

IN THE HIGH COURT OF SWAZILAND

DAVID ALFONSO SANTOS

Plaintiff

And

ATTORNEY GENERAL

Defendant

Civil Case No. 1464/95

Coram

For the Plaintiff

For the Defendant

S.B. MAPHALALA-J MR.

T. MLANGENI MISS H.

NDZIMANDZE (attached

to the Attorney General

Chambers)

JUDGMEN

T 23

March 2007

[1] Plaintiff has issued a combined summons against the Defendant for alleged assault by members of the Royal Swaziland Police by shooting him on the left hand and the chest. As a result of this assault the Plaintiff claims a sum of E650, 000-00 made out as follows:

(a)	Pain and suffering	E100, 000-00
(b)	Loss of earnings	E 50, 000-00
(c)	Loss of future earnings	E200, 000-00
(d)	Medical costs, present and future	E100, 000-00
(e)	Permanent disability	E200, 000-00

[2] The Plaintiff has abandoned his claim for loss of earning, past and future. The issue to be decided by the court is that of general damages. When the matter was called on the 13th March 2007, the parties informed the court that liability is admitted by the Defendant and that the only issue for decision by the court is the *quantum* of damages thereof.

[3] Before proceeding with the issue at hand that of the *quantum* of damages I find it necessary to sketch briefly the factual issues of how the claim came about. The Plaintiff in his Particulars of Claim avers that on or about the 20th November 1994, and at Ngwane Park Township, next to Ludvwala Shopping Complex, he was wrongfully and unlawfully assaulted by members of the Royal Swaziland Police by shooting him on the left hand and the chest. As a result of this assault Plaintiffs left arm and chest were severely injured. The said members of the Royal Swaziland Police were at the time of the assault based at Manzini Police Station and were at all material times acting within the scope and in the course of their duties as police officers in the service of the Government of Swaziland. As a result of the assault Plaintiff was hospitalized at Raleigh Firkin Memorial Hospital, Manzini where he underwent treatment. As a result of the afore-going, Plaintiff suffered damages as stated in paragraph [1] *supra*.

[4] The defence although abandoned is that Defendants deny liability in this case in that when Plaintiff was shot the police were effecting an arrest and the Plaintiff was running away. However, I must state that the defence by the Defendant does not presently concern the court as liability is admitted by the Defendant.

[5] Assessment of general damages is never an easy task because it has to take into account the peculiar circumstances of each case. The formula may be the same, but the figure it produces will always vary from case to case. To a large extent the Judge has a measure of discretion, taking into account what he considers fair in all the circumstances of the case, (see *Sandler vs Wholesale Coal Suppliers Ltd* 1941 A.D. 194 at 199 quoted with approval by Nicholas JA in *Southern Life Insurance Association vs Bailey* NO. 1984 (1) S.A. 119 paragraph 11.

[6] Further the damages that a Plaintiff chooses to sue for are a matter of his own decision and he must produce evidence to substantiate the same, and if the Plaintiff fails or omits to lead evidence to prove his claim for damages he should not be awarded any damages whatsoever, (see *Klopper vs Maloko* 1930 TPD 860, *Lazarus vs Rand Steam Laundries (Pty) Ltd* 1952 (3) S.A. 49, *Rangeland Ltd vs Henerson* 1955 (3) S.A. 134 and that of *Odendaaltrust Goldeneral Investments and Extensions Ltd vs Naunde* NO 1958 (1) S.A. 381.

[7] See also the cases of *Stewart Shadrack Dlamini vs Chief Sibengwane Ndzimandze and seven (7) others - Civil case No. 693/1995 (High Court of Swaziland)* and the South African case of *Minister of Defence and another vs Jackson* 1991 (4) S.A. 23.

[8] I wish to further relate a very useful *dictum* in the South African case of *Sigournay*

vs *Guill Banks* 1960 (2) S.A. 552 at 572 where the learned Judge Schreiner JA stated the two objective considerations that act as a framework for assessment, thusly:

- a) The collective judicial consciousness of a particular country harbours a notion of scale of compensation appropriate to the socio economic status of that country; and
- b) Within this scale, justice requires that like injuries receive like compensation. This implies that regard should had to previous awards in similar cases (with due allowance for the declining value of money) to maintain continuity.

[9] In the present case *Mr. Mlangeni* for the Plaintiff filed very comprehensive Heads of Argument and so is *Miss Ndzimandze* for the Defendant.

[10] If the present case had come before court in the period 1985 -88 when the case of *Marlin Johnson vs S.R.I.C - Civil Case No. 436/1985 (unreported)* and that of *Lyrists, Bruna and others vs S.R.I.C. 1987 - 95 (Vol. 1) S.L.R. 313* were decided, a more appropriate award for pain and suffering, permanent disability, etcetera would have been around E35, 000-00 taking inflation into account, the present value of E35, 000-00 in 1988 would be approximately be E250, 000-00 (see also in this regard *The Quantum Yearbook, 2007* by Dr. Robert Koch page 31 - 34). In my considered view under this head I would fix damages at E220, 000-00.

[11] Turning to the issue of special damages the *quantum* of this type of damages is determined by evidence. Expert evidence offers a concrete foundation for purposes of calculating *quantum*. In *casu* three medical reports in respect of the Plaintiff have been submitted by consent. The report of Dr. Shilubane, addressed to Royal Swaziland Police Headquarters is very explicit about Plaintiffs "chest pains for the rest of his life" and prescribes medication at E800-00 per month, for the rest of his life.

[12] Plaintiff offered the following formula to
of Birth- 1/01/1966 Life expectancy Balance
of years According to Mr. Mlangeni less 15
per cent contingency due to hazards of life
Not balance of years 29.5 years x 12 months
per 354 months 354 months x E800-00 per m

the court: -40 years 75 years years

5.25 years 29.75 years

E283,200-00

[13] In my view I would award a sum of E230, 000-00 in respect of this head of damages.

[14] In the result, for the afore-going reasons I would award a sum of E220, 000-00 in respect of general damages and E230, 000-00 in respect of special damages. The Plaintiff is also awarded costs of suit.

.B. MAPHALALA JUDGE