

Library



**REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE No. 516 of 2018**

BETWEEN:

MATIKI MASEYA.....CLAIMANT

AND

ELECTRICITY SUPPLY CORPORATION OF MALAWI LTD DEFENDANT

CORAM

Mrs T. Soko : Assistant Registrar
Mr Kamunga : Counsel for the claimant
Mr Kayira : Counsel for the defendant
N. Munthali : Court Clerk

ASSESSMENT ORDER

This is the order on assessment of damages following a default judgment dated 24th June 2021. The claimants claim is for damages for pain and suffering, loss of amenities of life, damages for deformity, damages for disfigurement, damages for loss of earning capacity and costs of the action. The facts aver that the claimant was at all material times an employee of the defendant working as a temporally laborer. On or about the 17th day of March 2016, at around 2pm at Mdeka Trading Centre within the city of Blantyre, the claimant was injured as he was installing prepaid meters at

several poles when he was pulled by the shock and his left hand was forced to come into contact with metal (neutral bolt) which energized following a broken conductor. As a result of the accident, the claimant sustained various injuries.

In evidence the claimant adopted his witness statement where he explained that as a result of the accident, he suffered internal injuries which are as follows:

1. Injury to spine
2. Nerve damage
3. Painful head
4. Unable to use the left arm
5. Nerve damage on the left arm
6. Persistent painful back
7. Persistent pain on the left leg
8. General body pains

The claimant stated that he experiences recurrent headaches when doing any work. He further lamented that he feels severe pain whenever he attempts to bend or turn. He added that he experiences a lot of pain from the upper left arm especially in the nerves. The claimant stated that he feels a lot of pain and numbness on his left leg and sometimes he has difficulties to walk. He bemoaned that he never used to take painkillers on daily dose unless when he is sick but since the accident he has been forced to live with taking pain killers each day in order to find comfort. He stated that he cannot walk long distance or perform his conjugal rights. He said since the accident, his small and ring finger completely went numb that he is unable to use them. Further, the claimant states that he walks while limping because the nerves damages his left leg. He stated that he can no longer walk and or stand upright due to the spine injury. On loss of earning capacity, the claimant stated that he is unable to work like he used to before the accident. He said that whenever he undertakes any heavy work then he experiences serious internal pains which sometimes last for over a week. He stated that he is unable to farm unlike before the accident. The claimant tendered copies of the medical documents as part of his evidence.

In cross examination, the claimant stated that he has 4 children ranging from 22 years – 6 years. He said he could not remember when the 4th child was born. He said he cannot have sexual intercourse with his wife as he cannot have erection anymore. He said he did not get any medical assistance

on the problem he developed. He said he was told about 5% incapacitation at Thyolo Hospital. He stated that he was treated as an outpatient from 1st March 2015- 17th March 2017. He stated that the report from Mpingwe clinic shows that the hip is normal and the bones are also normal. He stated that he is a farmer and earns an approximate of K30,000.00 per month.

In re-examination the claimant stated that before the accident he was receiving a basic salary of K30,000.00 and also earn K20,000.00 per month out of the farming. He said mpingwe clinic assessed the bones, hip and joints and they confirmed that everything was normal except the nerves which were not assessed.

The defendant did not bring a witness.

In submissions, Counsel for the claimant submitted that the claimant should be compensated with K56,000,000.00, K30,000,000.00 being damages for pain and suffering, K10,000,000.00 damages for loss of amenities of life, K5,000,000.00 damages for deformity, K5,000,000.00 damages for disfigurement and K6,000,000.00 as damages for loss of earning capacity.

On pain and suffering Counsel cited a case of *Richard Chinsinga vs Electricity Supply Corporation of Malawi Ltd, Personal Case No. 59 of 2018* where the claimant suffered very large burnt wounds on the neck exposing tendons on the neck. The claimants arm was amputated and suffered large deep horrific burnt wounds on the left cheek and left ear exposing flesh. The claimant was awarded K40,000,000.00 as damages for pain and suffering and loss of amenities of life, loss of earning capacity, deformity and disfigurement. The award was made on 30th August 2018.

On loss of amenities of life Counsel cited a case of *Chancy Chirambo vs Nico General Insurance Co. Ltd G4S Security Malawi Ltd and Alexanda Matemba Personal Injury Cause No. 80 of 2015* where the claimant suffered fracture of the left femur, metal insertion on the left upper leg. The claimant also sustained fracture of the left lower arm, deep cut wound on the head. He was awarded K6,003,000.00. the award was made on 6th October 2016.

On deformity, Counsel cited a case of *Rabbecca M'bwana vs Attorney General Civil Cause No. 1958 of 2009* where the Court awarded the claimant the sum of K1,000,000.00 as damages for deformity. Counsel stated that the claimant lost injury to spine, nerve damage persistent, painful head, unable to use the left arm, nerve damage on the left arm, persistent painful back, persistent

pain on the left leg, experiencing heat on the left leg, general body pains and cannot perform sexual activity.

On disfigurement Counsel cited *Piason Shadi vs Reunion Insurance Co. Ltd Personal Injury Cause No. 200 of 2014* where the Court in December 2015 awarded the claimant a sum of K6,000,000.00 as damages for disfigurement for a simple fracture.

On loss of earning capacity, Counsel calculated it as follows $K50,000.00 \times 12 = K600,000.00 \times 10$ years culminating to K6,000,000.00.

In the present matter, it is clear from the evidence that the claimant was electrocuted and lost conscious on the spot. It is also in evidence that the claimant sustained the injuries that I have already stated in this matter. The same were not controverted by the defendant. The only point that the defendant emphasized was that the claimant's bones, joints and soft tissues were normal. However, it does not dispute the fact that the claimant underwent pain and suffering. To add the claimant was treated as an outpatient for almost 2 years and I believe that it caused trauma and stress to the claimant. I therefore find that the claimant suffered pain and deserve to be compensated. Counsel proposed a sum of K30,000,000.00 as damages for pain and suffering. In my view, K30,000,000.00 is on the higher side. I have considered the comparable cases by Counsel for the claimant which in my view are more serious than in the present matter. Considering all the factors, I award the claimant a sum of K5,000,000.00 as damages for pain and suffering.

On loss of amenities of life, it is also clear from the evidence that the claimant cannot enjoy some of the activities such as walking as well as conjugal activities. This has affected him and the family as the wife and even himself has to endure the situation. Counsel for the claimant proposed K10,000,000.00 for loss of amenities of life. Considering the comparable cases cited by Counsel for the claimant and the circumstances of this case I award K3,500,000.00 as damages for loss of amenities of life.

On deformity and disfigurement, it is also clear from the evidence that the claimant was left with disability and neurological effect which includes failure to perform sexual activity. Counsel proposed K10,000,000.00 as damages for Deformity and disfigurement which in my view is also on the higher side considering the comparable cases cited by Counsel. In the view of the foregoing I award the claimant a sum of K3,500,000.00 as damages for deformity and disfigurement.

On loss of earning capacity there is no substantial evidence that the claimant was earning the amounts he mentioned in the evidence. Be as it may, the claimant stated that he cannot farm and cannot perform the work he used to do. I therefore award the claimant a sum of K2, 000,000.00 on loss of earning capacity.

Costs are for the claimant.

Made on this 18th day of November 2021.

A handwritten signature in black ink, appearing to be 'T. Soko', written over a horizontal line.

T. Soko

Assistant Registrar