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REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 367 OF 2017

BETWEEN

FRAZER PHIRI CLAIMANT

-AND-

POLYPACK LIMITED DEFENDANT

CORAM: HER HONOUR MRS E BODOLE, ASSISTANT REGISTRAR

Mbendera, of Counsel for the Claimant

Counsel for the Defendant, absent

Chitsulo, Court Clerk/Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

Introduction

The Claimant brought proceedings against the Defendant for pain and suffering, loss of amenities of life, disfigurement, compensation under the Workers' Compensation Act, and costs of the proceedings. This order on assessment of damages follows a Default Judgment which was entered for the Claimant on 1st March, 2019.

The Evidence

The matter came for assessment of damages on 26th March, 2020 and the Claimant was the sole witness for his claim. The Defendant's Counsel did not appear and did not call any witness.

The evidence before this Court is that on 8th October, 2016 the Claimant was working the night shift at the Defendant's place of business. He was in the process of

producing black sheet on the machinery when the wheels of the shaft of the machine fell down as he was replacing it onto the machine. His right hand got trapped in the wheels shaft and the machine continued pulling and rotating, and in the process pulling the Claimant's whole arm. He managed to remove his hand from the wheels shaft and the machine pulled off his skin and tore apart his fingers. He was bleeding profusely.

He immediately reported the matter to his supervisor and was rushed to the hospital. He was admitted at Queen Elizabeth Central Hospital for surgery on the said hand. According to the medical report, he sustained cut wound on the right index finger and middle finger and webspace index and middle finger. The treatment he received was debridement in that the doctors took off part of his flesh from his wrist to be used for the surgery. He also went through suturing and contracture release. He has been going through physiotherapy. He is suffering from post-traumatic pain, and numbness of the hand. He has limitation of movement of the fingers injured as he is unable to stretch his fingers. The hand swells whenever he works. He is unable to use it to eat nsima, wash clothes or farm in his garden. He cannot write properly. He has scars on the injured fingers and wrist.

Issue for Determination

The only issue in this matter is the appropriate measure of the quantum of damages that the claimant ought to be awarded in the circumstances.

Applicable Law

In assessing damages for personal injuries, the intention of the court is to compensate the injured party as nearly as possible as money can do. The principle is to put the Claimant in the position he would have been if he did not suffer the injuries, he is claiming damages for - ***Halsbury's Laws of England*** 3rd Ed. Vol. II p.233 para 400. This principle was further enunciated in ***Livingstone v Raywards Coal*** [1880] AC 25 at 39 where Lord Blackburn said:

'...where any injury is to be compensated by damages, in settling the sum to be given for reparation 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, in the same position as he would have been

in had he not sustained the wrong for which he is now getting his compensation or reparation.'

Such damages are recoverable for both pecuniary and non-pecuniary losses. Pecuniary losses must be specially pleaded and proved while non pecuniary losses are assessed by the court - ***Mary Ntulungwa & 9 Others v Makandi Tea Estate*** Personal Injury Cause No 844 of 2012.

Damages cannot be quantified in monetary terms by use of mathematical formula but use of experience and looking at awards made in decided cases of similar nature - ***Wright v British Railway Board*** [1983]2 AC 773. In reaching the final award for damages through looking at similar awards made, the Court considers the time the awards were made and currency devaluation - ***Kuntenga and another v Attorney General*** Civil Cause No 202 of 2002.

As to claims for personal injuries, damages are always awarded under the headings of pain and suffering, loss of amenities of life and disfigurement.

Pain and Suffering

In damages for pain and suffering, the Court considers the physical experience of the nerves and mental anguish which comes as a result of the injury - ***Lemon Banda and 19 others v Mota Engil Limited and General Alliance Insurance Limited*** Personal Injury Cause Number 178 of 2012. In the ***City of Blantyre v Sagawa*** 16(1) MLR the court stated that:

"Pain is, it is suggested, used to describe the physical pain caused by or consequent upon the injury, while suffering relates to the mental element of anxiety, fear, embarrassment and the like."

It is clear from the evidence that the Claimant went through a lot of suffering and was in pain. He is still suffering and in pain. He sustained cut wound on the right index finger and middle finger and webspace index and middle figure. The treatment he received was debridement, suturing and contracture release. He has been going through physiotherapy. He is suffering from post- traumatic pain, limitation of movement of the fingers injured and numbness of the hand. The hand swells whenever he works. He is unable to use it to eat nsima, wash clothes or farm in his garden. He has scars on the injured fingers and wrist.

Loss of Amenities of Life

Loss of amenities is concerned with loss of enjoyment of life. This follows from the fact that human beings enjoy certain activities which may as a result of the injury be curtailed - ***Lemon Banda and 19 Others V Mota Engil Limited and General Alliance Insurance Limited*** (supra).

The Claimant is unable to enjoy life as he used to. His ability to use his hand has been limited. He is unable to use it to eat nsima, wash clothes or farm in his garden. He is unable to write properly.

Disfigurement

Disfigurement is a limitation either physically or mentally for someone to do what any other person can do without reasonable accommodation. It is concerned with change of looks of the individual. This may be scars, amputations and postures - ***Lemon Banda and 19 Others V Mota Engil Limited and General Alliance Insurance Limited*** (supra). In ***Ching'amba v Deerless Logistics Ltd*** Civil Cause No. 2888 of 2007 the Court stated that disfigurement is not a matter to be taken lightly and casually. It is something that one has to live with permanently.

The Claimant has been disfigured. He is unable to stretch his fingers and suffers from numbness of the hand. The hand swells whenever he works. He is unable to use the hand as he used to. He has scars on the injured fingers and wrist.

Award of Damages

In ***Barnet Chapola v The Estate of Steve Chanje and 2 Others*** Civil Cause No. 496 of 2017 The Claimant sustained a dislocation of the right shoulder, multiple cut wounds on both legs and feet. The wounds were sutured and the arm was put in an arm sling. He was in an arm sling for two months. He was unable to turn his neck because of the pain and he was unable to work. This Court awarded him a sum of K4,000,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement on 11th April, 2019.

It is clear from the evidence that the injuries sustained by the Claimant are more serious than the ones sustained by the Claimant in the ***Barnet Chapola v The Estate of Steve Chanje and 2 Others*** (supra) case. He has gone through and will go through great pain and suffering for a long period of time. This Court, therefore, awards him

a sum of K6,000,000.00 as damages for pain and suffering, loss of amenities of life, and disfigurement.

Conclusion

The Claimant is awarded a total sum K6,000,000.00 as damages. He is further awarded costs of the proceedings to be taxed at a later date if not agreed by the parties. Each party is at liberty to appeal to the Supreme Court of Appeal within the requisite time frames.

Pronounced in Court this 15th day of May, 2020 at Blantyre.



EDNA BODOLE (MRS.)

ASSISTANT REGISTRAR