

IN THE HIGH COURT OF LESOTHO

In the matter of :

MOTLATSI MPOBOLE

Plaintiff

v

ALPHONSE THEBE-TSOEU

Defendant

J U D G M E N T

Delivered by the Hon. Chief Justice, Mr. Justice
T.S. Cotran on the 15th day of December, 1983

In this action, which was undefended, the plaintiff claimed from the defendant damages for personal injuries he had sustained as a result of an assault on him on the 20th May 1983.

The plaintiff's claim was for M5,000 being general damages for "assault, shock, pain, suffering, discomfort, disfigurement, and loss of certain vital amenities", M80 for expenses incurred for treatment at a hospital (M20) transport to and from town to hospital (M20) and for estimated future medical expenses (M40).

I propose to allow the special damages of M80 in toto.

I am, however, amazed at the quantum claimed under general damages. The plaintiff went into the witness box in the normal way to enable the Court to make an intelligent assessment based on the facts. It emerged that both plaintiff and defendant were fellow students at the National University of Lesotho and a fracas developed, origin unknown, between the defendant on the one hand, and another student, which started

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in the refactory and ended up in the forecourt outside. The plaintiff was not concerned with this, but noting that that third student was receiving undue punishment from the defendant, he attempted to intervene. The defendant turned upon the plaintiff himself and struck him with a knobkerrie several times.

It is not necessary to go into the details of what happened since the defendant chose not to defend the action because I have to accept the plaintiff's evidence that the assault on him was unjustified, but it is necessary to go into the kind of injuries the plaintiff received, the duration of his treatment, and the long term effects of the injuries. A few days prior to trial I requested an up-to-date medical report and X-rays of the skull. The latter disclosed no damage at all and the plaintiff himself confirms that to-day he suffers from nothing except an occasional headache. Well I suffer from an occasional headache but it would be quite wrong to attribute this to a fight I may have had as a student a longtime ago.

The plaintiff was taken to Roma hospital immediately after the assault. The doctor who examined him noted:

"Lacerations on right forehead and Lacerations to right eye".

The doctor answered all the questions with a "dash" but on temporary disability he indicated it "light" and on permanent disability he indicated it was "nil".

The plaintiff was not admitted as an in-patient but he testifies that that was at his request because he feared that the defendant would follow him to hospital and "finish" him. I think this was unlikely and the real reason was probably because the doctor did not think the injuries serious enough to justify admission. The plaintiff had five stitches to the forehead and two or three under the eye. He attended Roma hospital for dressing the wounds for 7 days and rested at home for a further 7 days, making his total absence from society

/14 days.

14 days. The only thing that remains from this episode is a longish scar on the forehead and a very small scar under the eye. I have been shown the scars but to describe these as "disfigurement" is a great exaggeration.

I think those in practice at the bar who advise clients ought to understand and to explain to those who brief them that fanciful claims cannot succeed even though undefended.

I assess general damages at M500 and special damages at M80 making a total M580. Costs will be awarded to the plaintiff on the magistrate's court scale, the forum in which the plaintiff, if correctly advised, should have sued.



CHIEF JUSTICE

15th December 1983

For Plaintiff : Adv. Addy

For Defendant : No Appearance