



REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NO. 167 OF 2017

BETWEEN

CHISTOPHER MACHEKA.....CLAIMANT

AND

ATTORNEY GENERAL (MALAWI POLICE ROAD TRAFFIC).....DEFENDANT

**CORAM**

Mrs T. Soko : Assistant Registrar  
Mr Banda : Counsel for the claimant  
Defendant : absent  
Ms Munthali : Court Clerk

**ORDER ON ASSESSMENT OF DAMAGES**

**BACKGROUND**

The claimant herein seeks for restitution of the vehicle, alternatively the payment replacement cost for the car at K6,000, 000.00, damages for loss of profits or earnings lost of K2, 560,000.00, damages for loss of business or earning capacity or legitimate income expected which the claimant was making at K20,000.00 net from 23<sup>rd</sup> January 2017 up to the date the defendant compensates the claimant, general damages for loss of a motor vehicle, general use and loss akin to loss by way of convention, loss of use for a period awaiting compensation and costs of the action. The facts are that on about 23<sup>rd</sup> January 2017 the driver

(employee) of the claimant was driving a motor vehicle registration No. BU 6976 from the direction of Chilobwe heading towards Ndirande carrying passengers for reward. Upon arrival at Shoprite, the driver was stopped by motor examiners of the defendant to examine certificate of Fitness (COF) of the said motor vehicle. The defendant's officers seized the claimant's vehicle and told the claimant's driver to pay K70, 000.00 for exceeding the passenger limit. The claimant's vehicle was driven and parked at the defendant's yard and premises by the defendant's officers. On 24<sup>th</sup> January 2017, the defendant's officers revised the figure to K50, 000.00 which the claimant agreed to source and pay the following day. On 25<sup>th</sup> January 2017, the claimant went to the defendant's premises to pay the said sum of K50, 000.00 and retrieve his vehicle when the claimant discovered that his vehicle was wholly burnt. On 14<sup>th</sup> December 2017, a summary judgment was entered against the defendant to pay cost of restitution or replacement of the motor vehicle and damages for loss of profits or loss of earnings and loss of business and costs of the action.

## **ISSUE**

Quantum of damages to be payable to the claimant

## **EVIDENCE**

The claimant was a sole witness. He adopted a statement of claim in which he stated that he was the owner of a motor vehicle registration No. BU 6976. He stated that the motor vehicle was seized by the defendant's officers for over exceeding passenger limit. The officers told the driver of the claimant to pay K70, 000.00 and later on K50, 000.00. When the claimant went to pay the said amount, he discovered that his vehicle was burnt. The claimant stated he suffered loss of use, loss of business and earning capacity. The claimant added that he suffered trauma and shock due to the accident. The claimant stated that he was using the vehicle for business for it was in good condition since it had been used for less than ten times. The claimant bemoaned that she had lost his business which he used to do to earn a living. The claimant stated that he purchased the minibus at the price of K6, 000,000.00. The claimant tendered a receipt for the purchasing price and Malawi Revenue Authority tax clearance form. The claimant added further that the vehicle was on the road every day for a week and it was making approximately K20, 000.00 per day which meant the claimant was making K140, 000.00 per week. The claimant stated that he has lost an amount of K8, 400,000.00 since January 2017. The claimant tendered a computation of his daily earnings from April to November 2016 as part of evidence. The claimant also alluded that his family has struggled since they fail to meet their daily needs. He said the minibus business was the only source of income and he lost his earning capacity.

The claimant also stated that when he bought the minibus he had to put glasses for ventilation and he encountered an amount of K283, 000.000 for glass fittings. The claimant tendered an invoice for glass fittings as part of evidence. The claimant stated that he also encountered expenses on car seats. He tendered an invoice as part of evidence. The claimant added that he encountered expenses for registration of the motor vehicle at the road traffic and insurance under Prime Insurance Company Limited. The claimant tendered copies of the same as part of evidence.

## GENERAL LAW ON DAMAGES

In assessing damages for personal injuries, the intention of the court is to compensate the injured party as nearly as possible as money can do. The principle is to put the plaintiff at the position he would have been if it would have not been for the tort committed. See *Namwiyo v Semu* (1993) 16 (1) MLR 369.

In calculating damages , therefore, the Courts consider, in monetary terms, the sum which will make good to the sufferer, as far as money can do, the loss he has suffered as a result of the wrong done. See *Admiralty Commisioners vs S.S Valeria* (1992) 1 A.C. 242 at 248.

In *Christina Mande vs Charter Insurance Co. Ltd Personal Injury Cause No. 329of 2016* the Court quoting *Wright vs British Railway Board* 1938 AC 1173, 1177 stated that:

*'Non-economic loss..., is not susceptible of measurement in money. Any figure at which the assessor of damages arrives cannot be other than artificial and, if the aim is that Justice meted out to all litigation should be even handed instead of depending on idiosyncrasies of the assessor, whether Judge or Jury the figure must be basically a conventional figure derived from experience and from awards in comparable cases.'*

In the case of *City of Blantyre vs Sagawa* the court said the following:

*'It would appear to us that if the award is to be conventional, an award for a similar injury should be comparable and should, to some extent, be influenced by amounts awarded in the previous case, either in the same or neighboring jurisdictions. In citing previous awards the court should not lose sight of factors like devaluation of the currency since the awards were made.'*

## **COST OF REPLACEMENT OF A MOTOR VEHICLE**

the position of the law is that where an item has been damaged and is in reparable state, the court will award as damages the cost of repairing the same whilst if it is beyond repair, the court will award the cost of replacing it as damages (see the cases of *Hara vs Malawi Housing Corporation, 16(2) MLR 527* and *Tea Brokers (Central Africa) Ltd vs Bhagat(1994) MLR 339.*)

## **LOSS OF USE OF A MOTOR VEHICLE**

The law on damages for use of a chattel is that general damages are recoverable for loss of use of a non-profit earning chattel. Loss of profit is also recoverable on the loss of use of a profit earning chattel where the plaintiff proves such a loss. *See The State vs The Inspector General of Malawi Police Service Civil Cause No. 285 of 2007.*

## **DETERMINATION**

In the present matter, the blue book tendered by the claimant as part of evidence shows that he purchased the motor vehicle in the year 2016. The claimant further The Claimant further paid a duty at Malawi Revenue Authority. When the vehicle arrived in Dar es Salaam – Tanzania the claimant paid the agent to clear the vehicle. The claimant also cleared the motor vehicle with the police and paid for the service. Besides he had to insure the vehicle with the Prime Insurance Company which he paid. He had to put glasses and car seats. I have looked at the invoices and receipts that the claimant tendered before this Court and I award a sum of K 5, 000, 0000.00 as the cost of replacing the said motor vehicle.

Besides, the claimant as stated in his evidence used to make a profit of K20, 000.00 per day. Which means he was making a profit of K140, 000.00 per week. The vehicle was seized by Police on 23<sup>rd</sup> January 2017. Since January 2017 the claimant has lost profits and it was the only source of income which means he has suffered hardships. I have considered the months that the claimant lost the use of the vehicle and I award a sum of K9, 000,000.00 for loss of use or business.

I award a total sum of K14, 000,000.00.

Costs are for the claimant.

pronounced in Chambers on the 19<sup>th</sup> day of September 2015



T. SOKO

ASSISTANT REGISTRAR