



IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
Personal Injury 402 OF 2016

BETWEEN  
PHILLIMON MATHUWA CLAIMANT  
AND  
POLYPACK LIMITED DEFENDANT

CORAM : MATAPA KACHECHE Deputy Registrar  
D Jere for the Claimant  
Absent for the Defendant  
Mtegha (Mrs) Official Interpreter  
ORDER ON ASSESSMENT OF DAMAGES

1. The claimant commenced this action by way of writ dated 31<sup>st</sup> May, 2016.
2. It was alleged in the statement of claim that the plaintiff was employed by the defendant as a machine operator. On or about 28<sup>th</sup> April, 2016, in the course of his employment operating the machine, the machine got jammed and crashed his hand thereby injuring it.
3. The claimant therefore commenced the action on the basis of the defendant's breach of statutory duty contrary to sections 13, 35 and 65 of the Occupational Safety, Health and Welfare Act, Cap55:07 of the Laws of Malawi. In the alternative he claimed under the general law of negligence.
4. He sought the following reliefs: damages for pain and suffering, damages for loss of amenities, damages for disfigurement and special damages namely the cost of the medical report.
5. The defendant duly entered defence. The Court then issued directions on 7<sup>th</sup> February, 2018 as to the further conduct of the action.

6. Whereas the claimant duly complied with the directions, the defendant did not. By an order dated 13<sup>th</sup> October, 2021 therefore the Court entered judgment in favour of the claimant granting him all the reliefs. The Court further directed that the Registrar must assess the payable quantum.
7. The matter was set down for assessment on 25<sup>th</sup> February, 2022. This is the order on assessment of damages.
8. 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 28<sup>th</sup> April, 2016, he was on night shift and he reported for work at around 6 p.m. On arrival he was advised to work on a machine called a crusher which grinds deformed products for recycling of the materials.
9. Around 8 p.m. his supervisors ordered him to leave the crusher and report to the bottle making machine. They instructed him to get spokes to be used for clearing a blower to release air into the molten material. The blower ordinarily works properly without anyone interfering with its operations. However, on this particular day it apparently had malfunctioned and that is why the claimant was asked to be using the spokes to be aiding the machine to perform properly.
10. While he was doing that the machine pulled his hand and moved it against a metal bar towards the molten material. He shouted for help and the machine was stopped but by that time his hand had already been severely injured.
11. He was taken to Queen Elizabeth Central Hospital where he was admitted for two weeks. The injured part was treated by a graft. The graft was done by extracting flesh from his thigh to fix it on the hand.
12. He could not work for the whole year. When he thought he had fully recovered he went back to work

but found that he could no longer work. So he resigned. He is therefore unable to work due to injury to the hand up to date.

13. I had an opportunity to see the injured area. The scar is so big and the hand is still deformed. He also showed a part of the arm where the initial flesh for grafting was taken where I observed a huge scar. Then he showed us a thigh where another huge scar appeared but this was a fading one.
14. 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.
15. 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.
16. In this case we are to assess non pecuniary damages for pain and suffering, loss of amenities of life and disfigurement.
17. 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. These are different heads of damages although due to their close linkage they are assessed as one.
18. 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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19. 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.
20. Disfigurement refers to the change in physical form of a person injured either as a direct result of the injury such as scars that remain after the wound heals, or its treatment, such as scars coming in as a result of surgical operation necessitated by the injury. Again the amount awardable here cannot be scientifically quantifiable.
21. I must emphasize that unlike pain and suffering the two other heads of non-pecuniary damages discussed here are separate and it is not correct to lump them together. Most times counsel lump all heads of nonpecuniary damages together and the Courts adopt the same approach. But the correct approach is that they must be separated. The separation helps the parties and subsequent assessment masters to appreciate the reason why a particular award was made.
22. 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 year ago. Most of them are in respect of bone injuries and not fairly comparable to the present one. Indeed, it is very difficult to get a precedent on injuries similar to the present one.
23. In this case although I will use *Ernest Alumando v Naming'omba Tea Estates Limited* (2016) **Personal Injury Cause No. 902**. The plaintiff suffered injury

to the hand. He was treated as an outpatient. He did not receive a major surgical procedure. He was awarded K1,000,000.00 for pain and suffering and K500,000.00 for loss of amenities.

24. In this case the claimant suffered a more serious injury. His pain was exacerbated by the fact that the treatment required grafting from two different body parts. In all these procedures he felt pain. And the grafting led to further scars on the claimant's body. He can no longer effectively use his right hand anymore.
25. With these considerations I make the following awards:
  - a. For pain and suffering: K3, 000, 000.00
  - b. For loss of amenities: K2, 000,000.00
  - c. For disfigurement: K2, 000,000.00
26. The claimant did not prove the special damages. So I will not award them.
27. The total award therefore comes to K7,000,000.00. the defendant to pay within 21 days of service on him of the order.
28. I also award costs of these proceedings.

Delivered this 29th day of June 2022



CC Matapa Kacheche  
Deputy Registrar