

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CASE NO. 438 OF 2005**

BETWEEN

TOWERA LUHANGA.....PLAINTIFF

-AND-

PEPANI BAKALI.....1ST DEFENDANT

ALICK YUSUF ASEDI.....2ND DEFENDANT

CORAM: **MANDA, SENIOR DEPUTY REGISTRAR**

Chilenga for the plaintiff

Gonaulinji Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

This is a notice of appointment for the assessment of damages following an interlocutory judgment the plaintiff obtained against the defendant on the 5th day of August 2005. No defence having been served by the defendant, it was adjudged that the defendant pays the plaintiff the total sum of K132, 180 as special damages, general damages and interest at the ruling Stanbic Bank lending rate.

The plaintiff's claim against the defendant is for damages arising from an accident which resulted in damage to her motor vehicle registration number RU 1956. The accident occurred along the presidential way as the plaintiff was driving to work, on or about the 29th day of October 2004. According to the particulars of the accident as described in the police report which was marked ExP1, the 1st defendant, who was driving a motor vehicle registration number BM 1775, Nissan Pulsar, was to blame as he had hit the plaintiff's car from behind. I should of course state that whilst as the vehicle was being driven by the 1st defendant, it was owned by the second defendant hence the reason why the second defendant was included as a party to this case.

It was the plaintiff's evidence, which was undisputed, following the accident her vehicle had sustained damages both in front and the rear of

the car, since she also hit the car that was in front of her due to the impact from behind. The plaintiff further told the court that she did send her car to Andrews Panel Beaters, who repaired the car at a total cost of K114 680 and proceeded to tender a receipt for that amount (ExP3). The plaintiff also told the court that whilst her car was undergoing repairs, she did hire a vehicle for five days from CS Car Rentals at a cost of K3 500 per day. In her evidence the plaintiff told the court that she only hired the vehicle for five days because it turned out to be expensive on her part as she had to meet the cost. The total amount that she paid for the hire was K17 500. After off-hiring the vehicle, the plaintiff told the court that she would borrow a friend's vehicle to go to work at times but that for most of the time she had to suffer the inconvenience of using public transport for the entire period that her vehicle was being repaired and from the calculations, it took a total of 94 days for the vehicle to be repaired, that from 29th October 2004 to 5th February 2005. It was therefore the plaintiff's claim that she be compensated for loss of use of the vehicle for 89 days, which is less the 5 days that she had hired a replacement vehicle.

It is stated in **Odgers' Principles of Pleading and Practice in Civil Actions in the High Court of Justice**, 22nd Edition, on P.170, that;

“General damage such as the law will presume to be the natural or probable consequence of the defendant's act need not be pleaded. It arises by inference of law, and need not, therefore, be proved by evidence, and may be averred generally.”

Further, the object of awarding damages has always been said to be to give the plaintiff compensation for the loss that he has suffered. This was well illustrated in the case of ***General Tire and Rubber Co. v Firestone Tyre and Rubber Co.*** [1975] 1 W.L.R 819 (H.L). Indeed, damages have been defined as the sum of money which will put a party, who has suffered, in the same position as he would have been if he had not sustained the wrong for which he is now getting his compensation or reparation. This was as per the speech of Lord Blackburn in ***Livingstone v Rawyards Coal Co.*** (1880) 5 App. Cas. 25, 39.

In this instance, it was quite clear to me that the plaintiff did suffer loss of use of her vehicle and therefore that she is entitled to be compensated. It is the view of this court that having caused the accident through his negligence, it became incumbent on the defendant to ensure that the plaintiff vehicle was repaired and at the same time to provide her with alternative transport. The fact that this was never done and the plaintiff was as a result inconvenienced, would in my view entitle to claim damages for loss of use. Indeed considering that the plaintiff has already

demonstrated that she had to hire a vehicle at a cost of K3 500 per day, I will take that amount in calculating the damages. I would thus award the plaintiff a total sum of K311 500 as damages for loss of use of her car for 89 days. The plaintiff is also awarded costs of this action.

Made in Chambers this.....day of.....2004

K.T. MANDA
SENIOR DEPUTY REGISTRAR