

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 374 OF 1994**

BETWEEN:

S. KONDWANI and
M. KOTIHA PLAINTIFF

and

MIAGA ESTATE LIMITED DEFENDANT

CORAM: E.B. TWEA, REGISTRAR
Mhone, Counsel for the Plaintiff
Counsel for the Defendant absent

ORDER

The plaintiff brought this action against the defendant company on 23 February, 1994 claiming general damages for personal injuries. The defendant company was served but there was neither acknowledgement nor defence by the defendant.

The plaintiffs obtained judgment on 15th December 1994. On the 17th of January 1995, the case was called up for assessment of damages. Again the defendant was absent. The plaintiff then proceeded to give evidence.

The plaintiff called two witnesses in their case: the plaintiffs themselves.

The first plaintiff told this Court that he sustained injuries on the right leg and arm. He told this Court that despite medication he still has backache when working. He produced the medical report PEX1. He told the Court that he is 23 years of age and has been employed by the defendant for six years.

The second plaintiff told this Court that he sustained injuries on both legs, the back, back of his head, fingers and shoulders. The scars of the injuries are still painful and he has difficulties when walking and suffers from bouts of dizziness. He also produced his medical report. He further told this Court that he is

33 years old and that he is no longer working for the defendant company. He now depends on piece work to earn money.

This in the essence was the evidence in this case and the submissions of counsel.

In the case for the second plaintiff counsel referred this Court to two cases: Lameck Macheso Vs. Punch Construction, Civil Cause No. 288 of 1984 and Wesley vs. British Waterways Board N.L.J. 23.3.87. It was however, counsel's submission that the injuries therein were more serious.

On the first plaintiff, counsel referred to the cases of Royce Mwasinga vs. Stage Coach Limited, Civil Cause Number 384 of 1992 and Defrietas Vs. Rathjen N.L.J. 27.3.87. Again in these cases, the facts are at variance with injuries herein.

It is clear from the evidence, however, that of the two, the second plaintiff suffered more serious injuries. I will thus refer to his case first. According to PEX1, the second plaintiff has suffered 05% incapacity in his flexion of muscles of the lower spine. This will affect his capacity to do manual work or, indeed, either household chores. He was in hospital for two days and continued to attend hospital for four weeks.

Although his age was given to be 33 years, he did not inform the Court how much he earned. I bear in mind that he claims general damages. In my view for a common labourer, I would think K10,000 general damages for pain suffering and loss of amenities would be adequate compensation. I herein bear in mind the loss of value of the Kwacha.

As to the first plaintiff, the medical report clearly shows that he has not suffered any incapacity. He is able to perform his duties as a labourer. He is still in the employ of the defendant. I would award K3,000 as damages for pain and suffering.

The defendant is condemned to pay costs for this action.

Pronounced in chambers this 18th day of April 1995, at Blantyre.



E. B. Twea
REGISTRAR