

ASSAULT

If A makes an unjustifiable attack upon B, B is entitled to sue A for damages for the pain and suffering and ~~xxx~~ insult inflicted upon himself. In assessing the claim for damages "the trial court must take into ~~æ~~ consideration the nature and extent of the wounds inflicted, the resulting nature and duration of medical treatment received by plaintiff, the weapon used in the assault, the status of the parties, the occasion selected for and the motive behind the assault, whether there was any provocation or not, whether the defendant ~~fx~~ has expressed regret and offered to compensate the plaintiff for damages suffered, and all other circumstances which may aggravate or ~~migi~~ mitigate the wrong done to the plaintiff. If the trial court bearing all these points in mind assesses the damages at a certain figure which is not manifestly unreasonable, the Appeal Court will not lightly interfere with its assessment". (Ngqola Mhlekwa vs Stanford Motiwane, 1943 N.A.C.(C&O).

If ~~x~~ A makes an unjustifiable attack upon B, the fact that B retaliated by striking ~~B~~ A after he himself ~~wax~~ has been struck does not mean that the parties are in pari delicto and does not disentitle B to his damages for wrongful assault (S.Ngqondi vs G.Gxana, 1936 N.A.C.(C&O).

DEFINITION

"The wrong of assault consists in the intentional application of force to the person of another without lawful justification. To constitute an assault it is not necessary that physical injury should be inflicted, nor is it necessary that there should be physical contact with the body of the person assaulted. It is sufficient that the acts or gestures of the one party should put the other in reasonable fears of immediate violence".

"An assault may be justified on various grounds. It may, for example, be justified on the ground that the plaintiff consented to the act complained of, or that the act was committed in the reasonable exer-



cise of parental or quasi-parental authority, or that it was committed in legitimate defence of person or property". (Mckerron "Law of Delict p.146-147)½

Effect of Provocation in claim for damages for Assault

In Kimberley Msimang vs Soloani Kutwena & Mpakanyana Kutwena, 1941 N.A.C.(C&O) the Plaintiff sued the Defendant for £54 as damages for assault. The Defendant pleaded provocation and offered £10 in full settlement. The Native Commissioner entered judgment for £10 whereupon the Plaintiff appealed against the judgment. In arriving at a decision the Native Commissioner relied on the following decisions of the Native Appeal Court:- (i) Anoch Sogodi & Anor vs Moggadaza, 1935 N.A.C.(C&O) in which the Defendant counterclaimed for £50 for assault in an action in which he (the Defendant) was ~~sued~~ sued for adultery. The Defendant was awarded only £5 as damages for the assault on the ground that he had "largely to thank himself for his injuries in the circumstances disclosed", having been caught in the act of adultery with Plaintiff's wife. (ii) Sisi Bida vs Wilson Njomane, 1936 N.A.C.(C&O) in which Plaintiff was awarded £50 by the Native Commissioner for an assault involving the loss of a finger. The Native Appeal Court, on appeal, altered the judgment to one for the Defendant on the ground that the Defendant acted in justifiable self-defence.

On the authority of these decisions the Native Commissioner in Msimang's case came to the conclusion that in an action for damages for assault the presence of the element of provocation must affect the question of damages. The Native Appeal Court held that where provocation is proved, it goes in mitigation of damages. It is not sufficient, however, merely to allege, provocation - it is only where provocation is actually proved to the satisfaction of the Court that it will affect the issue.