation – **Kuntenga and Another v Attorney General** Civil Cause No. 202 of 2002.

Special damages are supposed to be pleaded and proved. In **Knight Frank v Blantyre Synod and Another** [2001] MWSC 3 the court stated that

*“We agree with Counsel for the appellants that special damages must be proved strictly. In fact, the rule is that such damages must be specifically pleaded and proven strictly. The point is that special damages are damages that have already crystallized before a case comes to court, and the plaintiff must therefore be able to prove such damages strictly. This poses the question of what is meant by saying special damages must be “proved strictly”. Does it mean that special damages must be “proved beyond reasonable doubt”? We would answer this question in the negative. The standard of proof in civil cases is on a balance of probability and not beyond*

*a reasonable doubt as is the standard generally in criminal cases. Rather, what it means is that special damages cannot be presumed as is the case with general damages. The plaintiff who claims special damages must therefore adduce evidence or facts which give satisfactory proof of the actual loss he alleges in his pleadings to have suffered. A follow-up question is, does it mean that a plaintiff must always produce receipts or other documentary evidence in support of his case, as was contended by Counsel for the appellants in the present case? Again, we would answer this question in the negative. We accept that such receipts would proffer the best evidence, but there is no rule of law which requires a party to adduce such evidence, best evidence that is, in order to prove a civil case. In our judgment, it is principally a question of whether the plaintiff's evidence, even if only oral, is believed by the court. Having said this, we would add that there could be situations where, for example, a plaintiff would, as a matter of common sense, be expected to produce documentary evidence, and if no satisfactory explanation was given, such a situation would impact negatively on the plaintiff's credibility."*

In **Renzo Benetollo v Attorney General and National Insurance Co. Ltd** Civil Cause No. 279 of 1993 (HC) the court held that where a party has not proved special damages reasonable compensation in the circumstances can be awarded. In **Phiri v Daudi** [1992] 15 MLR 404 (HC) the court did not allow the claim for loss of profits as these were special damages that had to be specifically pleaded and strictly proved. Nevertheless, the court awarded damages on the basis that during the period the vehicle was with the defendant, the plaintiff lost profit and use of the vehicle.

### Analysis

It is indeed a requirement at law that special damages must be pleaded and proved strictly. As can be seen from the case of **Knight Frank v Blantyre Synod and Another** (supra) the plaintiff must bring evidence that proves the loss he has suffered and must do so on a balance of probability. It is not a requirement that receipts should be brought to prove special damages. It is enough as long as the

evidence is believed by the court. As can be seen from the case of **Renzo Benetollo v Attorney General and National Insurance Co. Ltd** (supra) even where special damages have not been proved, reasonable compensation can be awarded. As long as the evidence shows loss to the plaintiff, an award of damages can be made - **Phiri v Daudi** (supra).

The plaintiff pleaded the costs of repairs of the motor vehicle and damages for loss of the motor vehicle. It is not in dispute that the motor vehicle was damaged in the accident and the defendant promised to repair the motor vehicle. The defendant failed to repair the motor vehicle until the plaintiff repaired it at a cost of K2,360,500.00. The plaintiff has exhibited receipts he used to get when purchasing the spare parts. He has also exhibited the receipts he got from the mechanic after the repair of the motor vehicle. In the circumstances, I believe that the plaintiff has discharged his burden of proving that he incurred such costs to put the motor vehicle into full repair.

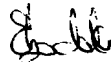
The parties had agreed that the defendant was to repair the motor vehicle. They agreed that the plaintiff should remit the sum of K1,000,000.00 which he received from the defendant's insurers to the defendant to commence repairs. The plaintiff remitted the sum of K650,000.00 to the defendant to start repairing the motor vehicle and the balance of K350,000.00 was to be remitted once the motor vehicle had been fully repaired. This shows that the plaintiff had this money in his custody which he did not remit to the defendant because the defendant did not repair the motor vehicle as per their agreement.

On damages for loss of use, it is not in dispute that the motor vehicle was not used by the plaintiff for about 16 months. The defendant took the motor vehicle for repairs and kept it for all that period. The defendant deprived the plaintiff the use of his motor vehicle. Due to the defendant's conduct, the plaintiff had to find alternative mode of transport for work and day to day activities. The plaintiff, for the period of 16 months, used a sum of K595,000.00 and he has exhibited receipts for that. This sum is reasonable in the circumstances. On a balance of probability, I find that the plaintiff spent this amount for transportation during the 16 months period he was deprived use of his motor vehicle by the defendant.

Award of Damages

I, therefore, award the plaintiff a sum of K2,360,500.00 as costs of repairs. This amount should be less the K350,000.00 which was to be given to the defendant upon him repairing the motor vehicle. He is, therefore, awarded a sum of K2,010,500.00 as costs of repairs. He is also awarded a sum of K595,000.00 as damages for loss of use of the motor vehicle, and costs of this action.

Pronounced in court this 27<sup>th</sup> day of February, 2018 at Blantyre.



**E. BODOLE (MRS)**

**ASSISTANT REGISTRAR**