

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 3794 OF 2002**

BETWEEN:

JAMES CHIRWA PLAINTIFF

AND

VINCENT JUMA.....1ST DEFENDANT

PRIME INSURANCE COM. LTD2ND DEFENDANT

CORAM: M A TEMBO, ASSISTANT REGISTRAR

Masumbu, Counsel for the Plaintiff

ORDER ON ASSESSMENT OF DAMAGES

This is an order on assessment of damages. The assessment was done pursuant to a default judgment entered in favour of the plaintiff herein for damages for personal injuries dated 20th December, 2002.

A notice of hearing of the assessment of damages herein was served on the defendants but they made no appearance at the hearing. That left the plaintiff's testimony totally uncontested. The plaintiff's claim for damages for personal injuries he suffered herein arises out of an accident that took place on 10th February, 2002, at Njuli. The liability of the 1st defendant for negligent conduct and of the 2nd defendant as insurer of the 1st defendant was settled by the default judgment referred to above. As a result of the accident herein the plaintiff sustained a fractured right arm and a dislocated ankle. The

fractured arm was put in a plaster of Paris at Queens Central Hospital where the plaintiff had been admitted for treatment for 3 days. The medical report tendered in evidence by the plaintiff and marked as **Exhibit P2** confirmed the injuries sustained by the plaintiff in the accident.

A person who has suffered damage due to the negligence of another is entitled to recover damages. The aim of awarding damages is to compensate the injured party as nearly as money possible as can do. See **Livingston vs. Rawyards coal Company** (1880) A.C. 25. The present claim relates to non-monetary loss in respect of which damages are recoverable for pain and suffering and loss of amenities of life.

It is not possible to quantify such aspects of loss in monetary terms with mathematical precision. As a result courts use decided cases of comparable nature to arrive at awards. That ensures some degree of general consistency and uniformity in cases in cases of a broadly similar nature. See **Wright v. British Railways Board** (1983) 2 A.C 773. The court notes herein that the plaintiff must have undergone considerable pain as a result of the fracture of the arm and the dislocation of his ankle. The treatment of these injuries must have entailed further pain.

However, the court did not find any evidence of the plaintiff's loss of enjoyment of any of the amenities of life. Actually the plaintiff confidently told this court that he is well and is attending school dispelling any doubt as to his personal fitness. The court shall therefore only make an award of damages for pain and suffering.

This court had the benefit of looking at awards made by this court in recent cases of a similar nature to the instant one. One of them is that of **Chipala v Dwangwa Sugar Corporation** Civil Case Number 435 of 1998 (unreported) in which the plaintiff sustained a compound fracture of the radius and ulna, fracture of humerus, and could not use his right hand. The court award that plaintiff the sum of K125,000.00 as damages for pain and suffering and loss of amenities of life.

The court notes that since the above award was made our currency had depreciated in value. It is also clear that the injuries herein can not be said to be more severe than those suffered by the plaintiff in the case cited above.

Upon consideration of the injuries suffered by the plaintiff herein and the awards made by this court in recent cases of comparable nature to the present case this court awards the plaintiff the sum of K65,000.00 as damages for pain and suffering. Costs of this action are also awarded to the plaintiff.

Made in Chambers at Blantyre this 16th April, 2003.

M A Tembo

ASSISTANT REGISTRAR