

**HH 150-03
HC 11044/98
PETER CHIRINDA
versus
THE MINISTER OF HOME AFFAIRS
and
THE COMMISSIONER OF POLICE**

**HIGH COURT OF ZIMBABWE
HUNGWE J,
HARARE, 17 August and 17 September, 2003**

**Mr *Chimhini*, for the plaintiff
Ms *Gurure*, for the defendant**

HUNGWE J: On 20 January 1998 the plaintiff was in a group of people walking home from Lever Brothers complex where he was employed as a laboratory technician. It has been indicated that they could not perform normal duties. As they approached Glen View residential area, they noticed there was a commotion. Riot police in full combat kit were everywhere. There was a crowd ahead. They took another route to avoid that crowd. Yet another crowd appeared. They then took a road leading directly to his residence. Suddenly a shot was fired. And yet another shot. He fell down. He felt numb. He lay there until a good Samaritan picked him up and conveyed him to a maternity home in 14th Avenue, his home street. Police were telephoned. They did not come. An ambulance service indicated it could not venture into that area due to the volatile situation prevailing. A private motorist conveyed him to Harare Central Hospital some hours later. By then he was in excruciating pain. Ordinary painkillers could not contain his pain. He was sweating profusely.

Doctors there conducted a series tests and scans. He learnt in horror that a bullet that struck him in the navel area had lodged in his spinal cord having completely severed it. He had lost all sensation from T12 level. He has lost his bladder and stool control. He feels no sensation in the lower limbs.

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In court the plaintiff gave a graphic description of the resultant disability. For three weeks he was bedridden at Harare Hospital whilst the doctors drained the blood and other fluids that had settled in his abdomen. He developed huge bedsores in that area he could not feel or see. He lost any sensation to obey nature including erectile reflex. He has to manually evacuate his bowels. Needless to say he cannot walk. He is wheelchair bound. The physiotherapeutical treatments he gets cannot restore his normal faculties

That he lost. His fiancée deserted him on learning from the doctors the nature and extent of his injuries. He has no social life to speak of. His landlord asked him to leave the rented accommodation, as they could not provide an assistant to help him get around. At the time of trial he was doing second year at Danhiko. He failed to get a placement for an attachment due to his condition as he cannot access high-rise buildings. He is generally shunned by society.

Doctor Madzima and Dr Tapfumaneyi described the extent of his disability as 100%. Because of the permanent need to use a catheter, he is predisposed to urinary tract infections. He is likely to develop renal failure due to the dysfunction of the urinary tract. The bedsores can lead to septicemia which may in all probability lead to death.

This is what could be quantified.

Psychologically the plaintiff, according to Doctor Madzima, had developed suicidal tendencies when he was admitted at Ruwa Rehabilitation Centre.

The plaintiff seeks \$1,5m as damages for injury, pain and suffering, and \$,5m loss of amenities of life disfigurement, permanent disability and discomfort.

The only issue for decision is what sum is the plaintiff entitled to as damages.

From the evidence of the plaintiff, it is clear that the Police officers who inflicted these horrible injuries on the plaintiff were out to put down public disturbances. Initially the defendants had claimed that their forces were armed with only tear smoke canisters and baton sticks. It clearly was a bogus claim because no report of anyone else having fired a gun was made to police on that date in that area. It could only have been the police themselves.

The police are charged with the task of maintaining peace, law and order. They have a duty to discharge their functions only in terms of the law. That implies a duty to do that which they have to do with due regard to the safety and sanity of the very citizens that they intend to protect. Riots are quelled for the public good. If, however in doing so the police employ methods which put the life of members of the public at risk, that action might actually provoke a riotous atmosphere.

There is no doubt that the shooting by the police was unlawful. It induces in any right thinking citizen a sense of anger and outrage. The result of that unlawful act was horrendous. Plaintiff is 100% disabled. His life has lost any meaning to him. No amount of money will truly compensate his lost health.

In determining the question of damages in a case of this nature my attention was drawn to the case of *Biti v Minister of State Security* 1999 (1) ZLR 165(S) and *Minister of Defence v Jackson* 1990 (2) ZLR 7-8.

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There is no doubt that plaintiff suffered excruciating pain both at the time and subsequently. He gave a graphic description of that pain. There is no doubt either that he has lost his amenities of life, is now disabled and suffers permanent discomfort. He is entitled to an award under this separate head. As for the special damages he claimed, nothing was said in opposition to the claims. I take them as proved.

In the premises there will be an order for the plaintiff against the defendants jointly and severally, the one paying the other to be absolved,

- (a) payment of the sum of \$1 500 000,00 for the injury, pain and suffering.**
- (b) Payment of the sum of \$1 500,000,00 for loss of amenities for life, disablement and discomfort;**
- (c) Payment of the sum of \$2 000,00 for medical expenses'**
- (d) Payment of \$64 000,00 for loss of income since January, 1998'**
- (e) Payment of interest *temporae morae* and costs of suit.**

***Zimbabwe Human Rights NGO Forum* , legal practitioners for plaintiff
Office of the Attorney-General , legal practitioners for defendants**