

CIV/T/827/2013

IN THE HIGH COURT OF LESOTHO

In the Matter Between:-

KOLOI MPHEKELELI

PLAINTIFF

AND

THABISO SELLO

1ST DEFENDANT

SAMPONYANE LEHLOKA

2ND DEFENDANT

RETHABILE MAKARA

3RD DEFENDANT

JUDGMENT

Coram : Hon. N. Majara

Date of hearing : 5th May 2014

Date of judgment : 12th August 2014

Summary

Claim for damages for assault – principles to be taken into account in assessing damages – damages designed to ameliorate the impairment of dignity caused by the physical and/or emotional suffering, but are not aimed at enriching the plaintiff – Court to also take into account prevalent economic conditions – onus on the plaintiff to establish the nature and extent of the injuries and the treatment he underwent.

ANNOTATIONS

CASES

1. National University of Lesotho v Thabane LAC (2007 – 2008) 476
2. Commander LDF & 2 Others v Tlhoriso Letsie C of A (CIV) 28 of 2009
3. De Jongh v Du Plessis NO in Corbbet Nene v Road Accident Fund (EL 352/02) (2005) ZAECHC 49
4. Mathafeng Nkofi v Tale Ramoreboli CIV/T/631/2013 (unreported)

[1] The plaintiff instated an action against the defendants jointly and severally in which he seeks damages resulting from an alleged assault on his person on the 4th June 2013. The defendants having not defended the matter, it was set down for hearing on the 5th May 2014 and the plaintiff led evidence to support his claim.

[2] It was the plaintiff's testimony that on that day he was at a bar and he tried to intervene in an altercation that had taken place over a cell-

phone between his companion Tsokolo and a woman called 'Matsupane. It is when he tried to so intervene that he was unlawfully and wrongfully attacked by the defendants who hit him with lebetlela sticks without a word. In the process he lost his mobile phone and some money to the tune of M1, 000.00 which were in his pocket. Further that he was severely injured as a result of the assault and had to be taken to a hospital.

[3] He added that the assault caused him disfigurement on his left hand and he that he has been advised to always wear a hat after sunset to avoid getting cold air on the head as it was also wounded. Further that he was in a lot of pain as a result of the assault and could not work for about a month after the incident. The plaintiff further told the court that he can no longer enjoy the things he used to like playing soccer and riding a bicycle because he can't wear a protective helmet. He also had to spend money on hospital bills and transport.

[4] It was his further evidence that he felt humiliated because the assault took place in full view of the people that were in the bar. It is his evidence that he is employed as a Deputy Sheriff of the Court. To support his evidence, he tendered in a medical report which shows that he sustained multiple scalp lacerations. It also reveals that the degree of force used was moderate, the degree of injury to life was light, the degree of immediate disability was moderate and there is no degree of long-term disability.

[5] Other documents that he tendered in comprised other medical reports that detail the history of his condition including the fact that his wounds had to be sutured and his wounds dressed as they were bleeding. It was also the plaintiff's evidence that he incurred other expenses some of which he cannot recall. He however attached copies of some of the receipts for the hospital bills which make up the total of about **M180.00**.

[6] It is the plaintiff's case that he suffered damages as a result of the assault as follows; one hundred and fifty thousand Maloti (M150 000.00) for pain and suffering; ninety-nine thousand, eight hundred and forty Maloti (M99, 840.00) for disfigurement; one hundred and fifty thousand Maloti (M150 000.00) for contumelia; one hundred thousand Maloti (M100, 000.00) for loss of amenities of life; one hundred and sixty thousand Maloti (M160.00) for medical expenses; interest at the rate of 18% per annum and costs of suit.

The Law

[7] It is now well established that though the trial court exercises a measure of unfettered discretion in determining an award of damages, it must ensure that the award is essentially fair to both parties and should have regard to previous awards in comparable cases.¹ The same

¹ National University of Lesotho and Another v Thabane LAC (2007 – 2008) 476 at 4881

principle has been reiterated in amongst others the case of **Commander LDF & Others v Letsie**.²

[8] In the present case, the evidence of the plaintiff stands unchallenged and this leaves the amount of damages under each head as the only issue for determination. It is trite that in order to determine a fair amount for pain and suffering, the Court is at liberty to take into account the evidence of the plaintiff as well as other factors such as past awards in comparable cases and the economic situation of Lesotho and must be wary not to award too high an amount especially for a non-patrimonial claim. This is basically because an award for non-patrimonial loss is not easily determinable in monetary terms.

[9] Thus, with respect to the claim for pain and suffering, contumelia and general expenses, it is generally accepted that these kinds of damages are designed to ameliorate as far as they can the impairment of dignity caused by the physical and/or emotional suffering, but are not aimed at enriching the plaintiff.

[10] Thus, quoting with approval the decision in the case of **De Jongh v Du Pisanie NO** the Court in **Corbbet Nene v Road Accident Fund**³ stated that in awarding the damages the Court must strive to set reasonable and consistent limits and ensure that the award is fair to both

² C of A (CIV) 28/2009 (unreported)

³ (EL 352/02) (2005) ZAECHC 49

sides. It must thus give just compensation to the plaintiff but *‘must not pour out largesse from the horn of plenty at the defendant’s expense’*.

[11] In the present case, the plaintiff was assaulted in full view of the people at the bar, suffered injuries on his head necessitating his wounds to be sutured and for him to undergo periodic dressing thereof. He also testified that he was in great pain and felt humiliated by the incident. Cognizant of the factors stipulated above, it is my view that an amount that would be fair to him and the defendants is for them to pay him the sum of M75, 000.00 for pain and suffering, M10, 000.00 for contumelia and M20, 000.00 for loss of amenities of life.

[12] It is however my view that insofar as the issue of disfigurement is concerned, it was not sufficiently proved as is required by the law. I have already shown that in terms of his medical report the degree of force inflicted was considerate with light injury to life, a moderate degree of immediate disability and no degree of long term disability. While the evidence stands unchallenged that the plaintiff sustained wounds that necessitated suturing, the medical report says nothing about disfigurement whether temporary or permanent.

[13] It is also worthy to mention that a claim for disfigurement which is the state of having one’s appearance deeply and persistently harmed due to the assault must also be proved by medical evidence.⁴ In my view

⁴ Mathafeng Nkofi v Tale Ramoreboli CIV/T/631/2013 (unreported)

what the medical reports only go to prove is that the plaintiff endured a lot of pain and suffering. For these reasons this claim falls away.

[14] For medical expenses, I have stated that the plaintiff tendered in documentary proof in the form of *ex facie* authentic receipts that also bear his names. The total amount thereof is M160.00, thus he is entitled to be recompensed for same.

[15] For all the foregoing reasons, I make the following order;

Default judgment is entered in favour of the plaintiff against the defendants jointly and severally the one paying the others to be absolved as follows:-

- a) Payment of M75, 000.00 for pain and suffering;
- b) Payment of M5, 000.00 for contumelia;
- c) Payment of M10, 000.00 for loss of amenities of life;
- d) Payment of M160.00 for medical expenses;
- e) Interest at the rate of 18% per annum from the date of judgment;
- f) Costs of suit.

N. MAJARA
JUDGE

For the plaintiff : Mr. Likhoeli

For the defendant : No appearance