



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 159 OF 2019**

**BETWEEN
BRAZIO LUKA
AND**

AQUIC CONTRUCTION COMPANY

CLAIMANT

DEFENDANT

**CORAM : MATAPA KACHECHE Deputy Registrar
Chizimba for the Claimant
Defendant Absent
Mbekeani Official Interpreter**

ORDER ON ASSESSMENT OF DAMAGES

1. By a judgment in default of defence dated 11th July, 2019, the defendant was held liable for negligence resulting in injury to the plaintiff. It was ordered that the defendant should pay the plaintiff damages for pain and suffering, damages for "incapacity", damages for deformity/disfigurement and costs of the action.
2. The judgment went on to direct the Registrar to assess the damages.
3. The matter came for assessment of damages on 23rd June 2022. The defendant did not avail itself. The matter thus proceeded without the defendant.
4. The claimant was his own lone witness in the assessment proceedings.
5. His testimony is that he was a carpenter employed by the defendant. On 3rd September, 2018, while fixing iron sheets on a warehouse, the roof structure suddenly collapsed and he fell down with it. He got injured in the process.

Brazio Luka v Aquic Construction Company

6. He sustained a deep cut wound on the left wrist with vascular injuries, traumatic amputation of a finger and degloving wound on the left middle finger.
7. He was taken to Chiradzulu Hospital where he was treated by dressing of the amputated finger and suturing of various cut wounds. The wounds were also washed using a saline solution. He was then given pain killers. These were very painful procedures according to the plaintiff. He remained in the hospital for four days.
8. As a result of the injuries he can no longer use the left hand the way he used to before the accident. He feels incessant pain on his left hand. He can no longer work as effectively as he used to. Being a carpenter he requires the use of both hands as he needs to constantly lift things. For this to happen one needs both hands to be healthy. This has led to reduced financial earnings.
9. Further, the injuries have left permanent scars on his left hand and an amputated finger.
10. 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.
11. 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.
12. In this case we are to assess non pecuniary damages for pain and suffering, damages for disfigurement and damages for what the plaintiff has termed "incapacitation" which I understand as damages for loss of amenities.
13. Pain refers to the immediately felt effect on the nerves and brain of some lesion or injury to a part of

Brazio Luka v Aquic Construction Company

the body, while suffering is distress which is not felt as being directly connected with any bodily condition.

14. 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 (2nd Ed., 1961, p. 624.2

“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.”

15. 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.
16. The amount to be awarded for these heads 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*.
17. I am grateful to counsel who has cited a number of cases from which I can get guidance to come up with my award. In coming up with my award I have taken them into consideration although I will not necessarily cite them all.
 - a. 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

Brazio Luka v Aquic Construction Company

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 also 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.

- b. In the case of Grivin Imedi v Attorney General Personal Injury cause no. 962 of 2011 the plaintiff was awarded K5, 000,000.00 having been amputated a leg. The award covered all heads (award made in 2013)
- c. In the case of Peter Nsona v Lujeri Tea Estates Limited Personal Injury Cause Number 857 of 2015, a person who had his arm crushed by a machine leading to its amputation was awarded K27, 000,000.00 in 2018.

18. I take into account the fact that the cited cases are far more serious with total incapacitation in the case of Peter Nsona. This is a mild injury compared to the cited cases.

19. Having made these considerations, I make the following awards:

- a. For pain and suffering: K2, 500, 000.00
- b. For loss of amenities: K2, 000,000.00
- c. For Disfigurement: K1,000,000.00

20. The total award therefore comes to K5, 500,000.00

21. I also award costs of these proceedings.

Delivered this 20th day of May 2022



CC Matapa Kacheche
Deputy Registrar