



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 750 OF 1994

MUSSA Mhone 1ST PLAINTIFF
LASTON MSUKU 2ND PLAINTIFF
JOHN NGWIRA 3RD PLAINTIFF
TIWONE KANYASHA 4TH PLAINTIFF
BITI MDALA 5TH PLAINTIFF

and

DEREK VAN ROOYEN DEFENDANT

CORAM: E.B. TWEA, REGISTRAR
Mwafulirwa, Counsel for the Plaintiff
Defendant/Counsel absent

RULING

This is a claim for special damages, damages for personal injuries and damages for loss of dependancy. The action was brought by five plaintiffs against the defendant.

On 12 May 1994, the plaintiffs obtained judgment in default of defence. On 18 November 1994, the plaintiffs gave evidence on which the Court is to base its assessment of damages. On 30 November 1994, the plaintiffs filed an amended judgment in default which I have disallowed.

Order 20, rule 11 is clear. The Court has powers to amend judgment or orders in cases of clerical mistakes or errors due to accidental slips. the subsequent amendment sought was to allow the plaintiff to enter judgment for K30,000 as special damages in respect of the 1st plaintiff. This was pleaded in the statement of claim, however, after the general judgment, for damages to be assessed, the 1st plaintiff gave evidence in which the value of the boat was not mentioned and on the evidence on record, the special damage was not proved. To allow an amendment to this effect at this stage would be correcting the evidential

2/.....



defect. In my view, the intervention of the 1st plaintiff evidence makes it inequitable to allow the amendment. It is for this reason that I disallow this amendment. On the evidence therefore, the special damages of K30,000 have not been proved.

The evidence herein was that the 2nd and 3rd plaintiffs were employees of the 1st plaintiff who owned and operated a fishing boat. The fourth and fifth plaintiffs were wives of the deceased employees of the 3rd plaintiff who died in the boat accident.

It was in evidence that on the fateful night the boat they were in was involved in an accident. The 2nd plaintiff sustained a broken shoulder blade and injured backbone. He was treated at Monkey Bay Hospital. He tendered the medical report as PEX1. He told this Court that up to now he is unable to do heavy manual work.

The evidence of the 3rd plaintiff was injured in the pelvis and head. He had a bone protruding from the pelvis and since healing, he still limps and that he is unable to do manual work or paddle a boat as his leg is now weak.

The 1st plaintiff told this Court that he was the employer of the other plaintiffs and their deceased husbands. He gave the ages of the deceased: Joseph Mkandawire for whom the 4th plaintiff sues was 21 years and Kenya James for whom the 5th plaintiff sues was 25 years. Both were married and had children. It was his evidence that he paid all his employees K600.00 a month. He did not tender any evidence of payment to his employees.

The other two witnesses gave evidence in respect of the families and ages of the deceased.

I have examined PEX1. I note that there is no mention of broken bone. The evidence of PW1 cannot be borne by PEX1. It should be noted that the Medical Report noted that he would not require further treatment and that he could swim. I am inclined to put



very little weight of 2nd plaintiff's evidence. I award him damages for pain and suffering at K6,000.00.

As to the 3rd plaintiff, he had no medical documents and no reason was given as to why. His evidence has it that he had a bone protruding. This would entail a very serious injury. There is no evidence as to his hospitalization at all which is very strange indeed. I am inclined not to put much weight on his evidence as well. I would grant him K8,000 damages for pain, suffering and loss of amenities.

The evidence of PW3, the 1st plaintiff was much about his deceased employees. I would grant, however, that his boat was damaged and that he ought to be compensated. However, in view of his failure to prove special damages for his boat, I will treat such damages as at large. I grant him K12,000 damages for the wretched boat.

On the 4th and 5th plaintiffs. I have considered the evidence. I refrain from accepting that evidence on the face of it in view of the inaccuracy of the evidence of the witnesses herein. I would grant the earnings at K450 a month. I will also take into account that a bread earner would spend some of his salary on himself which I would put at half of his earning. I did not receive any evidence as to when one would retire from employment as a fishmonger. I would grant however that such work would not be fit for elderly people. In my view the older one grows the more unlikely he is to be employed by a fishmonger as the work requires physical strength than anything else. I would put the age at 45 years and grant each deceased 24 and 20 years of purchase respectively. I would multiply this with K150 a month and grant 4th plaintiff K43,200.00 as loss of dependency and K36,000 for 5th plaintiff respectively.

4/.....

HIGH COURT
LIBRARY

I also grant the plaintiffs costs for this action.

Pronounced in chambers this 22nd day of November, 1995, at
Blantyre.



E. B. Twea
REGISTRAR

