

**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NO. 756 OF 2003**

**BETWEEN:**

**JUSTIN MANDA ..... PLAINTIFF**

**AND**

**MALAWI SOCIAL ACTION FUND .....DEFENDANT**

**CORAM: TEMBO, ASSISTANT REGISTRAR**

Tukula, Counsel for the Plaintiff

**ORDER ON ASSESSMENT OF DAMAGES**

This is this court's order on assessment of damages herein pursuant to a default judgment entered in favour of the plaintiff for damages for pain and suffering, loss of amenities of life, earning capacity and medical expenses.

The notice of hearing of this assessment was served on the defendant who never appeared at the hearing of this assessment. That left the plaintiff's testimony totally uncontroverted. On 15<sup>th</sup> January, 2000 the plaintiff was injured whilst lifting some concrete pipes whilst in the defendant's employment. The concrete pipe the plaintiff was lifting with his fellow employees of the defendant was left to slip by his co-workers. When the concrete pipe fell it crashed the plaintiff's right hand severely damaging his index finger. The damaged part of the index finger was amputated as a result to avoid bone infection. The remainder was bandaged. The plaintiff's right arm gets swollen when he engages it in heavy work. The right finger is still constantly painful.

The plaintiff stated that he was charged K6,000.00 for the medical treatment at Mlambe hospital and that he has only managed to pay K1,725.00. There is however no evidence to support the fact that indeed K6,000.00 is what the plaintiff was charged. The plaintiff has only proved payment of the K1,725.00 as medical expenses.

The plaintiff herein used to work properly before the accident earning a sum of K600.00 per month. But after the accident his earning capacity has been impaired. The general prognosis on the plaintiff's injury is poor since there is constant pain and bleeding. He therefore can no longer earn the K600.00 per month.

This court notes that the law of tort avails the remedy of damages to a person injured by the negligence of another so as to compensate the injured party as nearly as possible as money can do. See **Livingstone v. Rowanrds Coal Company** (1880) 5 app. Cas. 25. On the monetary loss the plaintiff is entitled to an award of the sum he spent on medical expenses of K1,725.00 which has been proved herein. The sum of K1,725.00 is therefore awarded to the plaintiff.

The plaintiff has also suffered loss of earning capacity. He can no longer earn the K600.00 as he used to before the accident herein. There is no evidence that he has found other employment. He is basically a manual worker and with the impairment of his use of the right hand he can not readily do manual work.

In calculating the loss of earning capacity the courts have evolved a certain method. The amount of loss of earning is calculated by taking the figure of the plaintiff's present annual earnings less the amount, if any, which he can now earn annually, and multiplying this figure by a figure which, while based upon the number of years during which the loss of earning power will last, is discounted so as to allow for the fact that a lump sum will be given now instead of periodic payments over years. The latter figure has come to be known as the multiplier and the former figure, the multiplicand. See **Mitchell v Mulholland** (No. 2) [1972] 1 Q.B. 65. Further adjustment however has to be made to the multiplicand and multiplier on account of other factors like inflation the so called contingencies of life and taxation.

The starting point for calculating the multiplicand has for long been the amount plaintiff earned before his injury. However, **Cookson v Knowles** [1978] 2 W.L.R. 978 would seem to confirm now that through stimulus of inflationary conditions, the starting point is what the plaintiff would have been earning at the date of trial, or assessment herein if not for the injury. From that is discounted whatever the plaintiff is capable to earn in the future. If he can not earn anything nothing falls to be deducted. For the multiplicand the starting point in calculating it is the number of years that it is anticipated the plaintiff's disability will last. See **Lim Poh Choo v Camden and Isling Area Health Authority**

[1979] 3 W.L.R 44. That calculation falls to be made from the date of trial and requires medical testimony. It is unclear how long the plaintiff's incapacity will last herein. But the medical opinion is that another surgical operation is necessary to encounter the constant pain and bleeding in the plaintiff's finger. This court notes that already since the time of the accident in January, 2000 the plaintiff has not been able to earn the K600.00 per month. So far the pain in the plaintiff's finger has not improved and so the prognosis is not good. Already for 3 years the plaintiff has been without his earning power. The plaintiff shall be given an allowance of a year within which he shall have to undergo a further surgical operation to encounter the infection indicated by constant pain and bleeding of his finger. And so this court adopts a multiplier of 4. As the plaintiff has been earning nothing this court shall still use the K600.00 as the multiplicand it being what the plaintiff used to earn before the accident herein. That is so because there is no evidence of what he would have been earning now. So the multiplicand shall be the monthly wage of K600.00 x 12 months which gives K7,200.00. The multiplicand of K7,200.00 when multiplied by the multiplier of 4 years gives the sum of K28,800.00. The sum of K28,800.00 is therefore awarded to the plaintiff as damages for loss of earning capacity.

Now, turning to the plaintiff's non-monetary loss this court notes that the same is not quantifiable in monetary terms with mathematical precision. As a result courts use experience and awards made by courts in cases of broadly similar nature as a guide in arriving at the appropriate award. That approach ensures some degree of general uniformity in civil justice in cases of a broadly similar nature. See **wright v British Railways Board** [1983] 2 A.C. 773. This Court notes that the plaintiff herein suffered a lot of pain on the finger which was later partially amputated in treatment. He also continues to suffer pain. He has also lost some enjoyment use of his right hand. He is therefore entitled to damages for pain and suffering and loss of amenities of life. This court has considered awards in cases in which the plaintiffs suffered injuries similar to those suffered herein. In **Nazigamba v Plastic Industries (MW) Limited** civil cause number 479 of 2000 the plaintiff, a machine operator, got injured in the right hand completely losing 3 fingers. He was hospitalized for 3 months and found it difficult to eat, dress himself or use tools like a hoe. On 29<sup>th</sup> November, 2001 he was awarded K30,000.00 for pain and suffering and K40,000.00 for loss of amenities of life of course the value of our currency has depreciated since that award was made. But it is observed that the injuries in the above case were rather more serious than those suffered by the plaintiff herein. In the circumstances of the present case this court awards the plaintiff herein K50,000.00 as damages for pain and suffering and loss of amenities of life. Costs of this action are for the plaintiff.

Made in Chambers at Blantyre this \_\_\_\_ September, 2003

**M.A. Tembo**

**ASSISTANT REGISTRAR**