

**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL CASE NO. 380 OF 2004**

BETWEEN

LT. COL. FR. MACHUMBUZA.....PLAINTIFF

-AND-

THE ATTORNEY GENERAL.....DEFENDANT

CORAM:     MANDA, **SENIOR DEPUTY REGISTRAR**

Mapila for the plaintiff

**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 27<sup>th</sup> day of July 2004. No defence having been served by the defendant, it was adjudged that the defendant pays the plaintiff the total sum of K67 000, interest on the said K67 000, damages for loss of use of a vehicle which were to be assessed and costs of this action.

The plaintiff's claim against the defendant is for damages arising from an accident which resulted in damage to his motor vehicle registration number SA 3750. The accident occurred during the night of the 16<sup>th</sup> day of December 2003 while it was being driven by police officers stationed at Chipoka Police Station.

It was the plaintiff's evidence, which was undisputed, that the vehicle in question is a Toyota Corolla and was being used at the time by Sister Machumbuzi, who runs Ngozi Hospital. For purposes of providing security for the vehicle, the plaintiff said he did ask for and got permission from the Central Region Police Headquarters to be keeping the vehicle at Chipoka Police Station. From the plaintiff's evidence, it was quite clear that the agreement he had with the police was that they should just be keeping the car and that they were not to use it. However, it was against this background that the plaintiff told the court on the morning of the 17<sup>th</sup> day of December 2003, the vehicle was found to have been damaged. According to the plaintiff, when enquiries were made, it was found that the vehicle was damaged while being driven by officers

who were on night duty at Chipoka Police Station and that they had done so without the authorization of Sr. Machumbuza.

In his testimony, the plaintiff went on to inform the court that following the accident they took the vehicle to Edwards Panel Beating where the vehicle was repaired at a cost of K62 000 on the 4<sup>th</sup> day of March 2004 and to this effect the plaintiff did tender an invoice from Edwards Panel Beating which was marked exhibit P1.

While the vehicle in question was being repaired, the plaintiff stated that they had to hire another car, registration number SA 3483, for Sr. Machumbuza to be using. Apparently this vehicle was hired at a cost of K5 000 per day, albeit not from a Car Hire Company. It was the plaintiff's evidence that they had been given a verbal go ahead by the police to source an alternative vehicle while the other vehicle was being repaired. This seems to have been in addition to the agreement that the police were going to be responsible for the damage to the plaintiff's car.

The plaintiff, whose evidence is undisputed and unchallenged, struck me as an honest witness. I say this in particular in relation to the issue of the hiring of the vehicle while the damaged vehicle was being repaired. Indeed I do accordingly accept that part of the plaintiff's testimony and make findings of fact relative to it.

In the present instance what falls to be assessed are general damages for loss of use of the vehicle since the plaintiff's claim for special damages was already met by the interlocutory judgment which he obtained against the defendant on the 27<sup>th</sup> day of July 2004. In terms of loss of use of the vehicle, the plaintiff claimed that he had to hire a vehicle at the rate of K5 000 a day and that this made him suffer pecuniary loss in the form of hiring expenses which came to K395 000. This amount was calculated as from the 17<sup>th</sup> day of December 2003, which was the day the vehicle was noted to have been damaged, to 4<sup>th</sup> March 2004, which was the day the vehicle was repaired. This made a total of 79 days.

It is stated in **Odgers' Principles of Pleading and Practice in Civil Actions in the High Court of Justice**, 22<sup>nd</sup> 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."*

In the present instance, it would be a right presumption that the need to hire a car by the plaintiff was brought about by the defendant's servant

act of damaging the former's vehicle. Indeed considering that the vehicle was being used on a daily basis for the running of a hospital, it was vital that the plaintiff should hire one while the other was being repaired.

Having said this and having accepted the plaintiff's evidence regarding the hiring costs and since the same was not challenged anyway, I do award the plaintiff the sum of K457 000 being damages for repair costs and the pecuniary loss that he suffered as a result of loss of use of the vehicle. The plaintiff is also awarded costs of this action.

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

K.T. MANDA  
SENIOR DEPUTY REGISTRAR