



The Judiciary



IN THE HIGH COURT OF MALAWI

CIVIL DIVISION

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 297 OF 2019

Between

RICHARD NAMADWALACLAIMANT

-and-

G.M. PLASTICS INDUSTRIESDEFENDANT

CORAM: Austin Jesse Banda, Assistant Registrar

Mr. Kapoto, for the Claimant

Defendant's Counsel not present

Miss. Makhambera, Clerk/ Official Interpreter

Banda

JUDGMENT ON ASSESSMENT OF DAMAGES

Background

Richard Namadwala, the Claimant, commenced this proceeding against GM Plastics Industries, the Defendant, on the 2nd of May 2019, claiming damages for; pain and suffering, loss of amenities of life, and disfigurement. The claims arose from injuries that the Claimant sustained as he was ordered to operate a machine that is used for producing plastics. In his Statement of Claim he alleged that the machine was faulty such that when he tried to tie the machine's injector the injector amputated his finger. The Defendant did not file any defence within the prescribed time, and the Claimant caused a Default Judgment to be entered in his favour. The Claimant then obtained an appointment with the Registrar for assessment of damages. The Defendant did not attend the hearing without any justification. Since there was evidence of service of the notice, the Court proceeded to hear the Claimant in the Defendant's absence.

Evidence

The Claimant was his own only witness. He told the Court that his index finger on the right hand (shown to the Court) was amputated by a faulty machine's injector that he was tying when he was ordered by the Defendant's agent to operate the machine. He was taken to Queen Elizabeth Central Hospital where he was admitted for a period of 21 days and treated as an out patient thereafter. He was given analgesics, suturing, debridement and full body examination.

Richard Namadwala said that as a result of the accident he had developed a permanent scar, has a possibility of developing arthritis, his finger has been shortened by 3cm and he had a degree of permanent incapacity assessed at 25%. He prayed for compensation under the heads as pleaded.

Issue

The only issue at this stage of this proceeding is the amount of damages that the Defendant must pay to compensate the Claimant for his loss.

Facts and Law

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 Mzumbamzumba Enterprises v. Amosi Transport Co Ltd [1992] 15 MLR 370(HC)**. The rule is that the injured party has provided proof of the damage sustained prior to the assessment hearing- **Yanu Yanu Co v. Ltd v. Mbewe 11 MLR 405 (SCA)**.

According to **Livingstone v Raynards Coal Co. (1880) 5 App Ca 25 at 39**, the measure of damages, however, is that sum of money that will put the party which has been injured in the same position he/she would have been in if they had not sustained the wrong for which he/she is now getting his/her compensation or reparation

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 Buslines Ltd, Civil Case 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 intergrum*.”

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 the quantification of applicable damages, without losing sight of particularities in the individual case that the court is dealing

with. See **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 within the period between the case at hand and the comparable one- **Hon. Kennedy Kuntenga v. Attorney General, Civil Cause No. 2002 of 2002, High Court, Principal Registry, (unreported)**.

Pain and Suffering

The word 'pain' in 'pain and suffering' connotes that which is immediately felt upon the nerves and brain, be it directly related to the accident, or, resulting from medical treatment necessitated by the accident, while suffering includes fright, fear of future disability, humiliation, embarrassment and sickness, as was stated in **Blantyre City v Sagawa [1993] 16 (1) MLR 67 (SCA)**, and as defined in Ian Goldrein et al, Personal Injury Litigation, Practice and Precedents (Butterworths, 1985) p8

The award of damages for pain and suffering depends upon the claimant's personal awareness of pain, and his capacity for suffering- see **Limpoh Choo v. Camden and Islington Area Health Authority [1980] AC 174 @ 183**.

In **H.Q. Chidule v MEDI M.S.C.A Civil Appeal No.12 of 1993**, the court said that in assessing damages for pain and suffering, the court must consider the pain which the particular plaintiff has suffered because the circumstances of the particular plaintiff are bound to have a decisive effect in the assessment of damages.

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, amputations and postures, coming in as a result of surgical operation necessitated by the injury, as was observed in **Lemon Banda & 19 others v Mota Engil Ltd & General Alliance Insurance Ltd, Personal Injury Cause number 178 of 2012**.

In **Austin Julius v. Rasika Gunawardena and General Alliance Limited, Personal Injury Cause Number 316 of 2014**, it was stated that disfigurement is a change in appearance which is capable of limiting a person from doing certain things and should therefore not 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)**; Kemp and Kemp, The Quantum of Damages, Vol. 1 (2nd Edition), 1961, p. 624.

Comparable Cases

In **Duncan Chongo v. De Cabs Bus Service & NICO Ltd Civil Cause No. 2847 of 2000** the plaintiff sustained a fractured hand and could not use it as before after recovery. The court awarded him K180 000 for pain and suffering.

In **Nazigamba v. Plastic Industries (Mw) Ltd Civil Cause No. 479 of 2000** the plaintiff lost three fingers and could not use his hand. He was granted K40 000 for loss of amenities.

In **Alex Kameko v. Starplex Industries Limited Personal Injury Cause No. 305 of 2014**, an award was made on 4th May 2017, to a Claimant who had two fingers amputated, and was hospitalized for 5 days, worth K2,000,000.00 for pain and suffering, and K1,000,000.00 for loss of amenities of life.

The Award

Since the evidence of the Claimant is uncontroverted, the extent of his injuries as stated in his credible evidence is taken for a fact. In view of the comparable cases and taking in consideration the circumstances of this case, as well as passage of time since those awards, I hereby award the Claimant here-in the sum of K3,600,000.00 damages for pain and suffering, K1, 800,000.00 damages for loss of amenities of life and K1, 500,000.00 for deformity. The Claimant is also awarded the sum of K10, 500.00 fee for medical report as was already granted in the Default Judgment.

Conclusion

The Claimant is hereby awarded a total of **K6, 910,500.00** for the personal injury that he suffered at the Defendant's negligence. The Claimant is further awarded costs of the assessment of damages which will be assessed by the Registrar if the parties cannot agree.

Made this 4th day of March, 2020



Austin Jesse Banda

ASSISTANT REGISTRAR