



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
CIVIL DIVISION
PRINCIPAL REGISTRY
PERSONAL INJURY CASE NUMBER 804 OF 2015

BETWEEN:

ALFONSO VINCENT..... CLAIMANT

-and-

TEM LIMITED.....FIRST DEFENDANT

-and-

GENERAL ALLIANCE INSURANCE CO LTD.....SECOND DEFENDANT

CORAM: Hon Justice Jack N’riva

Claimant present and represented by Mr Kalua of counsel

Defendants not present

Mrs Deliwe Msiska Court Clerk and Official Interpreter

On 23rd January, this year, I held scheduling conference of this case. The defendants did not attend the conference despite being notified of the date.

During the conference, I ordered the defendants to file witness statement and skeleton arguments within fourteen days of the order. I set down the hearing for 20th February. The claimant served the defendants the direction of the Court and the notice of hearing.

The defendants neither filed the witness statements nor did they attend the hearing. I struck out the defence for failure to comply with rules and failure to attend the trial and, with costs, entered judgment for the claimant. I enter judgment for the claimant for pain and suffering and disfigurement, as well as loss of amenities of life and damages for future earnings.

I now proceed to consider the compensation that the claimant sought from the Court. The claimant in the skeleton arguments made arguments in relation to damages.

The claimant lost a finger as a result of an injury he suffered at his place of work. The claimant got injured while he and his friends were moving metal bars. He said the metal bars are ordinarily moved by a folk lift. They are heavy. When moving the bars, his colleagues suddenly dropped the bar down, hitting his left fingers. He attributed the injury to negligence on the part of the defendants.

As a result he suffered amputation of the ring and middle finger, a deformed nail, lack of motion and stiffness between the fingers. He said he still feels pain on the amputated fingers.

Much as the claimant made many heads of damages, in the arguments he trimmed the damages to pain and suffering. Again from the evidence, the claimant made no reference to the other head of compensation especially on loss of future earnings.

It is apparent to me from the evidence, that the claimant is entitled to compensation for pain and suffering and disfigurement. I am also convinced that the claimant should receive compensation for loss of amenities of life. This is because he still feels pain in the fingers- cf:- *Nangwiya v Makwasa Tea Estates* [1993] 16(1) MLR 373 (HC).

Pain connotes that injury which is immediately felt upon the limbs, nerves and brain, be it directly related to the accident or resulting from medical treatment necessitated by the accident. 'Suffering' includes fright, fear of

future disability, humiliation, embarrassment and sickness. See: Ian Goldrein *et al*, *Personal Injury Litigation, Practice and Precedents* (Butterworths, 1985) 8 and *City of Blantyre v Sagawa* [1993] 16(1) MLR 67 (SCA).

‘Loss of amenities of life’ connotes loss of faculties of pleasures of life resulting from one’s injuries. Courts award damages for loss of amenities of life for the fact that the claimant is deprived of the pleasures of life, which amounts to a substantial loss. It is immaterial whether the claimant is aware of the loss or not. See: *Poh Choo v Camden and Islington Area Health Authority* [1979] 2 All ER 910 and *City of Blantyre v Sagawa* [1993] 16(1) MLR 67 (SCA) at 72.

Therefore, the claimant’s case, whose evidence I will recount shortly, fits into the claims of loss of amenities of life and pain, suffering and disfigurement.

The cardinal principle in awarding damages is that in so far as money can do, the law will endeavour to place the injured person in the same situation as he was before the injury was sustained – *Halsbury’s Laws of England* 3rd Ed. Vol. II p.233 para 400. In *Livingstone v Raywards Coal Co* (1880) 5 App Cas 25 at 39, Lord Blackburn said:

‘...where any injury is to be compensated by damages, in settling the sum to be given for reparation 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, in the same position as would he have been in had he not sustained the wrong for which he is now getting his compensation or reparation.’

It is well to remember that it is impossible to attain perfect compensation especially monetary compensation in cases of injuries. In *West v Shepherd* [1964] AC 326 at 346 the Court said:

‘money cannot renew a physical frame that has been battered and shattered. All judges and courts can do is to award a sum which must be regarded as giving reasonable compensation.’

Courts only endeavour to award a fair and adequate compensation in the circumstances of each case- *British Commission v Gourley* [1956]AC 185.

Courts only resort to awarding conventional figures guided by awards made in similar cases and also taking into account the money value.

In *Steve Kasambwe v SRK Consulting (BT) Limited* Personal Injury Cause Number 322 of 2014 (unreported), the Court said:

‘At times the court is faced with situations where the comparative cases have been rendered obsolete because of the devaluation of currency and inflation. It would not achieve justice if the court insisted on the same level of award as was obtaining in the previous cases. In such situation, when deciding the new cases, the court must take into account the life index, i.e. cost of living and the rate of inflation and the drop-in value of the currency. The court must therefore not necessarily follow the previous awards but award a higher sum than the previous cases.’

The claimant cited some cases where claimants received compensation from the courts in relation to injuries. However, the decision she cited are not related to amputation of fingers. For example, he cited *Anastasia Elias v NICO General Insurance* Civil Cause No. 117 of 2011 decided on 23 July 2011 where a claimant received K13, 500,000 for pain and suffered loss of amenities of life and K2,000,000 for disfigurement. In that case, the claimant suffered amputation of a leg.

Based on that decision, the claimant urged the court to award K6, 000,000.

I have looked at some decisions on injuries involving amputation of fingers. In *Charles Saidi Phiri v J. Kalinga And Trans Rukuru Bus Service* CC 531 of 2007, the claimant suffered amputation of a finger as a result of a bus accident. The Court awarded K400, 000 on 22 November, 2007.

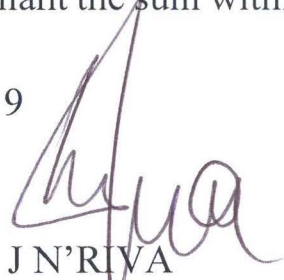
In *Alex Kameko v Starplex Industries* Personal Injury Case Number 305 of 2014, decided in May, 2017, the claimant lost his finger while working on a machine which he alleged was faulty. The Court noted that the index and middle fingers on the right hand were completely amputated. The fourth finger on the right hand was immobile. The Court compensated the claimant with K3, 000,000 for pain and suffering and loss of amenities of life. The Court made comparisons to *George Langston v Eastern Produce Malawi Limited* Civil Cause Number 04 of 2012 – where the claimant was awarded the sum of K900, 000.00 in August 2012 where he sustained an amputation of the distal phalanx of the left finger and his degree of incapacity was

pegged at 2%. The Court also referred to *Harry Kamwendo v Central Africa Drilling Company* Civil Cause Number 228 of 2011 where the claimant was awarded the sum of K1, 500,000.00 on 18 July 2012 for stiff fingers.

I find that I should make an award of compensation close to that which was made in *Kameko v Starplex*. In the circumstances, I award the claimant K4, 000,000.00 damages for pain and suffering, disfigurement and loss of amenities of life.

The defendants should pay the claimant the sum within 21 days of this order.

Made the 28th day of February, 2019



J N'RIVA
JUDGE