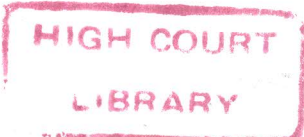


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REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 71 OF 2016

Between

JOHN KUNGADELE.....CLAIMANT

and

G & C CIVIL ENGINEERING DEFENDANT

CORAM: A.J. BANDA, ASSISTANT REGISTRAR

Mr. Yasin Domasi, Counsel for the claimant

None present for the Defendant

Ms. M. Galafa, Clerk/ Official Interpreter

ASSESSMENT ORDER

Introduction

This is an order for assessment of damages pursuant to a judgement entered on 5th February, 2016 by the Honorable Justice Kenyatta Nyirenda. It was adjudged that the defendant was liable and that the defendant should compensate the claimant for pain and suffering, loss of amenities of life, disfigurement, loss of earning capacity and the cost of this action.

I heard the claimant on assessment for damages. The defendant was absent without explanation, and the court proceeded to hear the claimant as there was proof that the defendant was served with a notice of assessment of damages.

Evidence

The claimant was the only witness for his own case. He did not call any other. He adopted his witness statement that he filed with the court earlier on, under oath. John Kungadele told the court that he was operating a concrete mixer at G&C Civil Engineering on 7th December, 2013, when he suffered injuries as his hand was hooked to the concrete mixer. As a result of the accident, he sustained a fractured right hand. He now has scars and his hand is disfigured.

The claimant went further to state that he cannot carry heavy objects as he did before because of numbness and pain. He even stated that he cannot engage in any business since the accident. He tendered a medical report in which the degree of permanent incapacity was rated at 20 percent.

Issue

The quantum of damages payable for pain, suffering, loss of amenities of life and disfigurement and loss of earning capacity.

Analysis and Determination

In the law of tort, the purpose of an award of damages is to as much as money can do it, place the claimant in a position as if he had not suffered the damage. In **Elida Bello v Prime Insurance Company Limited, Civil Cause Number. 177 of 2012** the court stated that 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. In law, it is what is referred to as *restitution in intergrum*- See **Victoria Laundry v Newman (1949) 2 KB, 528**.

Damages are the remedy that is open to a victim of the wrongful act of another. Courts do award damages not to punish the defendant but to fully compensate the claimant of the losses he has suffered. See **George Kankhuni v Shire Buslines Ltd, Civil Case Number 1905 of 2002**. However, it has to be noted that it is not possible to quantify damages for pain and suffering, loss of amenities and disfigurement as claimed in this matter with mathematical precision. As a result, courts use decided cases of comparable nature to arrive at awards. See **Kalinda v Attorney General (1992)15 MLR. 170**. As such this court will have a look at comparable cases to arrive at the appropriate quantification of damages for the claimant.

