

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CASE No. 342 OF 2003**

BETWEEN

MUSSA NG'OMA.....1ST PLAINTIFF

EVELINA CHIFISI.....2ND PLAINTIFF

PAUL CHIFISI.....3RD PLAINTIFF

-AND-

NICO GENERAL INSURANCE CO. LTD.....1ST DEFENDANT

F.A. LAMBAT TRANSPORT.....2ND DEFENDANT

CORAM: MANDA, **SENIOR DEPUTY REGISTRAR**

Mwale for the plaintiff

ORDER ON ASSESSMENT OF DAMAGES

This matter came for assessment of damages on the 14th day of December 2006, following the judgement of Hon. Justice I.C. Kamanga, dated 10th August 2006, in which the judge found the defendants liable for negligently causing the plaintiffs personal injury. The Judge also awarded the plaintiff the costs of the action. Both defendants were absent during the assessment hearing despite there being proof that they had been served, thus the court elected to proceed.

In brief the facts of this case are that on or about the 31st January 2001; the second and third plaintiff's were going to Zomba to attend a funeral, using a police motor vehicle, driven by the first plaintiff. When they got to Nkhande Hills in Ntcheu, the plaintiffs' vehicle hit the second defendant's lorry which had broken down on the road and it was the finding of the trial judge that the accident was caused because the driver of the lorry neglected to display any warning signs about the breakdown.

Following the accident, the first plaintiff suffered laceration on the scalp, bruises on the right forearm and his level of incapacitation was assessed at 5%. The second plaintiff suffered injuries to her right eyelid which

became septic and started producing a pus discharge. In addition the plaintiff also suffered conjunctiva chemosis and cornea hazy with erosion, with the result that she is now blind in the right eye and has permanent scarring on the same. Her incapacitation was assessed at 45%. Finally the third plaintiff suffered a neck sprain, soft tissue injury, blunt injury to the chest and a dislocated shoulder. His incapacitation was assessed at 6%.

During the assessment hearing all three plaintiffs gave evidence orally outlining how the accident occurred and the injuries that they sustained. In addition to her injuries, the second plaintiff also informed the court that at the time of the accident she was involved in a business of selling second hand clothes which she can no longer engage in because of the injury to her eye. In effect then she was raising a claim for loss of earning capacity. However on examining the pleadings, it was observed that this matter was not pleaded as such the court could not award any damages on the claim. In fact the court had asked counsel for submissions on this note but on reflection, counsel conceded to the courts observation and elected not to pursue that claim any further. Suffice to say that the plaintiffs did specifically plead for special damages in the amount of K41 000, which the court duly awards them. Having found thus all that remains is for his court to assess the damages for the personal injuries sustained by the three plaintiffs.

It was stated in **McGregor on Damages, 15th Edition, p. 855**, that in an action based on the tort of negligence resulting in physical injury, as in the present case, damages are recoverable by the injured party. Damages awarded in such actions are for pain, suffering, and loss of amenities of life and also, at times, loss of earning capacity and life expectation. As these aspects have no monetary value, the awards made have generally been described as being conventional. That however does not mean that the awards made should be at the whims of the assessor. Indeed courts try to achieve general uniformity and consistency by making awards within a wide spectrum in broadly similar cases. (See **Wright v British Railway Board [1938] A.C. 1173 AT 1177**). In essence then, the purpose of awarding damages is to compensate the injured party as nearly as possible in monetary terms.

In this regard, I shall first address myself, to the claims by the first and second plaintiffs as their level of incapacitation is almost similar. In the first instance, it was Mr. Ng'oma evidence that his injuries still give him some discomfort when performing his duties as a driver (a job which he still performs) such that he has to take pain killers at times. Looking at his situation and also considering comparable cases, I do believe that the sum of K250 000 would be fair compensation for his pain and suffering

and hence do award the first plaintiff the said amount. As for the third plaintiff, it was his evidence that after the accident, he has problems writing and that he can not stand up for long periods of time, without experiencing pain. He also told the court that his everyday performance has been reduced. In this regard, the court felt that an award of K300 000 would be fair compensation and proceeds to award the third plaintiff that amount as his damages.

Finally, I now turn to the second plaintiff. As already noted earlier she is now permanently blind in her right eye. It was also her evidence that she can not be in places where there is dust or smoke as her eye tears whenever it gets into contact with the two substances. Clearly then apart from the pain and suffering, the plaintiff has also lost amenities of life. Furthermore since she is a housewife and therefore performing unpaid work, the court, in assessing her award, took into account her prospective expenses, like employing domestic help, for the next 10 years or so of her life, (see ***Daly v General Steam Navigation Co. Ltd*** [1981] 1 W.L.R. 120). In view of this then, it was the view of this court that an award of K850 000 would be fair compensation I do proceed to award her the said amount as general damages for pain and suffering as well for prospective expenses.

The plaintiffs are also awarded costs of the assessment hearing which are to be taxed if not agreed.

Made in Chambers this.....day of.....2007

K. T. MANDA
SENIOR DEPUTY REGISTRAR