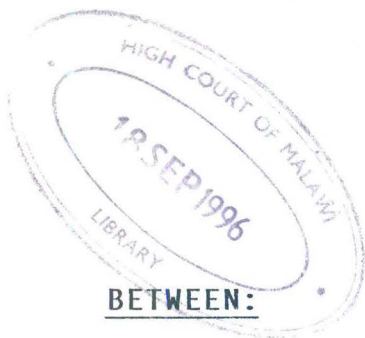


IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NUMBER 162 OF 1994



BETWEEN:

OSCAR E PHIRI.....PLAINTIFF

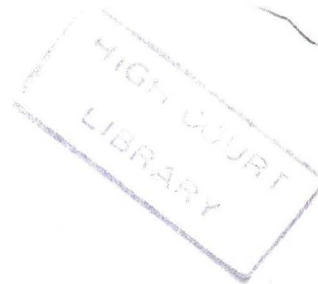
AND

THE ATTORNEY GENERAL.....DEFENDANT

CORAM

QOTO, DEPUTY REGISTRAR

Banda of Counsel for the Plaintiff
Defendant, absent



R U L I N G

QOTO, DEPUTY REGISTRAR, The task before me is to assess damages in this action.

By a writ of summons and a statement of claim issued on 26th January, 1994, the plaintiff claimed against the defendant aggravated and punitive damages for pain and suffering and loss of amenities of were life as a result of the defendant's negligence. He also claimed for costs of this action.

Service of the writ of summons and the statement of claim was by post and there being no defence, it was on 14th February, 1994 adjudged that the defendant do pay special and general damages to be assessed and costs of the action.

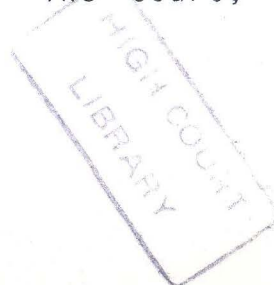
The hearing of the notice of appointment to assess damages was held in the absence of the defendant. He was served with the hearing but neither he nor his representative did come for hearing.

I heard evidence from the plaintiff.

It was that he works for Enterprise Containers a limited liability company. On 7th May 1992, he was walking along Chikwawa Road towards Sunnyside in the City of Blantyre. He was going to his place of work to inquire if there was work that day in view of the fact that there had been civil disturbances the day before. He saw a group of people fleeing for their lives and the police were chasing them and shooting at them. He too fled for his life and went to hide in someone's house at Manase location. The police came there too and banged on the door and ordered everyone out of the house. When he and others came out of the house, the police asked them to raise up their hands and whilst they did so, the police shot him on the left leg without cause. They shoot him again on the right leg. When he failed to walk because of the pain from the gun shot wounds, the police hit him with the butt of their guns. They then lifted him and threw him into their motor vehicle. They drove to Blantyre police station and from there, to Queen Elizabeth Central Hospital in Blantyre. He was admitted to Queen Elizabeth Central Hospital for two days and his gun shot wounds were dressed.

He also told the court that he felt great pain from the gun shot wounds and from the beatings. He continued to feel pain even after he got discharged and he continued to visit the said hospital as an out patient for treatment. The bullets had pierced his legs and had come out of it. Although the wounds have healed, he said, he frequently feels numbness in his legs and he has difficulties in walking. He cannot cycle uphill and he also has difficulties in ascending steps at his place of work.

The awards of damages for pain, suffering and loss of amenities are conventional because the loss which the court seeks to compensate has no monetary value. The court, in making



assessment for pain, suffering and loss of amenities, has to keep in mind such comparable awards as it can find so that justice meted out to all litigants should be even-handed instead of depending on the whims of the assessor of damages. In looking at awards in comparable cases, the courts must however not lose sight of the facts that they are called upon to assess damages for pain and suffering which the plaintiff has and has had and will always have and the suffering he has undergone. Again the courts must bear in mind that each case has a myriad of circumstances peculiar to itself.


When the courts look at awards in broadly similar cases, they do make adjustments to those awards as are appropriate in the light of the fall in the value of the money since those previous awards were made. This follows from the principle that the court must award the litigant today's kwachas.

Turning to the present case, I find on the uncontroverted evidence of the plaintiff that he suffered great pain and he has undergone great suffering from the gunshot wounds. He continues to suffer up to now albeit the wounds have healed. The medical report indicates that this state of affairs i.e of suffering will prevail for sometime. His loss of amenities of his good and useful life is heavily affected as he cannot cycle uphill and he has difficulties in ascending steps.

I have looked at awards made in broadly similar cases so that the award I make fits into the spectrum of awards made in this High Court. In Fannie Lisuntha v Attorney General Civil Cause No. 458 of 1994 K70,000.00 was awarded for pain, suffering and loss of amenities following from being shot twice in both legs. In C Kagona v Attorney General Civil Cause No. 918 of 1995, I awarded K60,000.00 for pain, suffering and loss of amenities of life following a gunshot on the chest which left big and ugly scars.

I think in the instant case K60,000.00 fits into the spectrum of awards made in the High court in broadly similar cases. I award it to the plaintiff with costs of the action.

Made in Chambers this 16th day of August 1996 at Blantyre.


W.W. Qoto
DEPUTY REGISTRAR

