

CIV/T/518/89

IN THE HIGH COURT OF LESOTHO

In the matter of :

MPATLISENG RAMOSELI

Plaintiff

and

KHOTSO TLEBERE

Defendant

JUDGMENT

Delivered by the Hon. Mr. Justice B.K. Molai  
on the 20th day of February, 1996.

On 29th August, 1990, Plaintiff herein served, upon the defendant, summons commencing an action in which she claimed for relief as follows:

- "(a) payment of the sum of M222-00  
medical expenses
- (b) Estimated future medical  
expenses M 500.00
- (c) Loss of earnings M4,288-00
- (d) Future loss of  
earnings M5,827-39
- (e) General damages for  
pain and suffering M7,000..00
- (f) Contumelia M5,000.00
- (g) Cost of suit
- (h) Further and/or

## a l t e r n a t i v e   r e l i e f "

The defendant filed no notice of intention to defend. Wherefor, the action proceeded uncontested.

In her declaration to the summons, Plaintiff alleged that she was, at all material times, employed as a domestic servant earning an income of M268 a month. On or about 2nd July, 1988 defendant wrongfully assaulted her, with a sharp weapon, on her left elbow which sustained a fracture.

As a result of the injury, Plaintiff lost her job and had not been able to find any other employment. Consequently, she suffered damages in the total amount of M22,837-39 for which she held defendant liable. Notwithstanding demand, defendant refused and/or neglected to pay. Wherefor, Plaintiff prayed for relief as aforesaid.

In order to prove her case for damages, Plaintiff gave formal evidence as P.W.1 and told the court that she lived at Sea Point here in Maseru and defendant was her neighbour. At about 6p.m. on 2nd July, 1988 P.W.1 left her home, on her way to her place of work. She met the defendant on the way. Upon seeing her, the defendant, who was only a pace away, said to P.W.1 : "Even this one I can beat up." In reply, P.W.1 asked: "Why would you beat me up?" Defendant then

suddenly pulled out a sable with which he hit P.W.1 a blow on the left elbow. After hitting her, the defendant ran away leaving the sable stuck on P.W.1's elbow. It had to be removed by the father of a certain Mr. Phuza.

Thereafter, P.W.1 went to Queen Elizabeth II Hospital, where she was admitted and operated upon. She was later discharged but had to be re-admitted and re-operated upon on several occasions. She spent altogether a total of 34 days in hospital suffering a lot of pain for which she held defendant liable to her in damages estimated in the amount of M7,000.00.

According to her, P.W.1 incurred medical expenses in the amount of M330 as a result of the injury. As proof thereof, a payment receipt was handed in as exh. "A" and part of her evidence. Following her treatment at Queen Elizabeth II hospital, P.W.1's injury was, however, still causing her trouble whenever she had to lift up heavy objects and she would have to incur future medical expenses, which she estimated at M500. I shall return to the evidence of P.W.1 in a moment.

P.W.2, Dr. Maw, testified that he was a medical practitioner stationed at Queen Elizabeth II hospital. He was the medical doctor who, under the supervision of two medical consultants viz. Dr. Kim and Dr.

Malibo, treated P.W.1 at Queen Elizabeth II hospital and compiled a medical report which he handed in as exh "B" and part of his evidence. P.W.2 confirmed, in material respects, the evidence of P.W.1 and told the court that the reason why P.W.1 had to be admitted and discharged five (5) times was because the wound on her elbow was developing pus which had to be drained and the bones could not properly join together.

In his evidence P.W.2 further told the court that P.W.1 was hospitalised, not for a total of 34 days, as the latter wished this court to believe but for a total of 31 days during which period she suffered a lot of pain. He told the court that P.W.1 had sustained a temporary disability and confirmed that she would still incur future medical expenses because of the injury on her left elbow.

Now, returning to her evidence, P.W.1 testified that she had attended school and obtained a Form C certificate. She subsequently got married and only one child (a girl) was born of the marriage. Her husband had since passed away and she was, therefore, a widow. As a result of the vicious attack on her, P.W.1 suffered contumelia for which she held defendant liable to her in damages estimated at M5,000.00.

Regard being had to P.W.1's status in life, I

consider the amount claimed under this heading reasonable. I would accordingly allow it.

According to her; P.W.1 was employed as a domestic servant by a certain Mr. Hoeskman who paid her M268 per month. Ever since she was injured by the defendant, P.W.1 had not been able to return to work and earn an income. She was unlikely to find any other employment. Consequently, she had suffered damages for which she held the defendant liable in the amounts of M4,288-00 and M5,827-39 being for loss of income and future earnings, respectively.

It will be remembered that P.W.1 told the court that she was attacked and injured by the defendant on 2nd July, 1988. She served her summons upon the defendant on 29th August, 1990. At the time of the institution of these proceedings she had, therefore, been unable to return to work and earn her income for some 25 months. Her estimation of loss of income at M4,288 was, in my view, quite moderate. I am not prepared to interfere.

However, the testimony of P.W.1 that she would incur damages amounting to M5,827-39 as future loss of income could not be substantiated by the medical evidence of Dr. Maw, who told the court that the injury had caused her only a temporary disability. In

any event, the evidence of P.W.1 did not show how she had calculated her future loss of earnings to arrive at the total figure of M5,827-37. I would disallow the claim under this heading.

It may be mentioned that I have had the occasion to examine exh "B" and found that P.W.1 was, in fact, hospitalised for a total number of 26 days. The evidence of P.W.1 and P.W.2 that the former had been hospitalised for 34 and 31 days, respectively, was, therefore, not quite correct. It is significant to observe that P.W.1's claim of M7,000 as damages for pain and suffering was based on her contention that she had suffered a lot of pain during the 34 days of her hospitalisation as a result of the injury inflicted by the defendant's vicious attack on her left elbow. Assuming the correctness of my finding that P.W. 1 had, in fact, been hospitalised for 26 days, and not 34 days, as she wished the court to believe, it seems to me, her claim was inflated by at least eight (8) days. There is, therefore, a need to reduce it proportionately to M5,353.

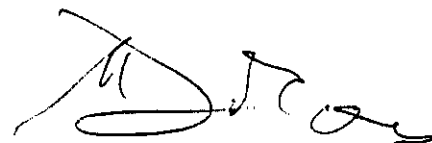
The evidence of P.W.1 that, she had incurred medical expenses of M330 could likewise, not be supported by exh "A" according to which she had paid M320 as medical expenses. That was, however, of not much importance because under the heading of medical

expenses, the amount of M222 was claimed in the summons which was never amended.

The evidence of P.W.1 that, following her treatment at Queen Elizabeth II hospital, she would still require further treatment and, therefore, incur future medical expenses, was corroborated by the medical evidence of P.W.2. Her estimation of future medical expenses at the total amount of M500 was, in my view, quite moderate. I can think of no good reasons why the court should interfere with the amount which is accordingly allowed.

From the foregoing, it is obvious that the view that I take is that Plaintiff has made out a case for damages which are awarded, with costs, as follows:

M	222-00	Medical expenses,
	500-00	Future medical expenses,
	4,288-00	Loss of earnings,
	5,353-00	Pain and suffering,
	5,000-00	Contumelia.

  
B.K. MOLAI  
JUDGE

20th February, 1995.

For Plaintiff : Mr. Monapathi  
For Defendant :