

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 2847 OF 2002

BETWEEN:

DUNCAN CHONGO PLAINTIFF

AND

DE CARS BUS SERVICE1ST DEFENDANT

NATIONAL INSURANCE CO. LTD2ND DEFENDANT

CORAM: TEMBO, ASSISTANT REGISTRAR

Phiri, Counsel for the Plaintiff

ORDER ON ASSESSMENT OF DAMAGES

This is this court's order on assessment of damages herein. This order is made pursuant to a default judgment dated 8th September, 2003 in favour of the plaintiff. The judgment was entered in favour of the plaintiff for damages for the personal injuries suffered by the plaintiff in an accident in which the plaintiff negligently hit by the defendant's vehicle whilst he was cycling along the Ntcheu-Balaka road. The notice of hearing of this assessment was duly served on the defendant who chose not to appear at the hearing. That left the plaintiff's evidence totally unchallenged.

In the accident herein, the plaintiff suffered a fracture of the right humerus, the right upper arm. That arm was cast in a plaster of Paris. After the recovery of the fracture, the plaintiff still experiences some pain. He can not use his right arm as he used to before the accident herein.

Clearly the plaintiff is entitled to damages for the pain and suffering occasioned by the fracture as well as the treatment thereof. The plaintiff also lost enjoyment of the use of his right arm hence he has lost enjoyment of related amenities of life like manual work. Such damages are aimed at compensating the plaintiff as nearly as possible as money can do see *Cassel and Company v Broome* [1972] A. C. 1027. And such damages are incapable of quantification in money terms with mathematical precision and so this court seeks guidance on the appropriate level of awards from decided cases of similar nature. See **Wright v British Railways Board** [1983] A.C. 773. This court has considered the plaintiff's fracture which was serious took 4 months to heal. This court has also considered decided cases of comparable nature to the instant one. One such case is that of **Chirwa v Juma and Prime Insurance Company Ltd** Civil cause Number 3794 of 2002 in which a plaintiff who suffered a fractured right arm that healed well without post treatment complications was awarded K65,000.00 damages for pain and suffering in April, 2003. Of course our currency has lost some value since then. This court has considered all the circumstances herein and awards the plaintiff herein K180,000.00 damages for pain and suffering and K65,000.00 damages for loss of amenities of life.

Costs are for the plaintiff.

Made at Blantyre in Chambers this June, 2004.

M A Tembo

ASSISTANT REGISTRAR