

CIV/T/135/2012

IN THE HIGH COURT OF LESOTHO

In the Matter Between:-

TEFELO MOSALA

PLAINTIFF

And

KHOTSO NTISA

1ST DEFENDANT

RAPELANG MOSALA

2ND DEFENDANT

JUDGMENT

Coram : Hon. N. Majara J

Date of hearing : 21st May 2014

Date of judgment : 13th 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 travel and medical expenses.

ANNOTATIONS

BOOKS

1. Neethling, Potgieter & Visser; Law of Delict; 5th Edition

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. Mohlaba & Others v Commander Royal Lesotho Defence Force & Another LAC (1995-99) 184

[1] This is an action for damages against the defendants on the basis of an alleged assault on the plaintiff on the 26th December 2011. The defendants were served with the summons and entered a notice of appearance to defend followed by a request for further particulars. The plaintiff duly filed further particulars and served the defendant with a

notice to plea. The defendants did not file their plea and the matter was set down for hearing for default judgment.

[2] On the date of hearing the plaintiff took the stand and testified that the defendants who are his step father and maternal uncle respectively, wrongfully and unlawfully assaulted him by hitting him with sticks, punching him with fists and pelting him with stones until he lost consciousness following a family misunderstanding.

[3] It was his testimony that he sustained bodily injuries as a result of the said assault. The plaintiff also tendered in a doctor's medical report which shows that he sustained a deep wound at the junction between the parietal bones caused by a sharp instrument. It further shows that the force used was considerate, the degree of injury to life moderate, degree of short-term disability moderate and that there is no degree of long term disability. The report also reveals that the plaintiff was admitted in hospital for one day, the 26th November 2011 and was discharged the next day.

[4] His claim for the resultant damages was broken down as follows; payment of the sum of M200 00.00 for pain and suffering; M50 000.00 for contumelia; M300.00 for medical expenses; M260.00 for travelling expenses; M50 000.00 for general damages as well as interest at the rate of 18.5% and costs of suit.

The Law on Damages

[5] It is a well established principle that while 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 principle has been reiterated in amongst others the case of **Commander LDF & Others v Letsie**.²

[6] In the present case, the evidence of the plaintiff stands unchallenged and the only issue for determination is that of the amount of damages as broken down under each head. In order to determine a fair amount for pain and suffering, the Court is enjoined to take into account the evidence of the plaintiff. However, it must also take into consideration other factors such as past awards in comparable cases and the economic situation of Lesotho to mention but a few, and to 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.

[7] Thus, in respect of a 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

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

² C of A (CIV) 28/2009 (unreported)

enriching the plaintiff. Thus in 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 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'*.

[8] For these reasons, it would be prudent *in casu* to take into account the amounts that were awarded by the Court of Appeal in previous cases albeit the assaults were of a more severe nature such as in the case of **Mohlaba & Others v Commander Royal Lesotho Defence Force & Another**,⁴ in which the plaintiffs were awarded the amounts of M75 000.00 and M25 000.00 respectively as damages for unlawful detention and assault. However, it is also important to bear in mind that the said case was decided more than 14 years ago which aspect should be factored into the assessment of what would be a fair and just award *in casu*.

[9] Bearing all those factors in mind, it is my view that unlike in the Mohlaba case, the present plaintiff was assaulted at home and not in detention and for a considerably shorter period, therefore it is my view that the amount of M50 000. 00 would be essentially fair to him and the

³ (EL 352/02) (2005) ZAECHC 49

⁴ LAC (1995 -99) 184 at 192 B-C

defendant for pain and suffering whereas the amounts of M2 000.00 and M 3 000.00 would suffice for contumelia and general damages respectively.

[10] As far as patrimonial loss is concerned it is usually easier to arrive at a fair amount because it is based on a liquid claim, notwithstanding how high or little the amount might seem. *In casu*, the plaintiff relied on his testimony for his claim for medical expenses without tendering any documentary evidence such as receipts and the same goes for the claim for travelling expenses.

[11] However, since his evidence remains unchallenged that he was indeed assaulted and admitted in hospital as a result, it is clear that he has to be compensated for the loss necessitated by the incident. In my view, though unsupported with any other proof, the amounts of M300.00 for medical expenses and M360.00 for transport hire from his home Mazenod to Roma respectively seems reasonable and I can find no reason why I should not grant them as prayed.

[12] On the basis of the above reasons I accordingly make the following order:-

Default judgment is entered in favour of the plaintiff as follows:-

- a) Payment of the sum of M50 000.00 for pain and suffering;
- b) Payment of the sum of M2 000.00 for contumelia;
- c) Payment of the sum of M300.00 for being medical expenses;

- d) Payment of sum of M360.00 for travelling expenses;
- e) Payment of the amount of M3 000.00 for general damages;
- f) Interest on the total amount at the rate of 18.5% from the date of judgment;
- g) Costs of suit.

N. MAJARA
JUDGE

For the plaintiff : Mr. Q. Letsika

For the defendant : No Appearance