



REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 347 OF 2019

**BETWEEN**

POME PIASONI.....CLAIMANT

**AND**

WILLIAMS AND COMPANY.....DEFENDANT

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

Mr. Chizimba - of Counsel for the Claimant

Mr. Kumpita – of Counsel for the Defendants

Mr. Chimtengo - Court Clerk and Official Interpreter

**ORDER ON ASSESSMENT OF DAMAGES**

The claimant, by writ of summons issued on the 20<sup>th</sup> of May 2019, commenced proceedings against the defendant seeking damages for pain and suffering, loss of amenities of life, disfigurement and costs of this action. Upon failure by the defendant to attend mediation, Honourable Justice N'riva struck off the defence and entered judgment in favour of the claimant on the 30<sup>th</sup> of January 2020. It was further adjudged that the issue of damages be brought before the Registrar and this court was appointed to assess the said damages to compensate the claimant for the losses suffered. This is the court's order on assessment of damages.

The matter came for assessment of damages on the 10<sup>th</sup> of March 2020. The claimant adopted his sworn statement in which he averred that he was employed by the Defendant a registered company in the Republic of Malawi as a machine operator. On the 8<sup>th</sup> day of April, 2019 while on duty, he was ordered together with a colleague to work on a new machine which the company had acquired. While so working, his colleague stopped the machine so that he could remove some offcuts. While removing the offcuts from the machine, the machine started moving and in the process it trapped his right hand and crushed it. As a result, he suffered injury that subsequently led to the traumatic amputation of his right forearm. He was taken to Queen Elizabeth Central Hospital where he was treated while in severe pain. While in hospital he underwent very painful medical and surgical procedures. He further testifies that as a direct result of the accident herein, he was subjected to very painful medical and surgical procedures while in hospital.

He further averred that before the accident herein, he was enjoying robust health and never had any health complaints in his entire life. He stated that he is a subsistence farmer and is married with two daughters of 5 and 3 years of age. He further stated that he was responsible for fending for his family and his extended family members. It was his testimony further that before the accident herein, he used to farm his garden and in every year he could harvest not less than 10 bags of maize weighing 50kgs. He also used to do piecework in other people's gardens just to raise enough money for him to be able to support his family in the best way he could. As a direct result of the accident herein, he does not enjoy good health as before. He sometimes experiences occasional pain on the area of the amputation. He no longer cultivates his garden or other people's gardens for a fee after the accident herein. The accident herein has incapacitated him at 75%.

In cross-examination, he stated that he received K4,000,000.00 as final settlement on the matter. He stated that he signed a document upon receiving the money. He also stated that he did not use a RTP for signing but it was his mother.

Basically, such was the evidence for the claimant. Counsel for the claimant also adopted his Skeleton Arguments as his final submissions on assessment of damages. The defendants, on the other hand, sought for an adjournment to parade their witness. However, on the set date the defendants did not avail themselves for hearing. Counsel for the claimants pleaded with the court to proceed and close the case for ruling on assessment of damages since the defendants had failed to present their case. The court adjourned the matter for a ruling on assessment of damages. Counsel for the defendants came back to court with an application without notice for an order to rehear the defendants's application for an order staying further proceedings in the matter and execution of the order striking out the defence pending an application to restore the defence. The court directed that the application be



brought inter-partes and it was given a date for hearing. On the set date, Counsel for the defendant appeared before the court only to state that he had failed to serve the claimant. The court upon being satisfied that the defendant was not serious with their undertakings dismissed the application and the matter was adjourned for ruling on assessment of damages based on the evidence so far on the record.

On applicable law and principles guiding assessment of damages, I must state that it is trite 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.

However, it ought to be borne in mind that it is not possible to quantify damages for pain and suffering, loss of amenities and deformity as claimed in this matter with mathematical precision. As a result, courts use decided cases of comparable nature to arrive at awards. That ensures some degree of consistency and uniformity in cases of a broadly similar nature: See **Wright -vs- British Railways Board [1983] 2 A.C. 773**, and **Kalinda -vs- Attorney General [1992] 15 M.L.R. 170 at p.172**. As such this court will have recourse to comparable cases to arrive at the appropriate quantum of damages for the plaintiff.

In this case, the claimant sustained an amputation of the right arm after it was crushed by a machine. Counsel for the claimant called upon the court to consider the following cases:

**Anastazia Elias -vs- Nico General Insurance Company Limited Civil Cause Number 117 of 2011** where the court awarded the claimant who suffered amputation of the leg below the knee MK13, 500, 000.00 as damages for pain and suffering and MK2, 000, 000.00 for disfigurement. The award was made on the 23<sup>rd</sup> day of July, 2011.

**Stanford Malimau -vs- Motor Engil Civil Cause Number 206 of 2011** where the court on the 23<sup>rd</sup> day of July, 2011 awarded the claimant who suffered amputation of his leg below the knee 10cm from the foot the sum of MK10, 000, 000.00 as damages for pain and suffering and MK800, 000.00 for disfigurement.

**Peter Nsona -vs- Lujeri Tea Estate Limited Personal Injury Cause Number 857 of 2015** where a person whose arm was caught by a machine while working resulting in his hand getting crushed and subsequently amputated below the elbow was awarded MK27, 000, 000.00 as compensation for pain and suffering, loss of amenities of life and disfigurement. The award was made on the 24<sup>th</sup> day of May, 2018.

In view of these cases against the injuries sustained by the claimant, Counsel was of the view sum of MK20,000,000.00 will reasonably compensate the Claimant for pain and suffering and MK5,000,000.00 for disfigurement.

With all that at the back of my mind, I must begin my analysis by stating that I have diligently perused the medical evidence as to the injuries and the prognosis given by the medical experts. I had the opportunity to observe the injury on the right arm of the claimant and his present physical condition. I gave meticulous thought to the written submissions filed by Counsel for the claimant. It is clear that the nature of the injury herein is not in dispute. The claimant's hand was crushed by a machine and got amputated in the process and he fell unconscious. The medical report indicates that the hospital had to carry out surgical procedure like revision of the amputation. It goes without saying that the claimant must have undergone agonizing and excruciating pain from the injury and the subsequent surgical treatment which he underwent as a direct result of the accident herein.

Apart from that, I believe we cannot run away from the fact that the claimant is effectively permanently disabled. He lamented that he used to do weight lifting and play *bawo* with his friends. There is accordingly no doubt that claimant's general enjoyment of life has been markedly diminished as a result of the injury sustained. It is important to emphasise, in this regard, that even if the claimant is fitted with prosthetics and or is provided with specialized equipment, he will never gain his pre-accident level of capacity and abilities. His work, social, and family life have been severely curtailed as a result of the amputation, and he has lost his total independence over his body and some activities he would have loved to do. In addition to that, the financial support he used to give his family is no longer there and he is now afraid that his family especially his daughters will suffer financially in the future because the accident left him virtually helpless. He lamented that his family is now surviving literally on the support from family and friends.

Turning to the cited cases, although they have been of assistance, it is settled law that each case must be adjudicated upon its own merits and no one case is structurally the same as another as such previous awards offer only guidance in the assessment of damages. See **Brumage v SA Eagle Insurance Co Ltd (C) QOD, Vol IV, E2-33 at E2-50**. In this case, I was of the view that the case of **Peter Nsona -vs- Lujeri Tea Estate Limited**



cited above was closer to the case herein in terms of the similarity and intensity of the injuries suffered. Apparently in that case as well the claimant's arm was caught by a machine while working resulting in his hand getting crushed and subsequently amputated below the elbow. He was awarded K27,000,000.00 under the heads of pain and suffering. From the skeleton arguments, with guidance from the cited comparable case authorities, I have seen that counsel for the claimant has submitted that the appropriate quantum would be K20,000,000.00 as damages for pain and suffering and K5,000,000.00 for disfigurement. Much as I am agreeable with the claimant's assertion that the injury is serious and worthy of a substantial award, I am of the view that the proposed quantum is on the higher side.

Thus, upon a thorough consideration of facts and circumstances of this case, and upon an exhaustive consideration of the submissions by the claimant in the light of the relevant and applicable law regarding damages for the claimed heads herein, having also considered the fact that the devaluation of the kwacha, and further upon considering the degree of permanent incapacity of the claimant, this court is of the view that the appropriate and reasonable damages should be the sum of K8,000,000.00 as damages for pain and suffering and K5,000,000.00 for disfigurement. In total, the claimant is awarded **K13,000,000.00** under all heads claimed and proved.

The claimant is further awarded costs of these proceedings.

DELIVERED IN CHAMBERS THIS 2<sup>nd</sup> DAY OF APRIL 2020

  
WYSON CHAMDIMBA NKHATA

ASSISTANT REGISTRAR