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IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NO.520 OF 1988

BETWEEN:

STANISLAUS LINDANI ..... PLAINTIFF

- and -

REVEREND FATHER MLENGA ..... 1ST DEFENDANT

- and -

ST. STANISLAUS PREPARATORY SEMINARY ..... 2ND DEFENDANT

CORAM:

MWAUNGULU, REGISTRAR

Mwafulirwa, Counsel for the Plaintiff  
Zimba (Miss), Counsel for the Defendant

O R D E R

The plaintiff in this action sued the defendants for damages for personal injuries he sustained on the 15th of May, 1987. The plaintiff, a student at the second defendant's Seminary, among other things, worked at a grinding mill for the school. On the 15th of May, 1988, as he was working, due to some defect, the grinding motor opened. It hit the plaintiff on the left arm, injuring the third and fourth fingers. The third finger had to be amputated. The fourth finger was not amputated. It, however, has shortened. It is stiff. It cannot bend.

The plaintiff was first treated at Zomba General Hospital. He was in hospital for three weeks. He had to go back to school. He, however, had to go to Zomba General Hospital as an out-patient. He was asked to go to Queen Elizabeth Central Hospital a few days later. According to the plaintiff, he goes to hospital from time to time. He could not produce evidence of this though.

The plaintiff is still in school. He is now in form four. He is left-handed. While in school he was playing volley ball. He does not play any more. He has had to learn to use his right hand to write.

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Now he complains that the arm still pains. He feels a lot of pain when stretching his hand. Sometimes the arm remains stretched or bent for a very long time until it relaxes.

This is a straight case of assessment of damages for personal injuries. The plaintiff is claiming for general damages. Courts award general damages in personal injuries to compensate the loss suffered from the injury. The Court will compensate the plaintiff for the non pecuniary aspect of the injury, pain, suffering and loss of amenities. For these, because it is difficult to evaluate them in monetary terms, Courts seek assistance, where this is possible, from previous awards that are comparable. The awards, however, must reflect change in the value of money. Courts also compensate for financial losses, past, current, or future, where they arise. It is important to re-state these principles because of the submissions made by both Counsel in this case.

Both Counsel rely on the case of Bisiketi v. Ruo Tea Estates Ltd. Civil Cause No.95 of 1986. They rely on it for divergent reasons. Both of them, however, referred to it because it appears to be the only case dealing with loss of fingers.

The plaintiff relies on it only to disapprove of the decision. The defendant relies on it as a reason why the award in this particular case should not exceed the award made by the Judge. There are considerable problems with the decision that it makes it unsafe to rely on it to guide this Court. The total statement on the assessment of damages is contained in a very short paragraph at the end which I should reproduce:

"I now come to damages. The plaintiff has suffered permanent disability, in that he lost three fingers. This is a serious handicap for a man who is involved in manual work. I assess damages at K4,000.00 ....."

The plaintiff's contention is that this award seemed not to have taken into account damages for loss of earning capacity or future earnings. The defendant contends that the judge did take this into account because he said that the plaintiff was involved in manual work. This is where the problem is.

When interpreting statements in a judgment the Court does not look at them strictly as it does a statute. However, in that case, as is normal, the Judge should have awarded a particular sum for non pecuniary losses, pain, suffering and loss of amenities. He should also have awarded, if he felt the case required it, a separate sum for pecuniary losses, loss of earnings or earning capacity. It is difficult from this

paragraph to know whether the K4,000.00 was really an award for loss of earnings or pain and suffering. If this was an award for loss of earning capacity, the Judge did not award for pain, suffering and loss of amenities. The fact that the Judge has said that the plaintiff was involved in manual work seems to countenance the view that probably he was looking at loss of earning capacity. One cannot be sure, however. It is important, however, that in each case where there is the possibility of loss of future earnings that the Judge should address that fact when awarding general damages for personal injury.

In Hemsworth v. Dunlop Rubber Co. Ltd. (1971) C.A. No.376 reported at paragraph 9-951 in the 1975 Edition of Kemp & Kemp on Quantum of Damages the trial Judge overlooked this fact. Lord Justice Roskill in the Court of Appeal said:

"I cannot help thinking that if the learned Judge had meant that he would have said that. But he did not say that. One is therefore left with no finding at all in relation to loss of earnings. Indeed Mr. Hytner was quick to point out that on Mr. Maguire's explanation of that passage in the learned Judge's judgment the Judge had failed to deal at all with the question of loss of earnings, at least in express terms. I therefore feel that in this Court we must look at this matter de novo and consider the evidence afresh. ....As I read the learned Judge's judgment I think he misunderstood this evidence and therefore failed to deal satisfactorily with the question of loss of earnings. He also failed to deal satisfactorily with the effect of the plaintiff's disability upon his position in the present and future labour market."

It follows, therefore, that, in any case and in my view, the case of Bisiketi v. Ruo Tea Estates Ltd. is similarly constituted, where there will be financial loss complete, where for example the injury has caused total loss of earnings, or partial, where there has only been a reduction of the earnings or in the case where employment has not yet commenced but the injury will cause some loss to the plaintiff in the labour market, the Court must regard the prospect of such a loss and award the plaintiff accordingly. In Bisiketi v. Ruo Tea Estates Ltd., the Judge did not seriously consider this aspect. If he did, he did so tangentially. It is difficult to rely on the award.

In this case the plaintiff suffered severe injuries from the accident. Later the third finger had to be amputated. He was in hospital for three weeks. For a few days thereafter he

had to attend hospital as an out-patient. He feels a bit of pain in the arm when using the left hand. He went through some considerable pain. He has now switched the use of his left hand to the right hand. He does write very well using the right hand but probably that is all. He cannot play volley-ball which he used to do. It must also be accepted that unless you are ambidextrous it does not come easy to switch from left-hand sidedness to right-hand sidedness. The plaintiff will, therefore, not be able to enjoy those pursuits of leisure which he would have had as a fully left-handed person, more so with an ineffective left-hand. I would award the sum of K7,000.00 for pain and suffering and loss of amenities.

I also have to consider the prospects of loss of future earnings. The plaintiff has not started work yet. He is in form four. Mr. Mwafulirwa, Counsel for the plaintiff, says that his client has lost the opportunity to develop other abilities, academic or otherwise, that the plaintiff's wholeness would have brought. There is that possibility. In my view, however, it is flippant. In that sense I would think Miss Zimba, appearing for the defendant, is right. The Court has, however, to look at the prospects of the disadvantage the plaintiff might have in future if he was thrown in the labour market. If there is a substantial risk that this will happen, the Court must award damages to cover such prospect. (See Clare v. Laberth Southwark and Lesham Area Health Authority (February 23, 1978) Par Donaldson, J. reported at paragraph 9-210 in Kemp & Kemp on Quantum of Damages). In this case it could be said that the plaintiff could find a sedentary job which may not really require the physical use of both arms or even one arm. The plaintiff, however, would be disadvantaged to find a job of a sedentary nature where the physical use of the arms is required. In those circumstances where even a sedentary job would be difficult to find the only option would be for a menial job. In that category the plaintiff will be disadvantaged. There is, therefore, a risk that the plaintiff will be disadvantaged in the labour market. How much should be awarded, however, is guided by the statement of Lord Justice Stephenson in Moeliker v. Reyrolle and Co. Ltd. (1977) 1 All E.R. page 19:

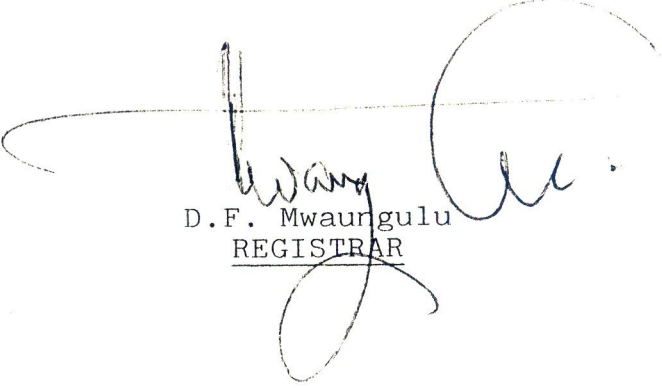
"The extent of each risk varies with the circumstance of every case. If (as will be rare) both are negligible and fanciful (I avoid 'speculative' because this head of damages can really be nothing else), no award should be made: .....If one or both are real or substantial, but neither is serious, the award should not be a token or derisory award, but should generally be hundreds of pounds: .....The risk of a plaintiff's falling out of his present job may be serious or slight, and so may

be the risk of his losing much or little if he does fall out of it, because he may be expected to have little or much difficulty in getting equally or less well paid work. If both risks are serious, the compensation should generally be in thousands of pounds. ...."

In this particular case I would think that although the plaintiff would be able to find some employment there is a whole possibility that his earnings would plummete. I award K2,000.00 for loss of earning capacity.

Parties can appeal to the Supreme Court against this order.

MADE in Chambers this 5th day of May, 1992, at Blantyre.



D.F. Mwaungulu  
REGISTRAR