



IN THE HIGH COURT OF MALAWI
CIVIL DIVISION
PRINCIPAL REGISTRY
PERSONAL INJURY CASE NUMBER 694 OF 2016

BETWEEN

THOMAS WILSON..... CLAIMANT

AND

NCHIMA TEA ESTATE.....FIRST DEFENDANT

AND

LUJERI TEA ESTATE LIMITED.....SECOND DEFENDANT

Before: Honourable Judge Jack N'riva

Mr W. Kazembe, of counsel for the claimant

Mr L. Ulaya of counsel for the defendant

Ms D. Nkangala, Court Clerk and Official Interpreter

JUDGEMENT

For the purposes of the hearing before this court the question for determination is whether the injuries that the claimant suffered were as a result of negligence on the part of the defendant and if so whether the defendant is liable to pay the claimant damages for the injuries.

The background of the matter is that the claimant commenced this matter stating that he was working for the defendant. On or around 8th May 2015, according to the statement of claim, the claimant was working when he got injured. He was

pruning tea and in the process he tripped and fell into a ditch in which he hit stones. The claimant was severely injured due to the accident. The claimant argued that the accident happened because the defendant was negligent and in breach of his statutory duty as an employer. The particulars of negligence were that defendant failed to provide a safe working environment to the claimant and subjected him to unsafe work environment and not putting in place proper systems to ensure that he was working in a secure environment. Therefore, the claimant claimed damages for pain and suffering, loss of amenities of life, and for loss of earning capacity as well as damages for disfigurement. He father claimed special damages and costs of this action.

The claimant was the sole witness in this matter.

The defendant did not call witness.

Looking at the evidence that claimant adduced, it was a repetition of what he said in his statement of claim

Back to the question before the Court whether the injuries were due to negligence on the part of the defendant and if so whether the claimant is entitled the damages that he has claimed. The second question follows the first.

In cross-examination, the claimant did not state how the defendant was negligent. He only insisted that he wanted to get compensation because he got injured while he was working for the defendant.

His argument was that since the defendant was a company, it had to compensate him. Likewise in re-examination on the question whether the defendant did anything wrong, the claimant's answer was merely that he was not given money for the injuries. Of course, later, he said that the defendant was to blame because there were some bushes and pits.

The evidence falls short of establishing how the defendant was negligent. As to the claim that he had to be monetarily compensated simply because he got injured while working, I believe that that is within the ambit of workers compensation regime. That cannot be claimed in this Court although this Court has an unlimited original jurisdiction. In any event that was not the claim in this Court.

Since this is a civil case, the burden is on the one who asserts to prove their assertion on a balance of probabilities. This Court is of the view that the claimant's evidence falls short of demonstrating how the injuries were caused to attribute negligence on the defendants. It was incumbent on the claimant to establish the defendant's negligent acts or omissions. The evidence falls short of establishing that aspect.

In the circumstances, the claimant failed to prove before this Court that the injuries were as a result of negligence on the part of their defendants. This Court, therefore, does not find that the defendant is liable for the claimant's claimed damages.

The claim is dismissed.

On costs, costs are in the discretion of the courts. In my discretion I make no order on course taking into account that the claimant said that he is longer working and also that when he was working he was working as a tea plucker. It is unlikely that that was a well-paying job. Costs on him would, most likely, cause financial hardship on him.

MADE the 29th day of March, 2022

A handwritten signature in black ink, appearing to read 'J. N'RIVA', written in a cursive style.

J. N'RIVA

JUDGE