

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 2668 OF 2002**

BETWEEN:

YUNUSU MDEZAPLAINTIFF

AND

PRICE WORTH WHOLESALERSDEFENDANT

CORAM: KALEMBERA, DEPUTY REGISTRY

Mankhambera, Counsel for the Plaintiff

ORDER ON ASSESSMENT OF DAMAGES

On 29th October, 2002 the plaintiff obtained a default judgement against the defendant for general damages for personal injuries pain and suffering and loss of amenities. This is now an order on a notice of appointment for assessment of damages.

The defendant did not attend the hearing of the evidence on the assessment despite being served with the requisite notice. The court therefore proceeded to hear the evidence for assessment of damages in the absence of the defendants.

The plaintiff's evidence which is undisputed and unchallenged was that while working as a casual labourer in the warehouse of the defendant he was involved in an accident on 11th January, 2002 from which he sustained injuries. He testified that on the material day he was loading bags of salt into vehicles. There came an Iveco Truck and he was one of

those passing on the bags of salt from a stack to his colleagues on the truck. The stack of bags behind him fell on him and he was buried under the stack until his colleague came to his rescue and pulled him out. He sustained serious injuries. He had open dislocation metacarpal pharynges joint of left index finger, a sprain in the metacarpal phalange joint of left thumb with a number of metacarpal of thumbs (Exhibit 'YM1' medical report refers). The plaintiff further informed the court that he can no longer use two fingers and infact the left hand due to the injuries. He was admitted and operated on about two times. He still has general body pains. The only assistance he got from his employer, given at different times, totaled K1,800 and was later informed that he should stop going to the defendants premises.

In the matter at hand the court should determine an appropriate award of damages to compensate the plaintiff. The damages must in monetary terms be no more and no less than the plaintiffs actual loss. **M Livingstone vs. Rayyards Coal Company** (1880) 5 App. Cas 25 at p. 39 Lord Blackburn formulated the principle as follows:

“When any injury is to be compensated by damages, in setting the sum of money to be given for Damages you should as nearly as possible, get at that sum of money which will put the party who has been injured or has suffered, in the same possible ... he would have been in if he had not sustained the wrong for which he is now getting his compensation”

It is prudent therefore for the court to in assessing damages payable, to be guided by decided cases of a comparable nature. Nevertheless the court must be mindful that no two cases are similar as each case is peculiar to itself. Lord Morris in **West v. Shephand** (1964) Ac 326 at paragraph 346 stated the position as follows:

“..... By common assent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that as far as possible comparable injuries should be compensated by comparable awards. When all this is said, it still must be that the amounts which are awarded are to a considerable extent conventional” Actual compensation in personal injury case is therefore impossible.

The plaintiff herein suffered serious injuries 'YM1', the medical report put the rate of his incapacity at 45%. The medical report further states that this incapacity is regarded as loss of the whole hand and there is permanent disability of the hand.

In the case of **J E Chintuli vs. Prime Insurance Company**. Civil Cause No. 1490 of 1997 the plaintiff in 1998 was awarded the sum of K80,000 for pain and suffering and loss of amenities for life. The rate of incapacity was put at 60%. In the case of **Tonald**

Kaoloka vs. The Attorney General Civil Cause No. 1279 of 1998 the plaintiff whose rate of incapacity was 35% was awarded K35,000 for pain and suffering and loss of amenities of life.

Upon careful consideration of the circumstances of this case, and in the light of decided cases of comparable nature and the devaluation of our currency in recent times, I award the plaintiff K75,000 for pain and suffering and loss of amenities of life. The plaintiff is also awarded costs of this action to be taxed if not agreed.

I have not considered an award of damages for loss of earning capacity as the default judgement entered herein did not cover that aspect.

MADE in Chambers thisday of June, 2003 at Blantyre

S A Kalembera

DEPUTY REGISTRAR