

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 2579 OF 1999**

BETWEEN:

EBEL CHASWEKA PLAINTIFF

AND

BASHIR ISHMAEL WHOLESALERS..... DEFENDANT

CORAM: POTANI, REGISTRAR

Msungama, Counsel for the Plaintiff

RULING

This is an action for damages for personal injuries resulting from a road traffic accident attributed to the negligence of the defendant. A default judgment was entered in favour of the plaintiff. Pursuant to that judgment, the plaintiff took out a notice of assessment of damages. The notice was duly served on the defendant. Come the hearing day, there was no appearance on the part of the defendant.

The plaintiff's undisputed evidence can briefly be summarized. Sometime in 1996, he was on the defendant's lorry which was ferrying some bags of maize from Chiringa, in Phalombe district, to the City of Blantyre. In the course of the journey, the lorry overturned. Due to the accident, the plaintiff sustained a fracture of the leg and some injury at the back. He felt severe pain. Presently, he still feels pains on the affected areas such that he often seeks medical attention. He further had it that he cannot perform manual work because of persistent backache he suffers as a result of the accident.

There can be no doubt that the injuries the plaintiff suffered occasioned considerable pain and suffering. Indeed, it was his evidence that even at present, he still feels pains on the affected areas with the result that he cannot perform any manual work. Once he attempts to do that, he experiences terrible backache. Clearly, therefore, the plaintiff has suffered loss of amenities of life and loss of earning capacity.

In considering the award to be made, guidance has been sought from awards made in decided cases of a comparable nature including the cases of Kantiki vs. Mkandawire Civil Cause Number 1175 of 1993 (unreported) and Mwasinga v. Stagecoach (Malawi) Limited Civil Cause Number 384 of 1992 (unreported). It must be stated that I am very mindful that each case has circumstances peculiar to itself. Sight has also not been lost of the fact that the cases cited above were decided several years ago. Over the years, the local currency has undergone remarkable devaluations. I take the view that a global award of K110,000.00 would adequately compensate the plaintiff for pain and suffering,

loss of amenities of life and loss of earning capacity.

Costs of the action are also awarded to the plaintiff.

Made in Chambers this day of February 7, 2003, at BLANTYRE.

H S B Potani

REGISTRAR