

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 1748 OF 2003

BETWEEN:

LIDIA MCHEKAPLAINTIFF

AND

**STEVEN ROBERT t/a NTHAWI YA MAPETO
TRANSPORTDEFENDANT**

CORAM: TEMBO,ASSISTANT REGISTRAR

Movette, Counsel for the Plaintiff

This is this court's order on assessment of damages herein for personal injuries suffered by the plaintiff in an accident caused by the defendants' negligence. The assessment is done pursuant to a default judgment entered in favour of the plaintiff dated 16th April 2004. The notice of hearing of this assessment was duly served on the defendant. The defendant did not attend the hearing leaving the plaintiffs evidence totally uncontroverted.

The defendant negligently drove his truck on 9th December 2001 along the Chikwawa road when he caused the accident herein in which the plaintiff sustained several injuries. The plaintiff suffered a fractured around her left wrist and a fracture of the bones on her left foot. These fractured bones were cast in a plaster of Paris for 2 months. The plaintiff also suffered a deep cut wound on her forehead that exposed part of the skull. That took about 2 years to heal. She now feels better but water comes out

the affected area of the forehead whenever it gets cold. Since the accident herein the plaintiff can no longer carry out farming activities like hoeing as she used to do before the accident herein. The plaintiffs' left forearm has also been shortened by a centimeter. The plaintiffs' injuries herein were serious. She is clearly entitled to damages claimed viz, for pain and suffering and loss of amenities of life. These damages are aimed at compensating the plaintiff for her suffering as nearly as possible as money can do. See **Cassel and Company v Broome [1972] A.C. 1027.**

Such damages are incapable of quantification in money terms with mathematical precision. And so courts refer to decided cases of similar nature for guidance on the level of awards. This ensures some degree of general consistency in civil justice in cases of similar nature. See **Wright v British Railways Board [1983] A.C. 773.**

This court notes the seriousness of the injuries suffered by the plaintiff and the impact of those injuries on her enjoyment of certain aspects of life like farming. This court has also sought guidance from awards made in cases of similar nature to the instant one. One such case being that of **Chimwala v Issa Civil Cause Number 1590 of 2000** in which a plaintiff suffered a fractured forearm and multiple bruises was awarded K80,000.00 damages for pain and suffering and loss of amenities of life in November, 2002. Another case referred to by this court is that of **Chirwa v Juma and another Civil Cause Number 3790 of 2002.** In that case a plaintiff who has suffered a fractured arm and dislocated ankle was awarded K65,000.00 damages for pain and suffering and loss of amenities of life in April, 2003. This court also considered the case of **Mulinde v Stagecoach Lintied Civil Cause Number 1816 of 1999** in which a plaintiff who suffered cut wounds in the face and also cuts on his fingers was awarded K20,000.00 damages for pain and suffering and loss of amenities of life in October, 1999.

This court is aware that the value of the kwacha has since depreciated in value since the awards referred to above by this court for guidance.

Having considered the severity of the plaintiffs' injuries herein this court awards her the sum of K350,000.00 damages for pain an suffering, and loss of amenities of life and

deformity. This court further makes an award on loss of earning capacity of K50,000.00 the plaintiff's earning capacity having clearly been diminished by her injuries herein.

Made in Chambers at Blantyre thisJune, 2004.

M. A. Tembo

ASSISTANT REGISTRAR