

**ADMINISTRATOR OF THE LATE AMOS SINYA AND ZAMBIA STATE
INSURANCE CORPORATION LTD. v. WILLIAM A. MANDA (1990 - 1992) Z.R.
3 (S.C.)**

SUPREME COURT
NGULUBE D.C.J., GARDNER AND SAKALA, J.J.S.
1ST MARCH, 1990
(S.C.Z. JUDGMENT NO. 3 OF 1990)

Flynote

Damages - Pain and suffering - Appropriate weekly rate.

Headnote

The respondent suffered serious injuries to his leg that resulted in almost total loss of use. He lost some teeth and his ribs were fractured. He was in hospital a total of 70 weeks. The deputy registrar assessed the award of damages, taking into account separate assessments for pain and suffering, at a level which on appeal the respondent conceded was high.

The appellant appealed.

Held:

Taking into account the rate of exchange and inflation as at the date of appeal, awards for pain and suffering in similar circumstances should be at the weekly rate of K300.00.

Cases referred to:

- (1) Mary Patricia Soko v. The Attorney-General [1988-89] Z.R. 158.
- (2) Ridgeway Hotel v. Ocaya (1987) Z.R. 53.

For the appellant: M.M. Mundashi, Zambia State Insurance Corporation.

For the respondent: H.H. Ndhlovu of H. H. Ndhlovu and Co.

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Judgment

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

This is an appeal from a decision of the deputy registrar of the High Court awarding damages in the sum of K306 000 in respect of personal injuries suffered in an accident.

The facts of the case were that the respondent suffered serious injuries to his leg. He lost some teeth and his ribs were fractured. He spent a number of weeks in hospital in the University Teaching Hospital in Lusaka and a hospital in the United Kingdom. The total number of weeks he spent in the hospital was 70.

In making his award the deputy registrar referred to some English cases and quite rightly said that when taking into account the value of the kwacha as compared with the English pound one should multiply the kwacha in accordance with the present rate of exchange relating to the pound. However, when he made this award he did

not take into account the case which this Court has decided recently.

Mr *Mundashi* has argued that the award at K306 000 was too high. Mr *Ndhlovu* has argued that, although he does not support that high award, a figure in the region of K150 000 in this case would be appropriate.

When considering the amount that should be awarded we must immediately say that the figure of K306 000 was so high that this Court is entitled to interfere and we are obliged to do so. When considering what figure we should award we bear in mind awards which have been made in the past by this Court, and we would refer to the case of *Mary Patricia Soko v The Attorney-General* [1]. There we awarded the highest award that this Court has ever awarded for personal injuries, that is K200 000 to a young girl who was blinded in both eyes and suffered brain damage as well. We have considered the English authorities and the nearest that we can find approximating to the injuries suffered by the respondent in this case, that is almost total loss of the use of his leg, was a case in 1982, in which general damages awarded were K17 500. As we said in the case of *Ridgeway Hotel v Ocaya* [2], when comparing awards made in England and converting those figures of English pounds into kwacha this Court takes a realistic view. We do not multiply by the exact exchange rate of the pound to the kwacha. In this particular case we are unable to calculate the award for pain and suffering separately but we take this opportunity to comment that in our view, taking into account the rate of exchange and inflation as at today's date, awards for pain and suffering of this nature should be at the rate of K300.00 per week. However, we would emphasise that such a calculation does not apply to this case because the appropriate rate at the date of the High Court award should apply, as we said in the *Ridgeway Hotel* case and elsewhere.

In this case, although we do not itemise and award for pain and suffering separately, we have borne it in mind. We allow this appeal and set aside the award made by the deputy registrar. In its place we award a total sum of K90 000 to the respondent. Costs of this appeal to the appellant.

Appeal allowed.