

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CASE NO. 554 OF 2006**

BETWEEN

ALUBUINI AAYASI ZABULA PHIRI.....PLAINTIFF
(On behalf of Calvin Kavalo (a minor))

-AND-

THE ATTORNEY GENERAL.....DEFENDANT

CORAM: MANDA, **SENIOR DEPUTY REGISTRAR**

Nankhuni for the plaintiff

Msisha Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

This matter came for assessment of damages on the 31st day of July 2007, following a default judgment entered by the court on the 1st day of June 2004. During the assessment hearing one witnesses testified and the matter was adjourned for ruling.

Mr. Phiri took out these proceedings on behalf of his grandson Calvin. This followed the amputation of Calvin's leg, after some complications during his hospital admission at Queen Elizabeth Central Hospital for diarrhea treatment. Apparently, in trying to administer the treatment, the medical personnel at the hospital inserted an Intravenous drip into the infant's leg but that the same was not properly done with the result that the child's leg was severely affected and had to be amputated. Indeed, I would think that this would be a proper case for the application of the doctrine of *res ipsa loquitur* and I would think that they would be much of an argument against the defendant's liability. Of course, I must state that the issue of liability was settled by way of a default judgment since as usual the state did not make an appearance at any of the stages if this case.

In an action for personal injury, which is a result of negligence, damages are awarded to the plaintiff in order to compensate for the loss suffered and not to punish the tortfeasor (see ***Lizzie Mhone and Beauty Mhone v Stern Kachokam'manja and Prime Insurance Company Ltd*** Civil Cause No. 402 of 1999 (unreported)). Indeed, in assessing the damages the purpose of damages is not to give perfect compensation for the injury.

In assessing damages, one of the guiding factors is the level of incapacity that the plaintiff would have suffered because of the injury. Indeed the damages for personal injuries cover aspects such as pain and suffering, loss of amenities of life and loss of expectation of life. In his submission, counsel for the plaintiff did aver that his client is entitled to damages for pain and suffering for the amputation, loss of amenities of life as a result of the loss of the leg and the medical expenses following the amputation. The figures that he proposed were in the amounts of K180 000, K600 000 and K270 000, respectively, which came to a total of K1 050 000.

Having considered the facts of this case as well as the authorities that counsel cited in his skeletal arguments, I did arrive at the conclusion that the amounts that counsel did suggest to the court were not far removed from what the court would have awarded. Indeed it is on this basis that I did agree with the submission that the plaintiff is entitled to the total award of K1 050 000, for pain and suffering, loss of amenities of life and medical expenses and I do accordingly award the said sum as damages. The plaintiff is also awarded costs of the action.

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

K.T. MANDA
SENIOR DEPUTY REGISTRAR