



The Judiciary

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CASE NUMBER 427 OF 2017

Between

JAMES WAILESI..... CLAIMANT

-and-

GLOBE COMPUTER SYSTEMS LIMITED..... DEFENDANT

CORAM: A.J. Banda, Assistant Registrar

Mr. Mussa, for the Claimant

Mr. Mzumara, for the Defendant

Ms. M. Galafa, Clerk/ Official Interpreter

BANDA, A.R:

ASSESSMENT ORDER

1. Background

The claimant obtained judgment in default of service and filing of defence by the defendant to the claimant's claims for damages for pain, suffering and loss of amenities of life, damages for disfigurement, K10, 346.00 cost of medical report and costs of the action. The court heard the parties on assessment of damages. This is the resultant order.

2. Evidence

James Wailesi in his adopted witness statement told the court that he was employed as a motor vehicle driver by the defendant, Globe Computer Systems until after the incident, the subject of this proceeding whereby his services were terminated. He told the court that even though he was employed as a driver and had not done any other work before, on 5th October, 2015, he was told to install computer or internet cables at Entyre offices in Blantyre. He said he tried to refuse to do the job but he was given pressure by his bosses to do the work; with an experienced workmate.

Wailesi said that at Entyre offices he climbed into the ceiling without any body belts or safety traps or any protective gear at all. He said he fell from the ceiling and did not remember anything else but realised later that he was on a hospital bed. He further told the court that he sustained a ruptured spleen and had internal bleeding from the fall. He underwent blood transfusion during an operation to remove his damaged spleen. He said he was put on oxygen support for many hours. He did not eat any hard food and did not defecate for days.

Wailesi told the court that he endured a lot of pain from the surgery and stitching of the surgical wound. He further said that he has to take pneumococcal vaccine every month for the entire life to boost his immune system which was severely compromised due to the removal of the spleen. He further said that he has to cover the surgical scar with a cloth whenever it is cold. He tendered a medical report detailing his injuries and treatment, from the Queen Elizabeth Central hospital. The report shows that he stayed for a month on admission in the hospital.

In cross examination, he said that he stayed in the hospital for a month and two weeks. He said he could be wrong for it took some time between the admission and his testimony in court or could have forgotten the actual days when asked to explain the discrepancy between his testimony and the medical report. He said that currently, he was working 6 days a week at Fargo as a messenger. He said after the incident he can only eat nsima made from polished maize flour. He said that he is not able to run, carry heavy materials and he cannot bend and as such he finds cultivation difficult.

3. Issue

The only issue the court is tasked with at this stage is to determine the quantum of damages applicable in the circumstances.

4. Analysis of Fact and Law

It is a principle of law that anyone who suffers loss from a wrongful act or omission of another must be compensated for the loss by the person who unlawfully caused the loss. Damages are therefore paid to compensate for the loss in as far as money can do. In **Livingstone v. Rawyards Coal Co [1880] 5 AC 25** Lord Blackburn pointed out that where any injury is to be compensated by damages, in setting the sum of money to be given for reparation, the court should, as nearly as possible, award the sum of money which will put the injured party in the same position as he would have been if he had not sustained the injury for which he is being compensated.

It is impossible to come up with an amount of money that fully compensates a non-monetary loss, coming from personal injuries, with mathematical precision. As result to achieve certainty and consistency of awards in like cases, courts use awards in

comparable cases as a guide, without losing sight of specific losses suffered by a particular claimant. See **Chipeta v. Dwangwa Sugar Corporation, Civil Cause No. 345 of 1998, High Court, Principal Registry (unreported)**.

Pain and Suffering

The word pain connotes that which is immediately felt upon the nerves and brain, be it directly related to the accident or resulting from medical treatment necessitated by the accident, while suffering includes fright, fear of future disability, humiliation, embarrassment and sickness- Ian Goldrein et al, Personal Injury Litigation, Practice and Precedents (Butterworths, 1985) p8. See also **City of Blantyre v. Sagawa [1993] 16(1) MLR 67 (SCA)**.

Disfigurement

Damages are paid under the head of disfigurement for the change in the physical form of a person injured either as a result of the impact of the injury or its treatment, such as a scar coming in as a result of surgical operation necessitated by the injury. It is a change in appearance but it is capable of limiting a person from doing certain things as was observed by the court in the case of **Austin Julius v. Rasika Gunawardena and General Alliance Limited, Personal Injury Cause Number 316 of 2014**.

Potani, J, in the case of **Chingamba v. Deerless Logistics Limited Civil Cause No. 2888 of 2007**, stated that disfigurement was not something to be taken lightly and casually as a person lives with the deformity for the rest of his life. In **Zaina Chipala v. Dwangwa Sugar Corporation Civil Cause Number 345 of 1998, High Court, Principal Registry, per Chimasula, J**, it was held that money cannot renew a physical frame that has been battered and shattered. The courts must therefore award a sum that is regarded as reasonable compensation.

The claimant through counsel Mr. Mussa cited two cases of **Rabecca M'bwana v. Attorney General, Civil Cause No. 1958 of 2009**, and **Anastazia Elias and Lanjesi Watson v. Mulli Brothers Limited, Civil Cause No. 389 of 2011**, where the claimants' one leg was amputated in both cases for the tortious acts of the defendants. Awards of K13, 070,220.00 and K 15, 504,500.00 respectively were made for pain, suffering and loss of amenities of life.

Counsel further cited the case of **Austin Julius v. Rasika Gunawardena and General Alliance Insurance Limited (supra)** where the court made an award of K700,000.00 for disfigurement.

Counsel for the defendant, Mr. Mzumara orally submitted that the court should not be guided by the cases cited by the claimant as all these cases are not comparable, in respect of injury, to the case at hand where the claimant lost a spleen. Mr. Mussa argued that the cases that the claimant cited involve the loss of a vital body organ, just as is the case in this matter.

I have considered the arguments. In light of a dearth of direct comparable cases on the type of injury, I am inclined to look at the seriousness of the injury, the effect on the claimant but also the actual pain and suffering he went through. In consideration of that I am of the opinion that the cases cited by the claimant are not far off from reality. A limb is a very important part of the body. A spleen might be too small in comparison, its functions not readily appreciated for we don't normally observe it as would a leg or an arm, but nevertheless just as vital. It is important for a person's body immunity against diseases and infections. It replaces dead blood cells with new ones. An absent spleen makes one vulnerable to influenza and pneumonia. See www.webmd.com (Reviewed by Carol DerSarkissian on 14th March, 2017).

Even though the spleen is an internal organ not visible it provides physical and biological functions. Its loss entails disfigurement. The scars necessitated by the surgery changes the claimant's physical appearance for ever. He will have to undergo the pain and humiliation of living to be injected with some immunity boosters. He has given up the enjoyment of some kinds of food with his new status. That must be considered when making the award in this case.

In light of the reasons above I believe an award of K9,355,000.00 is adequate and reasonable for pain, suffering and disfigurement.

5. Conclusion

Looking at the seriousness and vitality of the loss of the claimant I award him **K9,355,000.00 (Nine million, three hundred and fifty-five thousand Kwacha)** damages for pain, suffering and disfigurement. He should also recover costs of the assessment hearing. If the costs are not agreeable by the parties within 14 days, they shall be assessed by the registrar.

Made this 27th day of June, 2018



Austin Jesse Banda

ASSISTANT REGISTRAR