



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CASE NO. 316 OF 2017

BETWEEN

MANUEL LINGSON.....CLAIMANT

AND

NAMING'OMBA TEA ESTATE.....DEFENDANT

Coram: **WYSON CHAMDIMBA NKHATA (SRM)**

Kalua- of Counsel for the plaintiff

Chitsulo- Court Clerk and Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

This is the court's order on assessment of damages pursuant to a default judgment on liability entered in favour of the claimant on the 5th of July 2018. The issue of the Defendant's liability having been settled already by the said judgment, the duty placed upon this court was to determine the reasonable quantum of damages that would adequately compensate the claimant for the losses and damages herein.

The claimant in this matter took out a writ of summons issued on the 4th of October 2017 against the defendant claiming damages for pain and suffering, loss of amenities of life, disfigurement, special damages and costs of the action. In his Statement of Claim, he stated that at all material times he was under the employment of the defendant as a laborer. On or about the 3rd of June 2016, while cutting tea on the said estate, he was cut by a knife on the right leg. Consequent to the accident, he sustained a deep

cut wound on the right leg which was sutured with six stitches. He claims that the said accident was caused by the negligence of the defendant. It is therefore against this background that the he claims damages for pain, suffering and loss of amenities of life, damages for disfigurement and costs of this action.

The defendant did not appear for the hearing. However, there was evidence that the notice of assessment was duly served on them. For this reason this court ordered the hearing to proceed in their absence.

I must state that the law generally provides that a person who suffers bodily injuries or losses due to the negligence of another is entitled to recover damages. The fundamental principle which underlines the whole law of damages is that the damages to be recovered must, in money terms, be no more and no less than the Plaintiff's actual loss. The principle was laid down in numerous case authorities more particularly by **Lord Blackburn** in the case of *Livingstone v. Rawyards Coal Company* (1880) 4 AC 25 in the following terms:

where any injury or loss is to be compensated by damages, in settling a sum of money to be given as damages, you should as nearly as possible get at the sum of money which will put the party who has been injured, or who has suffered loss, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.

I diligently perused the medical evidence as to the injuries and the prognosis given by the medical expert. I had the opportunity to observe the injury and the present physical condition of the claimant. Observably, the claimant is missing three fingers. I gave meticulous thought to the written submissions filed by counsel for the claimant. I went through the precedents cited by the counsel with a view to assist this Court to make a critical evaluation of the damages. I considered the relevant aspects particularly of the following precedents cited by the counsel:

Robert Piason & Others v Prime Insurance Company Limited Personal Injury Cause No 413 of 2013 where the 3rd Plaintiff sustained a painful left side of the Head, painful left shoulder and painful left leg and she was awarded MK3,000,000.00. These awards were made on the 6th of September 2014.

Veronica Kayamba v Prime Insurance Company Civil Cause No 2158A of 2008 where the Plaintiff was awarded MK4,000,000.00 for a fracture of the left leg and a deep cut wound at the back as damages for pain and suffering and loss of amenities of life.

Jacquareen Manuel v Prime Insurance Company Limited Personal Injury cause No. 551 of 2016 in which the claimant sustained a fracture of the right leg, multiple cuts on the face, both hands and both legs. The court awarded her the sum of K4,800,000.00. The award made on the 19th of June 2018.

Joseph Danger v Prime Insurance Insurance Company Limited Civil Cause No. 1760 of 2010 in which the claimant sustained a fracture of the leg, deep cut wound on the knee, painful leg, bruises on both arms and at the back and a cut wound on the forehead. An award of K6,500,000.00 was made on 18th of April 2013.

Felista Macheso v Peter Kondowe, Blue Bird Motel & NICO General Insurance Company Limited Personal Injury cause No. 551 of 2016 where the plaintiff sustained a closed fracture of the right humerus and an open fracture of the right lower leg near the ankle. The court awarded her the sum of K5,600,000.00. The award was made on 16 October 2009.

It was therefore Counsel's submission that in the circumstances of this case, the reasonable compensation would be K8,500,000.00.

In my view the K8,500,000.00 prayed for by Counsel is on the higher side. The injuries sustained by the claimant are a deep cut wound and general soft tissue injuries. The cases cited by Counsel above include a fracture which I believe contributed to the quantum awarded. I am aware that injuries cannot be exactly alike. Nevertheless, I took time to look at cases where the predominant injury was a deep cut wound as it was in this case. Some of the cases I had recourse to are the following:

Robert sande (minor suing through his grandmother and next friend of JOYCE BANDA) Vs Prime insurance company limited, Personal Injury Cause No. 395 of 2011 in which the plaintiff sustained deep cut wound on the left leg and foot, bruises on the head, hand and leg. On 2nd October, 2013, the court awarded him the sum of K3,000,000.00 as damages for pain and suffering and loss of amenities of life.

Wonderson Mbeta v Steven Adam and Prime Insurance Company Limited Civil Cause no. 178 of 2011 in which the plaintiff sustained a deep cut wound on the thigh and head, bruises on the right foot and cut on the eye. The court awarded him the sum of K2,900,000.00 as damages for pain and suffering, and loss of amenities.

I take note that these cases were decided in the years 2013 and 2012 which are not far removed from the cases cited by Counsel and the devaluation of the Kwacha. I further take note that the claimant is lamenting that he can longer work these as an aftermath of the accident because upon doing so his stomach swells. With that in mind and upon a thorough consideration of facts and circumstances of this case, and upon an exhaustive consideration of the submissions by the claimant's Counsel in the light of the relevant and

applicable law regarding damages for the claimed heads herein that I award the plaintiff K4,000,000.00 under all heads claimed and proved.

The plaintiff is further awarded costs of this action to be taxed if not agreed by the parties.

DELIVERED IN CHAMBERS THIS 30th DAY OF JULY 2018



WYSON CHAMDUMBA NKHATA

ASSISTANT REGISTRAR