

SMART BANDA v WALES SIAME (1988 - 1989) Z.R. 81 (S.C.)

SUPREME COURT
NGULUBE, D.C.J., GARDNER, J.S., AND BWEUPE, AG. J.S.
7TH DECEMBER 1988
(S.C.Z. JUDGMENT NO.30 OF 1988)

Flynote

Damages - Devaluation of kwacha - Effect on awards.
Damages - Pain and suffering - Appropriate rate.

Headnote

The respondent suffered injuries to his right leg as the result of a road traffic accident. He was admitted to hospital for a remedial operation on the leg. He returned to hospital later for final treatment. He endured pain and suffering for twenty weeks. There was no permanent injury. The trial Judge awarded K8,000 for pain and suffering. The appellant appealed on the ground the sum was inordinately high.

Held:

- (i) Awards for damages must take the devaluation of the kwacha into account. It is not a matter of multiplying previous awards by the amount to which the kwacha has been devalued. Courts must take into account the general cost of living and the real value that will be received.
- (ii) The appropriate award for pain and suffering at the time of trial should be K200 per week.

For the appellant: Mr Nyembele, Ellis and Co.
For the respondent R. Nachula, Kitwe Chambers.

Judgment

GARDNER, J.S.: delivered the judgment of the Court:

This is an appeal against an order of damages made by a High Court Commissioner, in connection with injuries suffered by the respondent in a road traffic accident.

There was evidence that as a result of the road traffic accident, the respondent suffered injuries to his right leg. He went into hospital on one occasion when a remedial operation was carried out to his leg. Thereafter, some months later he had to return to the hospital for final treatment. There was no evidence that he suffered any permanent injury.

The learned High Court Commissioner having heard the evidence, made an award for pain and suffering in the sum of K8,000-00. Mr Nyembele on behalf of the appellant, has argued that that award was inordinately high.

It is a settled principle of this Court that we will not interfere with any award of damages unless we find it to be totally inadequate, or, in the words of Mr *Nyembele*, 'inordinately high', or unless the

trial Court has misdirected itself. In this case we accept from the evidence, and this has been agreed by Mr *Nyembele*, that the respondent suffered pain and suffering for a total of twenty weeks, for which he must be compensated.

The general awards for pain and suffering in the United Kingdom at the time of the trial of this action, which was in April 1985, was in the region of 80-00 pounds sterling per week. The principles which this Court

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has followed are that, whilst we take notice of awards of damages made in the United Kingdom, we do not automatically multiply such awards by the exact equivalent of the devalued kwacha. Following those principles and in accordance with the practice of the High Court and this Court in the past, we take the view that an appropriate award at the time of the trial should be K200-00 per week. The resulting sum, therefore, which should have been awarded to the respondent for his twenty weeks' pain and suffering should be K4,000-00. When we compare this with the award made by the learned Commissioner, we find, that, in our view, that award was inordinately high and should be interfered with by this Court.

We would like to give guidance to counsel so that claims for damages may be more easily settled between counsel in the future. Since 5th October 1985 there has been a devaluation of the kwacha, and future awards for pain and suffering must take that devaluation into account. However, as we have emphasised before in this Court, this is not a simple matter of multiplying previous awards by the amount to which the kwacha has been devalued. Courts must take into account the general cost of living in this country and the real value that will be received. In calculating damages in future, therefore, awards should be less than what would result from a simple multiplication of previous awards as compared with the devalued kwacha.

This appeal is allowed and the award of K8,000-00 damages to the respondent is set aside. In its place we substitute an award in the sum of K4,000-00 with interest thereon at the rate of 10.5% from the date of the accident until the date of this judgment. Costs will follow the event and will be awarded to the appellant.

Appeal allowed.
