



IN THE HIGH COURT OF MALAWI

LILONGWE REGISTRY

CIVIL DIVISION

CIVIL CASE NO. 760 OF 2021

BETWEEN:-

CHRISPIN JOHN..... CLAIMANT

-AND -

BABA G. CONSTRUCTION LIMITED.....DEFENDANT

Coram:

Brian Sambo, Assistant Registrar

Grace Mapemba Chikopa, of counsel for the Claimant.

Defendant, absent and unrepresented

Mr. Matope, Court Clerk/Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

Introduction

On 3rd of November, 2021 the Claimant successfully obtained a default judgment for the following;

- i. Damages for pain and suffering
- ii. Damages for loss of amenities of life
- iii. Damages for disfigurement
- iv. Damages for loss of future earning capacity
- v. Costs of action.

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On 18th November, 2021 I heard evidence on assessment, interparte, and I now return to give my assessment of damages. Before I do so, let me share brief facts of this matter.

Brief Facts of the Case

The Claimant was employed by the Defendant as a carpenter, and was working at Area 3 within the city of Lilongwe. On 15th of May, 2021, while on duty, the Claimant was involved in an accident after a grinder which he operated malfunctioned. As a result of the accident, the Claimant sustained an open fracture of his 4th and 5th fingers, and laceration of his right hand. The accident occurred as a result of the Defendant's negligence.

Evidence on Assessment

The Claimant was the sole witness in his case. He testified that as a result of the accident, he lost a finger; his finger borne got scrapped off. He said the accident would not have happened if it were not for the negligence of the Defendant. He told the court that he was given bad tools for his carpentry job, and despite reporting to them, his supervisor kept on forcing him to make do with the same poor tools. He adopted and tendered his Witness Statement along with a Police Report and a Medical Report all marked PEX1. He added that, as a carpenter he uses hands to work, and the loss of his finger has negatively affected his trade. He said he could not work any longer, and the Defendant had also laid him off for no proper reasons. He said his family has been negatively affected because of the injuries as well as because of the unfair dismissal.

Issues for Determination

The hearing was conducted in order to assess the appropriate level of damages payable by the Defendant to the Claimant.

Analysis and Determination.

Damages are the remedy for a victim of a wrong, and the wrongful party has to compensate the victim, in as far as money can, to be put back in the same position that the victim would have been if not for the wrong- **Elida Bello v. Prime Insurance Company Limited**, Civil Cause No177 of 2012 (unreported).

Pain and Suffering

The word 'pain' 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- Ian Goldrein et al.

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Personal Injury Litigation, Practice and Precedents (Butterworths, 1985) p8. See also **City of Blantyre v. Sagawa**, [1993] 16(1) MLR 67 (SCA).

In order to achieve consistency and uniformity, courts of law would also want to consider comparable judicial precedent.

In **Yambitsani Follius vs Prime Insurance Company Limited**, Civil Cause No. 632 of 2020 this court made a total award of MK4,950,000.00 in which the Claimant sustained mild head injury, fracture of pelvis, laceration and swollen head, bruised right shoulder and bruised abdomen and his degree of incapacity was assessed at 30%.

In **Mr. Albert Kambova vs Prime Insurance**, Personal Injury Cause No. 99 of 2016, a total award of **MK3, 313,500.00**. This award was made by Hon Austin Jessie Banda, Assistant Registrar (as then he was) on 23rd of July, 2018.

In the instant case, the Claimant sustained an open fracture plus laceration of his right hand. He lost a finger in the process, and the pain and suffering associated with these afflictions cannot be underestimated.

Loss of Amenities of Life

Loss of amenities embraces all that which reduces the Claimant's enjoyment of life; her deprivation of amenity whether she is aware of it or not.

In the case of **Manuel Paul v BT Ndawala and Prime Insurance Co Ltd**, personal injury cause no 251 of 2014, loss of amenities of life was calculated at the amount of K1,000,000.00 the Claimant whom was a minor and the degree of incapacity was at 15%.

In **Tambala v Jali and Prime Insurance co ltd** [2018], the claimant sustained a fracture and had scars due to some grafting done on him. He was awarded K1, 500, 000 for the loss of amenities of life.

In the present matter the Claimant has lost the pleasure of using a hand with all five fingers intact. The Medical Report says the Claimant would like lose mobility of the 2 distal phalanges of the 4th and 5th fingers.

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 coming in as a result of surgical operation necessitated by the injury. It is a change in appearance but it is capable of limiting a person from doing certain things as was observed by the court in the case of **Austin**

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Julius v. Rasika Gunawardena and General Alliance Limited, Personal Injury Cause Number 316 of 2014.

The evidence before me does indeed show a disfigurement on the part of the Claimant, to the extent that he lost one of his fingers. His degree of incapacity was assessed at 7%. He deserves compensation.

Loss of Future Earning Capacity

The Claimant in his testimony told the court that he cannot work any longer. He believes that his future earning capacity has been lost. I examined his Medical Report, and it does not support his assertions to the extent that he has lost earning capacity. Rather, the Medical Report says that he is healed and should be able to return to work in a month time. The hospital made these findings on 15th June, 2021, and now it is well over 5 months. I will therefore not award any damages under this head.

Conclusion

In conclusion, considering all the circumstances of the case and the Claimant, the court hereby makes an award of **MK4, 500,000.00** being damages covering all heads above. This whole amount is payable within 7 days from today.

Costs are for the Claimant and shall be assessed, separately if not agreed upon by the parties.

Made in chambers today Monday the 20th day of December, 2021.


Brian Sambo
Assistant Registrar

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