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IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 402 OF 1993

BETWEEN:

SAMSON NGWIRA 1ST PLAINTIFF
MULAWONA NGWIRA 2ND PLAINTIFF

BOTH SUING THROUGH MRS S. NGWIRA
THEIR MOTHER

and

FELIX MALISELO 1ST DEFENDANT
T.N. MAHOMED
t/a CONTACT DRILLERS 2ND DEFENDANT

CORAM: W.W. QOTO, DEPUTY REGISTRAR
Nkhoma, Counsel for the Plaintiffs

RULING

QOTO, DEPUTY REGISTRAR

The plaintiff's claim is for damages for personal injuries sustained as a result of an accident caused by the negligent driving of a motor vehicle registration number BF 7386 Isuzu Pick-Up driven by the first defendant on 26 March, 1990. The second defendant is the driver of the said motor vehicle.

The plaintiff's further claim interest on damages and costs of the action.

The writ and the statement of claim were issued on 24th March, 1993. The defendants were personally served with the same and there being no notice of intention to

defend the action, it was on 31st May, 1993 adjudged that they pay the plaintiffs damages to be assessed.

This is now a notice of appointment to assess damages. The defendants were duly served with the notice. They, however, did not attend the hearing.

I heard evidence from the mother of the plaintiffs and from the second plaintiff.

It emerges from their evidence that on 23rd March 1990, the plaintiffs were standing beside a highway road at or near Ginnery Corner in the City of Blantyre. The motor vehicle in issue left the road and hit both of them. They became unconscious after the impact and they were rushed to Queen Elizabeth Central Hospital to where they were admitted. The first plaintiff who is now aged 12 years regained consciousness after two days. She had suffered head injury. She was in hospital for two weeks and since then she has never really recovered. She sometimes behaves like an insane person and often screams at night. Her nose bleeds often and her memory of things is bad. She does not remember most things and up to now she still receives treatment. At the time of the accident, she was in standard one.

The medical report exhibit P1, states that the first plaintiff suffered "closed head injury with concussion". She is no longer fit for manual work and the injuries she sustained are described as serious. The report further states that she will suffer

permanent incapacity which is assessed at 15%.

The second plaintiff who is now aged 16 years, who was admitted to the said hospital for a period of three months and during which time, he was operated on on several occasions. He had sustained a fracture of the leg which was in P.O.P. for three months.

The fracture failed to heal properly with the result that his right foot is deformed and he now limps. He cannot run or play football. He cannot wear shoes and he still feels the pain on the foot. When he walks long distances, his right leg swells and he feels great pain on it.

The medical report states that he sustained "open fracture of the right foot" and he went to theatre four times for detriment of the debris. The right foot is deformed. He suffered permanent incapacity which is assessed at 25%. The nature of the injury he sustained is described as serious.

I accept the evidence for the plaintiffs which, is undisputed and unchallenged. I saw the witness as they testified and there is no doubt whatsoever in my mind that they gave me a truthful account of what happened and of what has happened.

There is again no doubt whatsoever in my mind, that the injuries which both sustained are considerable and very serious. Mulawona Ngwira suffered head injuries of maximum severity with the consequence that he has

almost been reduced into a vegetable state. She has never recovered and she has become sub-normal. Her physical and mental impairment are unlikely to change for the better. She has chronic nasal haemorrhage, has lost her memory and she often screams. As I said after the impact, she had suffered "closed head injury with concussion".

Samson Ngwira's injuries were also substantial. He was operated on his foot four times and it has not healed properly. He now walks with a limp and he cannot run or play football. He still feels great pain on that foot and when he walks long distances it gets swollen.

In making an assessment of damages I have to take into account the bodily injury sustained as well as the pain undergone and its effect on the health of these victims. I must also take into account items of expense incurred and the pecuniary loss suffered.

I must award these victims sums of money which will, as nearly as possible, put them in same position as if they had not sustained the injuries. Of course pain and suffering endured and the future loss of amenity in a personal injuries case are not in the nature of things convertible with legal tender nor is there a rational test by which a judge can calculate what sum is appropriate. The principle of restitutio in integrum however compels the use of money as the sole instrument of restoring the status quo.

Although the aim of the court in awarding damages is to

make good to the plaintiff so far as money can do it, the loss he has suffered, it is impossible to assess damages for pain and suffering and for loss of amenities of life by any process of arithmetical calculation. It is never a matter of mathematics and in many cases the court has to engage in the art of prophesying.

The difficulty inherent in the assessment of damages provides no reason for the court to shirk the task of arriving at an estimate most likely to provide fair and reasonable compensation.

Damages for pain and suffering and for loss of amenities are basically conventional derived from experience and from awards in comparable cases.

Lord Morris in West vs. Shepard [1964]A.C. 326 at p. 346 stated the position as follows:

"... money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common asset awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that as far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a

considerable extent conventional".

I have looked at comparable awards in cases with broadly similar injuries to those sustained by Samson Ngwira and Mulawona Ngwira. I must say at once that the pain and suffering undergone by these plaintiffs and severe loss of amenities will suffer justify a substantial amount of damages. They suffered great pain and still continue to suffer it. Mulawona Ngwira has suffered substantial and serious impairment of her mental faculties and as I said she is almost reduced to a vegetable state. She has lost her memory and has chronic nasal haemorrhage. No improvement is expected. It is also obvious that she will need nursing care for the rest of her life.

I award her K90,000.00 for pain and suffering and loss of amenities of life.

I also award her K50,000.00 for her future care.

I turn to Samson Ngwira. He is now a cripple. He too has suffered and undergone considerable pain and suffering during the injury, during the operations and even thereafter. He still suffers from pain up to now from the foot and no improvement is expected. His loss of amenities is great. He cannot play football or ride a bicycle. He cannot run and he cannot wear shoes.

I award him K70,000.00 for pain and suffering and for loss of amenities of life.

He has an ugly foot which no doubt embarrasses him. I award him K20,000.00 for deformity.

I award also the plaintiffs costs in the action.


W. Qoto
DEPUTY REGISTRAR