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IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
PERSONAL INJURY CAUSE NO. 902 OF 2016

BETWEEN  
ERNEST ALUMANDO  
AND  
NAMING'OMBA TEA ESTATES LIMITED

CLAIMANT  
DEFENDANT

CORAM : MATAPA KACHECHE Deputy Registrar  
Kazembe For the Claimant  
Absent Counsel for the Defendant  
Mtegha (Mrs) Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

1. By a judgment dated 1<sup>st</sup> October, 2020 the defendant was found liable for the injury suffered by the claimant for negligence and breach of statutory duty. The judge ordered that the damages awardable be assessed by the Registrar if not agreed by the parties.
2. Apparently the parties failed to agree and the matter came for assessment on 4<sup>th</sup> November, 2021. The defendant did not attend despite being duly served with the process.
3. The claimant called one witness and it was the claimant himself. He adopted a witness statement in which he states that he was at all material times working for the defendant. On 19<sup>th</sup> June, 2016, while pruning tea the knife that he was using hit a tree stump, bounced back and hit him on his left hand. As a result, the knife cut into his left hand. He sustained a deep cut wound and general body pains.
4. When expounding the witness statement, he said that a nerve got damaged so that he is now unable to work in a farm or do any manual work. I am unable to accept this aspect in the testimony because it was the

very first time that he introduced the damage to the nerve. The witness statement did not mention the damage to the nerve anywhere. Moreover, the statement of claim did not particularize that damage nor is such a damage stated in the medical report that he filed together with the summons. All this leads me to a conclusion that the mentioning of such damage is an afterthought on the part of the plaintiff. Unfortunately, I consider it so fundamental that the defendant needed to have notice of it which in the present case he did not have.

5. No medical report was provided to, and the one on file does not, show the extent to which the hand cannot work or whether the claimant received physiotherapy to improve the performance of the hand.
6. According to the statement of claim the claimant claims the following:
  - a. Damages for pain and suffering
  - b. Damages for loss of amenities of life
  - c. Damages for loss of earning capacity
  - d. Special damages.
7. The special damages were not particularized. And the claimant did not lead any evidence to prove them. As a result I will not assess these.
8. A person who suffers bodily injuries due to the negligence of another is entitled to the remedy of damages. The principle is that the Court must, as nearly as possible, award an amount, as far as money can, which will put the plaintiff in the same position s/he would have been in if s/he had not sustained the wrong for which s/he is being compensated.
9. Such damages are recoverable for both pecuniary and non-pecuniary losses. The pecuniary losses include loss of earning capacity and related benefits and medical expenses and related expenses.
10. In this case we are to assess non pecuniary damages for pain and suffering, loss of amenities of life and

pecuniary damages being the claim for loss of earning capacity.

11. Pain refers to the immediately felt effect on the nerves and brain of some lesion or injury to a part of the body, while suffering is distress which is not felt as being directly connected with any bodily condition.
12. Loss of amenities of life concentrates on the curtailment of the plaintiff's enjoyment of life by his/her inability to pursue the activities s/he pursued before the injury. Bricket L.J. put it thus in *Manley v. Rugby Portland Cement Co.* (1951) C.A. No 286, reported at Kemp and Kemp, *The Quantum of Damages*, Vol. 1 (2<sup>nd</sup> Ed., 1961, p. 624)

*"There is a head of damage which is sometimes called loss of amenities; the man made blind by the accident will no longer be able to see the familiar things he has seen all his life; the man who has had both legs removed will never again go upon his walking excursions- things of that kind- loss of amenities."*

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13. The amount to be awarded for this head of damages cannot be quantified in monetary terms by use of a mathematical formula but by use of experience and guidance afforded by awards made in decided cases of a broadly similar nature. See *Wright v British Railway Board* [1983] 2 AC 773.
14. I must emphasize that the two heads of non-pecuniary damages discussed here are separate and it is not correct to lump them together. Most times counsel lump them together and the Courts adopt the same approach. But the correct approach is that they must be separated.
15. As for loss of earning capacity, it simply refers to the inability of the claimant to pursue gainful employment or business due to the injury. This is mostly due to the fact that the injury to a particular part of the body has made the claimant so disabled

that he can no longer pursue the gainful work or, if he can, it would be only at a reduced capacity.

16. Unlike the nonpecuniary damages discussed above, the damages under this head are quantifiable by use of a scientific formula. We use the multiplier and multiplicand formula. The multiplier being the estimated number of years that the claimant would be expected to work and the multiplicand being the annual wage that the claimant would be expected to receive.
17. In respect of his submission for pain and suffering and loss of amenities of life, counsel cited a number of previous awards, most of them coming from eight to nine years ago. Most of them are in respect of far more serious injuries than the present case. Further, the awards global combining pain and suffering, loss of amenities and disfigurement as one award. The practice of combining the awards, in my view, should not be encouraged. It distorts precedent as it is unclear as to what weight was given to which head of damages.
18. In this case although I will cite global awards only for the purposes of general comparison my award will be properly segregated to guide the plaintiff on how I came up with the award. The following awards will be my benchmark:
  - a. In the case of *Julius Kathumba v Fanuel Naphimbo and another (2020) Personal Injury Cause Number 599* the Claimant was hit by a car. He lost consciousness, had deep bleeding cuts over his proximal forehead, bruises over right side of the face and distal forehead, bruised right posterior shoulder, bruised left anterior lateral left hip, bruises over left lateral wrist, bruised left elbow both palms and left lateral thigh, bruised both knees on lateral aspects and bruised both feet interiorly and severe head injury. He was taken to St Joseph Nguludi Hospital where he was treated and admitted for four days. The injuries resulted in nasty scars over his face and most parts of his body, he is deformed, and at the time of

assessment he was unable to attend school due to his condition. It was also said in Court that the claimant had suffered a mental disturbance. The claimant was awarded K5, 500, 000.00 on all heads. The award was made in August 2021.

- b. In the case of *Dan Kananji v Noel Zigowa and another (2020) Personal Injury Cause number 795*, the Claimant suffered injuries such as a fracture of the malleolus bone (left ankle), deep cut wound on the left eye, soft tissue injuries and excessive body pains. His left ankle was cast in Plaster of Paris and he was on weight bearing for six months. His wound was sutured and dressed. He was having difficulties in walking. He developed residual scars on the affected area and he still felt severe pain on his ankle. He could not walk for long distances due to the severe pain that he felt on his ankle. He was awarded K4, 500,000.00 on 12<sup>th</sup> July, 2021.
  - c. In the case of *Manuel Witness v John Dick and others (2018) Personal Injury Cause number 376* the claimant sustained crushed right foot, left foot with degloving wound exposing the flesh and painful chest and fractured clavicle. He was taken to Queen Elizabeth Central Hospital ("QECH"). He was taken to theatre where his right leg was amputated below the knee. He was a subsistence farmer. He also used to ride his bicycle when going long distances. He could no longer do all these. He now relied on handouts from his relations in order to survive. He was awarded K3, 000,000.00. Award was made on 24 May 2021.
19. It must be noted that the injuries involved in these cases are far more serious than the injuries suffered by the claimant herein. The claimant was even treated as an outpatient. As a matter of comparison therefore, the award in this case must be lower than in the cited cases. Further when awarding for loss of amenities I will have to consider that the claimant herein is also being awarded for loss of earning capacity to avoid overcompensating him. With these considerations I make the following awards:

- a. For pain and suffering: K1, 000, 000.00
- b. For loss of amenities: K500,000.00

20. Now I come to the award for loss of earning capacity. I observe that the claimant did not state his age in the witness statement or here in Court. Counsel has submitted that the claimant is 31 years old. He submits further that we should use the retirement age of 55 years being the retirement age to determine the multiplier. He thus proposes the multiplier to be at 24.
21. In the absence of the claimants age being verified I am unable to use the parameters submitted by counsel. In any event even if they were accepted the amount would have been reduced to account for the fact that the claimant is going to get a once off lump sum payment instead of periodic payment over a long period of time. I will thus use 10 as the multiplier.
22. Further the claimant stated that he used to earn K1, 300.00 a day. This amount is less than the current minimum wage and counsel has proposed that we use the minimum wage of K50,000.00 per month as the multiplicand. I agree with counsel on this one.
23. The award for loss of earning capacity therefore comes to:  $50,000.00 \times 10 \times 12 = K6, 000,000.00$
24. The total award therefore comes to K7, 500,000.00
25. I also award costs of these proceedings.

Delivered this 20<sup>th</sup> day of June 2021



CC Matapa Kacheche  
Deputy Registrar