



REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 973 OF 2021

BETWEEN

FRANCIS MUMBA .....CLAIMANT

-AND-

JAVID AYYUB LIMBADA t/a MOON PUFFS.....DEFENDANT

Coram

E.Chapita-Banda, Assistant Registrar

Ndhlovu, Counsel for the defendants

Chida, Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

The claimant was an employee of the defendant when on 13<sup>th</sup> June 2021, he was injured whilst on duty, operating a machine. Through a default judgment dated 15<sup>th</sup> November 2021, judgment was entered for the claimant and he was awarded damages for pain and suffering; loss of amenities; disfigurement; loss of earning capacity; and loss of earnings. The claimant appeared before me for assessment of the damages on 18<sup>th</sup> January 2022. The defendant did not come and I proceeded in their absence. This is an order on assessment of damages.

## **EVIDENCE**

The claimant was the only witness who testified. He adopted his witness statement as his evidence. His evidence is that he was working for the defendant and on the day of the accident, he was operating a machine that dries soya pieces. In the process, his right hand got trapped and he lost four fingers off his right hand. He also sustained a cut wound on the thumb and a painful arm.

Evidence indicates that the defendant terminated the claimant's employment after the accident and he has failed to secure another job due to the condition of his hand. The claimant tendered medical report and a letter of referral he received at Limbe Police referring him to the hospital after the accident.

## **SUBMISSIONS ON COMPARABLE CASES**

Counsel cited cases in which comparable awards were made. He cited **Richard Chinsinga v Electricity Supply Corporation of Malawi**, Personal Injury Cause No. 59 of 2018 in which an award of K30,000,000.00 was made in 2018 to the claimant as damages for pain and suffering, loss of amenities of life and disfigurement. The claimant was electrocuted and sustained burns and an amputated arm.

In **Justin Makwangwala v Henderson Van Guilder and two others** Civil Cause No. 213 of 2015, the claimant was in 2017 awarded K9,000,000.00 as damages for pain and suffering, loss of amenities and disfigurement. The claimant had his leg amputated.

Counsel also cited **Deepak Sharma v Zagaf Transport and another** Personal Injury Cause No. 271 of 2014 in which K7,000,000.00 was in 2015 awarded to the claimant as damages for pain and suffering, loss of amenities of life and disfigurement.

## **DAMAGES FOR PAIN AND SUFFERING AND LOSS OF AMENITIES OF LIFE**

A claimant who has suffered loss as a result of a defendant's negligence is entitled to compensation. The damages awarded to the claimant are meant to compensate for both pecuniary and non-pecuniary losses. For non-pecuniary losses courts have made awards for pain, suffering and loss of amenities. See **Lindani v Mlenga and Another** (1992) 15 MLR 199.

In **Sumana v Hara and another** [1993] 16(2) MLR 843 at page 847, the High Court elucidated 'pain and suffering'. The Honourable Judge stated:

*"Pain and suffering are ordinary words. Pain refers to that which is felt by the senses, the discomfort, the ache, etcetera. Suffering refers to the mental injuries and the actual pain and the overall effect of the injury now and for the future."*

On amenities the judge in **Sumana v Hara and another** (supra) had this to say:

*"Amenities are really the things that the injury will deprive enjoyment of. In one case it would be loss of leisurely pursuit, in other cases it would just be the enjoyment of work, all these come under the epithet, "amenities".*

A claimant who has sustained injuries by the wrongful act of a defendant is entitled to damages for pain and suffering and for lost amenities. The claimant herein felt pain at the time of the accident and thereafter and he suffered. He had his four fingers amputated and certainly cannot do or enjoy things he used to before the accident, although these were not named. A sum of K5,000,000.00 is awarded as damages for pain and suffering and loss of amenities of life.

## **DAMAGES FOR DISFIGUREMENT**

Damages for disfigurement were initially awarded as part of damages for pain and suffering owing to the suffering a claimant went through as a result of being disfigured. See **Mwasinga v Stagecoach (Mal) Ltd** 1993 16 (1) MLR 363. Later they began to be awarded separately. In **Matenje v Beams** (1992) 15 MLR 253, the court awarded damages for disfigurement as a separate head of damages when the claimant got scarred as a result of a dog bite.

Damages for disfigurement are awarded to compensate for a change in a claimant's physical form or appearance as a result of injury. See **Francis Chikoti v United General Insurance Company Limited**, Personal Injury Cause No.1958 of 2016. The claimant has a permanent disability on a noticeable part of his body, the hand. He is entitled to damages for disfigurement.

Counsel cited cases in which comparable awards were made. A departure from them is that those cases involved loss of entire limbs. In the present case the claimant lost fingers and the sum of K4,000,000.00 is reasonable and it is awarded to the claimant as damages for disfigurement.

## LOSS OF EARNING CAPACITY

Loss of earning capacity is a reduction in a person's ability to earn an income. Where injury is severe and impairs the claimant and causes him to lose work or to go into a different line of work often with reduced earnings, he is entitled to recover damages for loss of earning capacity.

The High Court through Mwaungulu J as he was then stated: "Awards for loss of earning capacity evaluate the chance of an employee, who is actually working, losing a job or earning less on account of the injuries sustained..." **Sakonda v S.R. Nicholas Limited** Civil Appeal Cause Number 67 of 2013.

When earning have not changed, damages for loss of earning capacity are still awarded if there is substantial risk of future loss. See **Lamwa v Attorney General** 1997(1) MLR 286. This principle applies to victims who were not earning at all before the accident, like children. See **Mwasinga v Stagecoach (Mal) Ltd** (1993) 16 (1) MLR 363.

Evidence shows that the claimant lost his job with the defendant after the accident. He has not yet secured another job. The claimant has lost fingers on his hand and the prospect of him not finding any job is substantial.

The evidence shows that he was earning K1,700 per day or K2300 if he worked at night. The day earnings are below the current minimum wage and it would therefore be proper to use the minimum wage of K1923.08 per day or K50,000.00 per months (with one day off).

The claimant did not state how old he is in his witness statement. He appeared before and having seen him, I know he is a young man. He would still be in employment for the next ten years and more. I adopt a multiplicand of 10 considering the vicissitudes of life and that a lumpsum is being given at once.

So,  $K50,000 \times 12 \times 10 = K6,000,000.00$

The claimant is awarded the sum of K6,000,000.00 as damages for loss of earning capacity.

## LOSS OF EARNINGS

These damages are for earnings actually lost as a result of injuries and are thus claimed and awarded as special damages. They are ascertainable having been lost already. Otherwise,

earnings not yet earned and lost are covered under damages for loss of earning capacity. This claim has not been supported by the evidence. In his submissions after trial the claimant wanted an award to cover the next 6 years. These years have already been covered by the damages for loss of earning capacity. No award is therefore made for loss of earnings.

Dated 13<sup>th</sup> Day of May 2022



**E. CHAPITA- BANDA**

**ASSISTANT REGISTRAR**