



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 219 OF 2016

BETWEEN

CHIKONDI BANDA CLAIMANT

AND

SATEMWA TEA ESTATES LIMITED DEFENDANT

CORAM : HER HONOUR MRS. BODOLE, ASSISTANT REGISTRAR

Kusiwa, of Counsel for the Claimant

Ms. Mndolo, of Counsel for the Defendant

Ms. Kazembe, Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

Introduction

The claimant brought proceedings against the defendant claiming damages for pain and suffering, loss of amenities of life, and costs of the action. Judgment on liability was entered for the claimant on 24th May, 2016. The matter has now come for assessment of damages.

The Evidence

The claimant used to work for the defendant at its Satemwa Tea Estate as a labourer from 13th October, 2010 until the time of the accident. At the time of the accident, he was working as a garden boy. On 20th February, 2013, as he was mopping the garage, he fell down and sustained injuries. He sustained fracture of the radius. He was put on plaster of Paris for a period of 6 weeks. He feels numbness of the left hand. He now does piece work as planting seeds and watering plants as he is unable to use the hand as he used to.

The claimant was given a sum of K20,800.00 as compensation by the defendant in accordance with the defendant's legal obligation under the Workers Compensation Act.

Applicable Law and Analysis

A person who suffers bodily injuries due to the negligence of another is entitled to the remedy of damages. Such damages are recoverable for both pecuniary and non-pecuniary losses. The principle underlying the award of the damages is to compensate the injured party as nearly as possible as money can do it – ***Elida Bello v Prime Insurance Co. Ltd*** Civil Cause No. 177 of 2012.

The damages cannot be quantified in monetary terms by use of a mathematical formula but by use of experience and guidance affordable by awards made in decided cases of a broadly similar nature – ***Wright v British Railway Board [1983] 2 AC 773***. The court, however, considers the time the awards were made and currency devaluation – ***Kuntenga and Another v Attorney General*** Civil Cause No. 202 of 2002.

The non-pecuniary head of damages include pain and suffering, loss of amenities of life and disfigurement. These are assessed by the court. Pecuniary loss must be pleaded and proved - ***Renzo Benetollo v Attorney General and National Insurance Co. Ltd*** Civil Cause No. 279 of 1993.

Section 63 (a) of the Workers Compensation Act provides as follows:

“Where the injury was by the personal negligence or willful act or default of the employer or some other person whose act or default the employer is responsible, nothing in the Act shall prevent proceedings to recover damages being instituted against the employer by civil suit independently of this Act:

Provided that

(a) Any damages awarded in such civil suit shall take into account any compensation previously paid under this Act in respect of the same injury.”

The court, when making any award, must take into account any compensation that was paid by the employer by virtue of Workers Compensation Act.

Pain and Suffering

Pain and suffering is attributable to the claimant’s injury or to any necessary surgical operations and mental anguish such as that suffered by a person who knows that his expectation of life has been reduced or who being severely incapacitated, realizes the condition to which he has been reduced – ***Sakonda v S.R. Nicholas*** Civil Appeal Cause No. 67 of 2013.

It is clear from the evidence that the claimant went through a lot of suffering and was in great pain. He sustained fracture of the radius. He was put on plaster of Paris for a period of 6 weeks. He feels numbness of the left hand. He now does piece work as planting seeds and watering plants as he is unable to use the hand as he used to.

Loss of Amenities of Life

Loss of amenities is attributable to deprivation of the claimant’s capacity to engage in some sport or past-time which he formerly enjoyed – ***Kanyoni v Attorney General*** [1990] 13 MLR 169. It means that he is incapable of performing some activities he used to do.

The claimant is unable to enjoy life as he used to. He feels numbness of the left hand. It must be noted that the claimant was working as a garden boy before the occurrence of the accident. He is still doing gardening works but to a lesser extent. He does piece work as planting seeds and watering plants as he is unable to use the hand as he used to.

Award of Damages

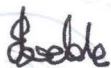
In ***Praise Chitete v Prime Insurance Company Ltd*** Civil Cause No. 282 of 2014 the claimant sustained fractured ulna. The claimant was awarded a sum of K4,800,000.00 as damages on 13th November, 2014. In ***Geoffrey Kholowa v Watson Milward Zeka and Prime Insurance Company Ltd*** Personal Injury Cause No. 25 of 2016 the claimant sustained severe head injury, multiple cuts on the scalp exposing the skull bone, fracture of the left shoulder joint, loss of three teeth, loss of part of the left pinna, multiple cut wounds on the back, big scars on the top lip between the nose and mouth, loss of memory, loss of function of the left arm and was admitted for more than a month. He was awarded a sum of K4,500,000.00 as damages in March, 2018.

Taking into account the above-cited cases, I award the claimant a sum of K2,900,000.00 as damages for pain and suffering, and K700,000.00 as damages for loss of amenities of life. The claimant received compensation in the sum of K20,800.00 under the Workers Compensation Act. The award made by this court will be reduced by the compensation he earlier received.

Conclusion

In conclusion, the claimant is awarded total sum of K3,579,200.00. The claimant is also awarded costs of this action.

Pronounced in court this 16th day of January, 2019 at Blantyre.



EDNA BODOLE (MRS)

ASSISTANT REGISTRAR