

IN THE HIGH COURT OF SWAZILAND

CIV. CASE NO.1064/91

In the matter between:

REUBEN MLOTSHWA
VS
THE ATTORNEY GENERAL

CORAM
FOR THE PLAINTIFF

Hull, C.J.
Mr. Mamba

Judgment
(21/6/93)

On 28th October 1991, the plaintiff commenced an action in the High Court as father and natural guardian of Sonnyboy Mlotshwa claiming general damages for confinement, pain and suffering, permanent disfigurement and loss of amenities in the sum of E35 000 and estimated future medical expenses of E5000.

The claim arose from an incident on 1st January 1991 during which the son was shot in the leg by unknown members of the Royal Swaziland Police.

The particulars of claim averred that due notice had been given under the Limitation of Legal Proceedings against the Government Act 1972 and that the prescribed period had elapsed.

On 12th October 1992, the plaintiff filed a notice of intention to amend the claim to allege, inter alia, that as a result of the injuries, the son's right femur had been

shortened, and that the right leg was two centimetres shorter than the left leg, causing him to walk with a limp, and to suffer permanent pain in the right leg.

He also gave notice to amend the amount of the claim to the following:

- (a) Estimated future medical expenses : E18 000
- (b) Medical costs, hospital expenses and damages for confinement : E15 000
- (c) Permanent pain and suffering : E20,000
- (d) Permanent disfigurement and permanent loss of amenities : E30 000.

On 4th November 1992, the plaintiff filed amended particulars of claim.

The Government has taken no steps in the proceedings.

On 13th January 1993, the plaintiff filed a notice of set down for judgment in default.

At the hearing, Dr. Mauro Neri, the Head of the Surgical Department at the Mbabane Hospital, was called to give evidence on behalf of the plaintiff. He testified that he had examined the son on 8th June 1992. His report, dated 25th June 1992, was produced as Exhibit "A". He confirmed that the injury had resulted in a shortening of the right leg of some two centimetres, and said that in his opinion the injury had resulted in a loss of use of the limb amounting to almost 60 per cent. He concluded that the son would suffer chronic pain in the future, which would get worse with the passing of time. He also said, in his report, that the disfigurement was very noticeable and that the handicap would make it difficult for him to engage in sports. Unless corrected, it was his opinion that the consequences of the injury would be permanent.

In testimony, he said that the possibility of lengthening the leg, i.e. to correct the impairment, was not certain, and would probably cost in the order of E18 000.

The son also have vive voce evidence. He confirmed the facts alleged in the amended particulars of the claim, and said that he had been a first division soccer player. He gave his age, at the time of hearing, as 21 years.

As to the question of damages, the evidence before me is to the effect that medical expenses to date have cost E15 000 and that future treatment is likely to cost E18 000.

I propose to consider general damages for pain and suffering, disfigurement and loss of amenities globally. The estimated future medical expenses, as I understand Dr. Neri's evidence, relate to the cost of further treatment to correct the disability. In principle, therefore, I have regard to the need to avoid overlapping of elements of damages: see Amos Sibusiso Ndlovu v. Swaziland Royal Insurance Corporation Civil Case No. 136/87 per Chief Justice Hannah at pages 19 and 20.. The prognosis for successful future corrective surgery is however uncertain. The plaintiff's son is in my view entitled to have the opportunity to obtain further treatment; on the other hand, because of the uncertainty in it, I do not think that it is appropriate to take that into account to any extent in assessing general damages.

Counsel referred to Ndlovu (Supra) and also to Yeko v. S.A. Eagle Insurance Company Limited, a decision of the Ciskei Supreme Court, set out at page E 3 - 1 of Volume IV of The Quantum of Damages in Bodily Injury and Fatal Injury by Corbett and Honey.

Ndlovu involved very severe injuries sustained in 1985 by a man who, at the date of judgment in 1989, was twenty-six. As a result of that accident, he lost both legs.

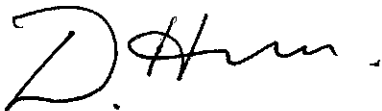
The learned Chief Justice awarded E80 000 for pain suffered and loss of amenity.

Yeko was a case involving injuries that were comparable, fairly closely, to the present case. The plaintiff was 34 at the time of the accident and 37 at trial in 1986. He received E12 000 general damages.

The plaintiff's son here is a good deal younger. Taking into account that fact and the passage of time, it appears to me that a suitable allowance for general damages, globally, would be E38 000.

I give judgment accordingly for the plaintiff in the following amounts, (together with costs):

(a) For medical costs, hospital expenses and confinement	E15 000
(b) For estimated future medical costs	E18 000
(c) For general damages (all heads)	E38 000
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DAVID HULL
CHIEF JUSTICE