

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 429 OF 2000**

BETWEEN:

R W CHAULUKAPLAINTIFF

VERSUS

ATTORNEY GENERALDEFENDANT

CORAM: M A TEMBO, ASSISTANT REGISTRAR

Msungama, for the Plaintiff

ORDER ON ASSESSMENT OF DAMAGES

By a writ of summons dated 16th February, 2000 the plaintiff commenced this action against the defendant, the Attorney General, for damages for personal injuries. The plaintiff attributes the injuries occasioned to him to the accident caused by the defendant's driver's negligence. The issue of the defendant's liability was settled by a default judgment obtained by the plaintiff herein dated 27th March, 2000.

This assessment of damages proceeds on the basis of that default judgment. Though the defendant was duly served with the notice of hearing of this assessment nobody from its Chambers appeared at the hearing. That left the plaintiff's evidence unchallenged.

The plaintiff's testimony was of a considerable length.

The plaintiff informed the Court that immediately after the collision of the vehicles during the accident he fainted and gained his consciousness at Queens Elizabeth Central Hospital.

The plaintiff informed the Court that he suffered multiple injuries as a result of the accident herein. That he suffered two fractures on his right hand and a dislocation of the right wrist.

That he also suffered a fractured left collar bone and left thumb.

The plaintiff also stated that he sustained a deep cut on the left writ as well as a depression on that writ. The plaintiff further stated that the right side of his hip was dislocated. And that he also suffered multiple cuts on the right leg, on open fracture and deep cut on the front of the left ankle and a deep cut below the left knee.

The plaintiff also said he suffered three broken ribs as a result of which he passed blood

in urine for a week after the accident herein. Finally, the plaintiff stated that he suffered cuts from the broken windscreen glass on his face and head as a result of which he bled from the nose, eyes and mouth.

Then the plaintiff elaborated on the treatment he underwent for the serious injuries he had suffered, for the right hand the plaintiff stated that a plaster of Paris was put on from the elbow down and he had it on for a period of 2 months. And that thereafter surgery was performed on that hand and a metal rod was inserted inside to hold bones together. The wound occasioned by the surgery was stiched and dressed for a period of two weeks. The plaintiff's left hand was also put in a plaster of Paris from the shoulder to the finger tips. And as a result the plaintiff lay on his back for a period of twenty – one days with his left hand hanged to a metal cross-bar placed over his bed.

The deep cut on the left wrist, on the lower leg and on the cuts on the face and head were dressed for periods ranging from 2 weeks to a month.

For the plaintiff's right leg, a metal rod was placed across the knee and weights attached to each side. And for the left leg a plaster of Paris was put on from the knee down to the foot and the deep cuts on the lower part of the leg were dressed for a period of 3 weeks. The plaintiff's broken ribs were treated by surgery. A cold compress was also regularly administered to the plaintiff to ease the burning sensation in his chest.

The plaintiff was also treated for bedsores he developed on his back after lying on his back for two month's without turning on either side. It also has to be noted that the plaintiff had to be helped to take a bath or to relieve himself whilst on the bed. He could not sit up in bed or walk and had to undergo physio-therapy to learn the same. This was accompanied by excruciating pain. And that thereafter he had to use cratches to walk for a period of about 2 months. From the injuries described above and the treatment therefor it will be appreciated that the plaintiff underwent grave pain and suffering herein.

The plaintiff told the court that as a result of the said injuries he still suffers some post-treatment problems. The plaintiff's lower right arm is bow-shaped and has a big long scar and is thereby disfigured. The right arm is weak and can not be used by the plaintiff to do heavy tasks like lifting heavy objects or writing on the chalk board for long periods of time as he used to before the accident. The plaintiff also said as a result he only uses the left arm when eating.

The plaintiff can also not lift his left arm beyond a certain small angle to his body for instance to touch the other side of the head as he used to before the accident herein.

The plaintiff's evidence is further that he suffers continuing pain on the right hip giving him problems when walking on uneven ground. And that as a result of that pain he cannot run or jump as before the accident. The plaintiff also has a stiff left knee as a result of which he finds it difficult to crouch hence problems on his part to board a bus or use a pit latrine or to easily sit on the floor or stand up from there.

The plaintiff also said that due to pain in the chest area he can't quickly turn his body. And that he sees red stars in his right eye especially when he blinks it after waking up from sleep. The plaintiff finally said that since he is a lecturer at Blantyre Teacher's Training College he can no longer effectively discharge his duties as a lecturer as he used to before the accident herein.

It is, without doubt, clear from the foregoing that the plaintiff suffered loss of enjoyment of various aspects of life as a result of the accident herein and thereby lost various amenities of life. It is trite law that a person who has suffered bodily injury due to the negligence of another is entitled to recover damages. The aim of awarding damages is to compensate the injured party as nearly as possible as money can do and not to punish the tortfeasor. See *Cassel and Company v Broome* 1972 A C 1027. The present claim related to non-monetary loss in respect of which damages are recoverable.

The plaintiff's statement of claim simply states that the plaintiff claims damages for personal injuries. Presumably these should be general damages courts award in cases involving personal injuries. See *Mc Gregor on Damages*, 14th Edition, Par. 1497. The damages recoverable under the head of general damages for personal injuries are those for pain and suffering and loss of amenities of life and disfigurement. It is not possible to quantify such aspects in monetary terms with mathematical precision. As a result courts use decided cases of comparable nature to arrive at the award to be made. That ensures some degree of general uniformity and consistency in awards made in cases of a broadly similar nature. See *Wright v British Railways Board* (1983) A C 773. This same principle is expressed in the case of *J Lipenga v Vassilatou Brothers Transport* Civil Cause Number 616 of 1998 (unreported) cited by counsel in his written submissions.

Counsel for the plaintiff referred the court to awards recently made in similar cases to this one. In *Felix Ziba and Doreen Cxhuma v Agora Limited and NICO* Civil Cause Number 1086 of 1998 (unreported) the plaintiff was bedridden and hospitalized for three months and went through various surgical operations involving mixing metal rods. It was held that K350,000.00 be awarded as damages for pain and suffering, loss of amenities and disfigurement. In *Kenneth Kandulu v Astaldi (Mw) Limited* Civil Cause Number 2828 of 2001 (unreported) the plaintiff sustained a fractured left leg and could hardly walk for more than a kilometer. The court awarded K250,000.00 for pain and suffering and loss of amenities of life. For injuries on fractured collar bone, ribs and hip the court awarded K90,000.00 in the case of *Milton Matengonya v Blantyre Water Board and United General Insurance Company Limited* Civil Cause Number 451 of 2000 (unreported). In *Lonely Mulumbe v Rachel Kaniche, Group Five International and Commercial Union Assurance* Civil cause number 1966 of 2000 (unreported) the plaintiff was awarded K110,000.00 for disfigurement of right leg and head injuries.

In *Adam Mtepatapa v David Lalley t/a Transport* Civil Cause Number 3383 of 1997 (unreported) the plaintiff could not stretch his arm and could not effectively use his arm. An award of K65,000.00 was made for pain and suffering and loss of amenities of life.

And in *Lukanga v Attorney General and Prime Insurance Company Limited* Civil Cause number 3305 of 1998 (unreported) a plaintiff who could no longer play soccer due to head and had injuries was awarded K20,000.00 for pain and suffering and loss of amenities of life. And in *Isaac Misomali v Impregilo Salini (Kapichira Project)* Civil Cause number 2347 of 1998 the plaintiff was awarded K20,000.00 for sustaining various bruises and for not being able to perform relatively hard tasks.

The Court also considered other recent awards made to plaintiffs for injuries suffered similar to the ones herein. The Courts also notes that since the awards alluded to above the kwacha has depreciated in value. The court notes further that the plaintiff herein

suffered grave injury to most parts of his body namely fractures on the left leg, both arms and three ribs. The plaintiff also sustained cuts on the head, face and on both the legs. He must have undergone a lot of pain and suffering.

The treatment for the injuries should also have generated a lot of pain. The plaintiff underwent two surgical operations, had to have his wounds dressed for periods ranging from weeks to a month. The plaintiff also got treated for bedsores. As a consequence of the injuries the plaintiff lost enjoyment of various amenities of life. He cannot run or turn up. He finds difficulty walking on uneven ground. He can not effectively perform his job as a lecturer due to difficulties he experiences when he stands up for long periods of time. Considering the foregoing and the awards made in recent cases of similar nature the court is of the view that an award of K300,000.00 for pain and suffering is fair and adequate herein. And that an award of K250,000.00 is fair and adequate for loss of amenities of life herein. And that for disfigurement an award of K50,000.00 is fair and adequate. The total award is therefore K600,000.00.

The plaintiff is also awarded costs of this action.

Made in Chambers this 6th day of November 2002 at Blantyre.

M A Tembo

**ASSISTANT REGISTRAR OF HIGH COURT AND
SUPREME COURT OF APPEAL**