IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NUMBER 812 OF 1991

BETWEEN

P.R.M. MTIKA **PLAINTIFF**

AND

U.S. CHAGOMERANA t/a TRANS USHER ALIAS ZEBRA TRANSPORT **DEFENDANT**

C**ORAM: D.F. MWAUNGULU, J**

Nyirenda, for the plaintiff

Counsel for the defendant, absent

Chigalu, Official Interpreter

Mwaungulu, J

ORDER

On 1st August, 1991 the plaintiff took out this action. He is claiming damages for personal injury and damage to property. The plaintiff's car collided with the defendant's car at Nyemba Village on the Blantyre/ Lilongwe Road on November 29, 1990. The motor vehicle was destroyed. The plaintiff himself suffered serious injuries. This action is to recover damages. Judgment was obtained by default. The only question then is the amount of damages.

In the accident the defendant suffered a fracture of the right lateral condyle and depressed tibia plateau and fracture of the left shaft and head of the fibula. The plaintiff also suffered torn ligaments. As I mentioned earlier, the motor vehicle was destroyed completely. The plaintiff is claiming K20, 000 for the car. The plaintiff lost apparel, shoes and a wrist watch. He is claiming K488 for this. There is a claim for medical expenses: K60 is for his medical expenses, K15 is for the expenses of his wife. There is also claim of K50 for the police report. There is a claim for K5, 000, expenditure for the tobacco

business rendered futile. The plaintiff is claiming all these as special damages.

The plaintiff is employed in the civil service. He is working at the Road Traffic Commissioner's office. He earns K6, 720 per annum. The injuries were very serious. They have not however resulted in loss of earnings. The plaintiff is continuing in the same employment. The plaintiff is also farming. The enterprise gives him K15, 000 per annum as revenue. The plaintiff is 48 years old.

At the hospital there was no surgical treatment done. There was closed reduction by applying above the knee cast in various positions. The plaintiff started using clutches immediately. There were no weights. He was on plaster of Paris for two months The doctor indicates that with the nature of the injury, i.e., the lateral condyle depressed, the joint surface of the knee is involved. This will eventually result in post-traumatic arthritis of the left knee. The doctor further states that the plaintiff cannot run because the articular surface of the tibia is involved on the left side. The plaintiff will have particular difficulty walking over rough surfaces because the presence of crepitus, the knee will be unstable. The overall prognosis is fair though the plaintiff will have recurrent post-traumatic arthritis attacks. The plaintiff played indoor games, tennis in particular. This he cannot do.

I think the starting points would be the remarks made recently in Tembo -v- City of Blantyre and the National Insurance Company Ltd. (1994) Civ. No. 1355, unreported:

"The policy behind damages is, where it is possible and money can do it, to fully compensate the victim for the new situation in which he is because of the wrong done to him. The scope of what has to be compensated, however, is difficult to define. If the problem of remoteness has been overcome and it is decided that the victim is entitled to recover, courts endeavour to adequately compensate the victim. As a guide courts award in accordance with the accepted heads of damages. These heads of damages ensure that all conceivable areas of injury are covered."

Personal injury inevitably entails immediate or prospective financial loss. Immediately after the injury there will be medical, transportation, etc., to pay. For others such injury results in immediate loss of wages or earnings while of hospitalisation or recuperation. Yet certain injuries may lead to permanent incapacity to work. These are the sort of losses which courts deal with when awarding damages for pecuniary loss. For these full compensation can be aimed at. In Picket -v- British Rail Engineering [1980] A.C. 136, 168, cited in Tembo's case, Lord Scarman said:

"But, when a judge is assessing damages for pecuniary loss, the principle of full compensation can properly be applied. Indeed anything else would be inconsistent with the general rule. Though arithmetic precision is not always possible and though in estimating future pecuniary loss a judge must make certain assumptions based upon evidence) and certain judgment, he is seeking to estimate a financial compensation for financial loss. It makes sense in this context to speak of full compensation as being the object of the law."

There are also losses, not monetary, recognised by courts. These attend any personal injury. These are pain and suffering. Then there is what is known as loss of amenities.

This covers the loss caused by the injury in that the plaintiff will be unable to pursue the leisure and pleasures of life that he used to enjoy when, but for the injury. These cannot be quantified in monetary terms. “Non-economic loss....,” declared Lord Diplock in Wright -v- British Railway Board [1938] A.C. 1173,1177, “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 should be evenhanded instead of depending on idiosyncracies of the assessor, whether judge or jury, the figure must be basically a conventional figure derived from experience and from awards in comparable cases.”

Here the plaintiff had multiple fractures. He was so for a long time. The pain will continue for some time. In future the plaintiff will have attacks of arthritis. There has to be compensation for present and prospective pain. The plaintiff suffers and will continue to do so. He has lost out on the pursuits of leisure. He cannot play tennis as he used to. I award K60, 000 for pain and suffering and loss of amenities.

The plaintiff has not suffered any loss in earnings. The plaintiff’s type of job is such that injury to organs of movement will entail in future loss of employment. Courts award damages for such a loss. This is precisely for the reasons approved by Lord Denning in Martin -v- John Mowlen & Co. Ltd [1951] A.C. 272:

“Employers must consider their own interest, and, as the time comes when anyone has to be stood off, as the expression is, quite obviously they do stand off a man who has been incapacitated to a certain degree.”

Where there has been no change in earnings there cannot be an award for loss of earnings. Courts consider the prospect of the victim losing the job because of the injuries which for now appear to have no impact on his earnings. Where there is a substantial prospect there will be an award for loss of earning capacity. (Tembo -v- City of Blantyre following Smith -v- Manchester Corporation [1974] 17 K.I.R.1; and Moeliker -v- Reyrolle [1977] 1 W.L.R. 132). Here the plaintiff has not lost the job he is now involved in. Equally there is little to suggest that he can’t go on farming. The impression I have of the plaintiff is that there is a substantial prospect of him reducing his earnings on the farming and the job he is engaged in now because of the injuries he has sustained. I award the plaintiff K6, 000 for loss of earning capacity.

The plaintiff is entitled to all the claims in the special damages claim except two. The plaintiff cannot claim for the wife’s medical expenses when she is not a party to the proceedings. There is that claim for abortive expenditure on the tobacco farm. I do not understand what it represents. Anyway, if the money was not spent, I fail to see how it should be claimed.

There will therefore be judgment for the plaintiff for K86,593.

Made in open Court this 17th Day of September 1997.

D.F.Mwaungulu

JUDGE