



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 807 OF 2018**

MILLIWARD DOUGLAS

CLAIMANT

-AND-

ELECTRICITY SUPPLY CORPORATION OF MALAWI LTD

DEFENDANT

CORAM:

H/H MAKHALIRA

ASSISTANT REGISTRAR

APPLICANTS REPRESENTED BY

COUNSEL C. KALUA

RESPONDENTS REPRESENTED BY

COUNSEL MTAMBO

COURT CLERK

CHITSULO

**ORDER ON ASSESSMENT OF DAMAGES
(AS PER HIS HONOUR MAKHALIRA)**

The Court of the 27th of February 2019, entered a default judgment in favour of the claimant and awarded the claimant damages to be assessed, special damages as pleaded and costs of the action. The matter then came for assessment of damages on the 29th of August 2019. Both, the claimant and his counsel as well as counsel for the defendant were present.

The Court heard evidence from one witness only, the claimant. In his evidence in chief, the claimant identified himself as Milward Douglas from Hawilani Village, T/A

Makwangwala, in Ntcheu District. He then identified his signature on the witness statement that was shown to him by his counsel. He also identified a medical report. He tendered the witness statement, medical report and the health passport as part of his evidence. They were marked as Exhibit CW1, Exhibit CW2 and Exhibit CW3 respectively.

Lastly, he told the Court that he has scars on his head, on his upper lip and on his leg and that he still feels pain when he walks a long distance.

In cross-examination by counsel for the defendant, the claimant was first referred to paragraph 4 of his witness statement, where he stated that amongst other injuries he sustained a fracture of his left ankle joint. He was asked if what he stated in this paragraph is the same as what is indicated in his medical report and the claimant stated that they were the same.

When pressed by counsel for the defendant that what his witness statement was stating is different from what is stated in the medical report, the claimant said that was not true. He however admitted that as per his medical report, he was never admitted in hospital.

When it was time for him to confirm that his medical report does not state that he was put in plaster of Paris the claimant told the Court that he does not understand English. When he was asked where he stays, the claimant said that he stays in Chirimba. When asked if his leg was swollen on that day, the claimant said no.

In re-examination, the claimant stated that the Plaster of Paris was applied on him in Zomba at Zomba Central Hospital. When asked what name was on his medical report, the claimant said that he cannot read. When further asked whether he could differentiate between an ankle joint and tibia and fibula, the claimant said

that he could not. Lastly when asked by his counsel where he got the scars which he showed to the court, the claimant stated that they were due to the injuries which he sustained in Zomba in 2018. This was the end of the evidence from the claimant.

Counsel for the defendant told the Court that he would not call any witness but only prayed to the Court to file his submissions within 10 days. The Court granted his prayer. On the other hand, Counsel Kalua told the Court that he would adopt the assessment bundle and the skeletal arguments already on record as his final submissions.

The claimant's claims are for damages for pain and suffering, loss of amenities of life and disfigurement due to the injuries he sustained when he fell down from an electric pole whilst in the course of employment for the defendant in Zomba. He sustained the injuries according to his witness statement on the 30th March 2018. The claimant also prays for costs of the action and special damages in the sum of K12, 000.00 being the cost of the medical report.

The only issue in this case at this stage is the amount of damages that the claimant must be awarded for the personal injuries he suffered under the heads pleaded. The starting point is that assessment of damages presupposes that damages have been proved and what remains is the measure of the amount of the damages – see the case of **Ngosi t/a Mzumbazumba Enterprises v Amosi Transport Co. Ltd** [1992] 15 MLR 370 (HC).

Damages in a case like this one are not awarded to punish the defendant or tortfeasor but to fully compensate the claimant of all the losses that he has suffered as a direct or consequential result of the defendant's wrongful act or omission. In

the case of **George Kankhuni v Shire Bus Lines Ltd**, Civil Cause Number 1905 of 2002, Katsala J stated as follows:

“The law demands that the plaintiff, as far as money can do it, be put in the same position as if he has not suffered the loss. This is what is referred to as restitution in integrum...”

It is not easy to quantify damages for losses that are not monetary in nature such as personal injuries. Courts as such use comparable cases as a guide to arrive at applicable damages without losing sight of the particularities in the individual case that the court is dealing with. See the case of **Chipeta v Dwangwa Sugar Corporation**, Civil Cause No. 345 of 1998, High Court, Principal Registry (unreported).

The Court will also consider factors such as passage of time since a particular comparable award was made, as well as currency fluctuations with the period between the case at hand and the comparable one. See the case of **Honourable Kennedy Kuntenga v Attorney General**, Civil Cause No. 2002 of 2002, High Court, Principal Registry (unreported).

Pain and Suffering

The word “pain” connotes that which is immediately felt upon the nerves and the suffering, be it directly related to the accident or resulting from medical treatment necessitated by the accident, while suffering include fright, fear of future disability, humiliation, embarrassment and sickness – Ian Golden et al, Personal Injury Litigation, Practice and Precedents (Butterworths, 1985), page 8.

The award of damages for pain and suffering depends on the claimant's personal awareness of the pain and his capacity for suffering. See **Limpoh Choo v Cumden and Islington Area Health Authority** [1980] AC 174 at 183.

Deformity/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 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 214.

Potani J in the case of **Ching'amba 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.

Loss of amenities of life

Damages are paid under the head of loss of amenities of life to compensate the claimant's deprivation of the pleasures of life which amounts to substantial loss whether the claimant is aware or not of that loss. See **City of Blantyre v Sagawa** [1993] 16(1) MLR 67 (SCA).

In the instant case, the claimant in his witness statement, stated that as a result of the accident, he sustained a fracture of his left ankle joint, he had lacerations on the face and dislocation of the right hand. He also stated that when he was taken to the hospital, Zomba Central Hospital, his left leg was put in plaster of Paris. This was however disputed by counsel for the defendant who noted that this was not reflected in the medical report tendered as part of the claimant's evidence.

The medical report indicates that he had a fractured tibia and fibula, sprained right wrist and lacerations on the face. As per the injuries recorded in the medical report, it is obvious that the claimant felt pain and suffering immediately after the accident. The medical report also stated that the claimant has difficulties to do his job as well as other manual work. During the assessment hearing, he told the Court that he has scars on his head, on his upper lip and on his leg.

In **Malichi v Prime Insurance Company Ltd**, Civil cause Number 2613 of 2009, High Court, Principal Registry (unreported), the claimant suffered a cut wound on the scalp, bruises on the face, swollen head and fracture of the left tibia. He had headaches and limped when walking. He was awarded K4,500, 000 for pain and suffering and loss of amenities of life, on 29th May 2012.

In the case of **Mariam Kennedy (A minor suing through her mother and next friend, Edna Bwila) v Fred Maiden and Prime Insurance Company limited**, Personal Injury Cause Number 457 of 2018, High Court, principal Registry (unreported), the claimant sustained serious head injuries, a long and deep cut and four cuts on the which developed into visible scars. The claimant was awarded K3,500,000.00 for pain and suffering, MK1,500,000.00 for loss of amenities of life and K1,200,000.00 for disfigurement. The award was made on the 25th of March 2018.

Looking at the time that has passed between the above comparable awards and the present case and also the nature and circumstances of the injuries to the claimant in the instant matter, I award claimant K3,000,000.00 for pain and suffering, K2,000,000.00 for loss of amenities of life and K1,800,000.00 for disfigurement.

The claimant also prayed for special damages in the sum of K12,000.00 as costs of procuring a medical report. It is trite that such special damages should be specifically proven. There is no evidence either by means of a receipt or any other means to show that the medical report was procured at a fee. I therefore decline to award the claimant the prayed special damages.

However, the claimant is awarded costs of the action. The costs will be assessed by the Registrar if not agreed upon by the parties.

In total therefore the claimant has been awarded K6,800,000.00 as total damages for the personal injuries he suffered.

Made this 12th day of December 2019 at High Court, Principal Registry, Blantyre.



HER HONOUR EDNA BODOLE
ASSISTANT REGISTRAR