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**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NO. 479 OF 2000**

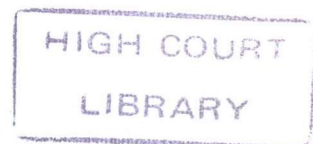
BETWEEN:

GEOFREY NAZIGAMBA ..... PLAINTIFF

AND

PLASTIC INDUSTRIES (MW) LIMITED..... DEFENDANT

**CORAM: POTANI, REGISTRAR**  
Msungama, Counsel for the Plaintiff



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**RULING**

On March 27, 2000, the plaintiff, Geoffrey Nazigamba, obtained an interlocutory default judgment against the defendant, Plastic Industries Limited. It was adjudged in that judgement that the defendant do pay the plaintiff damages to be assessed and costs of this action.

Subsequent to the default judgement, the plaintiff took out a notice of assessment of damages which was duly served on the defendants. The defendants, however, never appeared on the appointed day and no word was communicated to the court for the failure to make an appearance. The court, therefore, proceeded to hear the plaintiff's case in the absence of the defendant.

It was the plaintiff's undisputed evidence that while working for the defendant as a machine operator, he got injured on the right hand. As a result, he completely lost 3 fingers. He was taken to Queen Elizabeth Central Hospital where he was treated. He remained in hospital for 3 months. It was his evidence that at present, he finds it very difficult to use the right hand especially in relation to activities like eating, dressing himself and using tools like a hoe. He tendered a medical report, EXP1, describing the nature, extent and effects of the injuries she sustained.

The plaintiff also had it that although he is still working for the defendant, he is working in a different section doing quite a different type work from that of machine operator. While working as a machine operator, he used to work in shifts which enabled him to earn up to K1,200.00 in a month. He now does not work on shifts such that he only earns K700.00 in a month.

It was further the plaintiff's testimony that his employer paid him K14,437.65 as compensation for the injuries he sustained.

The law is settled that a person who suffers bodily injuries due to the negligence of another is entitled to recover damages from the tortfeasor. The aim of awarding damages is not to punish the party in the wrong but to compensate the injured party. Such damages are awarded under the major heads of pain and suffering, loss of amenities of life, loss of expectation of life, disfigurement, loss of earnings and loss earning capacity, among others. In order to arrive at an appropriate award, courts use experience and guidance afforded by decided cases of a comparable nature. See Wright v British Railway Board (1938) AC 1173.

Reverting to the present case, going by the nature and extent of the injury the plaintiff sustained, there is no doubt that he underwent considerable pain and suffering. No wonder, he was in hospital for 3 months. It is also self evident from the fact that the plaintiff lost 3 fingers that he can not effectively, if at all, use his right hand. As he testified, he finds it extremely difficult to use it whenever he has to eat and dress up, among others. There is, therefore, clear testimony of loss of amenities of life. Furthermore the loss of the 3 fingers has brought about some disfigurement to the plaintiff. It should also be recalled that according to the plaintiff, although he still works for the defendant, he is working in a different section thereby earning less than he used to when he was working as a machine operator. He has, therefore, suffered loss of earning capacity.

In arriving at the awards to be made, I take cognisance of the fact that the plaintiff was paid the sum of K14,437.05 by the defendant as compensation. I would hasten to say that considering the injuries the plaintiff sustained and their effects, that sum of money is very inadequate. In my view the following awards would be fair and adequate:

1	pain and suffering	K30,000.00
2.	loss of amenities of life	K40,000.00
3.	disfigurement	K45,000.00
4.	loss earning capacity	<u>K50,000.00</u>
		<b>K165,000.00</b>

The total award, therefore, comes to K105,000.00. The plaintiff is also awarded costs to be taxed if no agreed.

Made in chambers this day of November 29, 2001, at **BLANTYRE**.

  
**H S B Potani**  
**REGISTRAR**

