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**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 131 OF 2015**

**BETWEEN
KELVIN BROWN
AND
OIL AND PROTEIN COMPANY**

**PLAINTIFF
DEFENDANT**

**CORAM : MATAPA KACHECHE Assistant Registrar
Kalua I for the Plaintiff
Maere for the defendant
Ngoma Official Interpreter**

ORDER ON ASSESSMENT OF DAMAGES

1. By a default judgment dated 23rd March, 2015 the plaintiff is entitled to damages suffered due to injuries he sustained when he fell from a height at the his employer, the defendant's premises. The accident happened on 24th February, 2013 and has been attributed to the failure by the defendant to provide a safe working environment.
2. The evidence shows that as a result of the accident the plaintiff sustained head injuries resulting in a loss of consciousness, severe trauma to the left side of his body, a deep cut on the scalp and cerebellar stroke leading to left side weakness.
3. Immediately after the accident he was taken to Queen Elizabeth Central Hospital where he was admitted and received treatment for a period of four days. A medical report was produced during assessment. The report does not indicate the type of treatment that the plaintiff received.
4. According to him, after discharge from the hospital he was unable to walk for a period of one month. He then began getting medicine from a pharmacy until he got better. He was also treated as an outpatient for about two years and three months.



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5. Further he has had other ailments since the accident such as ear pain. Recently he had a swelling in the ear and when he went to hospital some discharge was removed therefrom; he also has unexplained tearing from his right eye and still has general body pains in the right side of his body. He can no longer run as he used to.
6. The defendant asked that the plaintiff be subjected to further medical examinations. The examination was done at the Beit Cure International Hospital. It was found that he still has excessive tearing of the right eye and has a swollen right flank and chest.
7. The medical examination at Beit Cure however found that he has normal muscle power and movements, he has no deformities except for scars in the scalp. The report found no connection between the injury and the pain he currently experiences in the right flank. Finally it recommended that the plaintiff should undergo eye specialist examination to determine the cause of the excessive tearing.
8. He stopped working for the company in September 2014 due to poor working conditions.
9. I will not explain the law of damages suffice to say that the plaintiff has to be fully compensated so far as money can. I also need to remind myself the assessment herein is for non pecuniary damages of pain and suffering, loss of amenities and disfigurement whose measure is not exact and we rely comparable awards made in earlier cases.
10. Counsel has cited several cases to guide this court in arriving at the right award. I need not cite them suffice to state that I have them in my mind as I come to my decision.
11. The injuries suffered by the plaintiff are soft tissue injuries. Although the plaintiff still has some pains they are at most mild. The effects to the eye and the ear are, at most, speculative only. There is no direct link shown. I must point out though that since most injuries were internal it is difficult to know the extent of the damage other than relying on the medical reports presented herein.

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12. In the circumstances I award K900, 000.00 damages for pain and suffering, K100, 000.00 damages for disfigurement and K200, 000.00 for loss of amenities. The total comes to K1, 200, 000.00.

13. I also award costs of these proceedings.

Delivered this **11th** day of **August** 2016.



CC Matapa Kacheche
ASSISTANT REGISTRAR