

IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO. 573 OF 2004

BETWEEN

P. Y. S. KHUMALO PLAINTIFF

AND

DIMON MALAWI 1ST DEFENDANT

ROYAL INSURANCE COMPANY LIMITED 2ND DEFENDANT

CORAM: T.R. Ligowe : Assistant Registrar

Kadzakumanja : Counsel for the Plaintiff

Mussa : Counsel for the Defendant

Chulu : Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

The parties in this case agreed on 22nd February 2006 before Kamanga J. on the liability of the defendant's to the plaintiff's claims for damages. The brief facts are that Wened Wasili, the 1st defendant's servant or agent negligently drove the 1st defendant's motor vehicle Registration Number BK 6180, insured by the 2nd defendants, that he collided with the plaintiff's motor vehicle registration number MHG 338 Toyota pickup along Chilambula road near ADMARC. Per his amended statement of claim the plaintiff claims:

- (i) The sum of K658 843.93 being the revised cost from M.A. Motors of putting the vehicle back on the road.
- (ii) Damages for loss of use of the motor vehicle from the date of the accident the date of settlement of the claim.
- (iii) Damages for pain, suffering and loss of amenities as a result of personal injuries.
- (iv) Refund of US\$1 000 and K50 000 for medical expenses.
- (v) Refund of K2 000 for Police report, and
- (vi) Costs of the action.

The matter now comes for assessment of the damages. By the time the matter came for assessment the parties had agreed the quantum in some respects of the claim. They had agreed for K100 000 damages for loss of use of the motor vehicle, K80 000 for personal injuries, K190 000 refund for medical expenses, and K2000 refund for a police report. The total is K372 000 and I endorse it. I only have to do the assessment with respect to the cost of repairing the vehicle.

The normal measure of damages in cases where there has been physical damage of goods as a result of the defendant's negligence is the reasonable costs of repair. The law was clearly settled in ***Derbishire v. Warran*** (1963) 1 W.L.R. 1067 C.A. where Harman L.J. said:

“[It] has come to be settled that in general the measure of damage is the cost of repairing the damaged article.”

If despite the repairs, the market value of the goods is less than before, the plaintiff is entitled to the diminution in value in addition to the cost of repair. In ***The Georgiana v. The Anglican*** (1873) 21 W.R. 28 the plaintiff was held entitled to recover in addition to the cost of partial repairs to a yacht which did not make her strong and seaworthy as formerly, the amount by which the value of the partially repaired yacht was less than before the damage occurred.

In this case the plaintiff testified that his vehicle was damaged at the front, the rear and inside. He got quotations from several garages for repairs to the vehicle. One is from Pinto Motors Limited for K634 748.84 obtained on 13th November 2003. The second is from North End Motors for K566 933.41 to do the same repairs obtained on the same date. The last one is from M.A. Motors for K551 934.54 obtained on 12th August 2003. The 2nd defendant offered to settle for K140 000 or K190 000 if they were to take the wreck but he refused and commenced this action. The plaintiff tendered another quotation

obtained from M.A. Motors for K658 843.93 and asked the court to compensate him in accordance with that quotation.

On being cross-examined he said that his vehicle must have been made some time in 1983 or 1984. He could not clearly explain why some items on the second quotation from M.A. Motors are not there on the first. Eventually he said he would not know as he was only interested in having his vehicle fixed.

The defendants had asked for an adjournment for them to bring their witnesses. It was granted but they did not attend court on 13th December 2006 despite having been served with the notice of adjournment. The court proceeded to assess the damages on the evidence available. And on that evidence I award the plaintiff damages on the basis of the first quotation from M.A. Motors, K551 934.54. I also award him costs of the action.

Made in chambers this day of January 2007.

T.R. Ligowe

ASSISTANT REGISTRAR