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Loss of earning cap  
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IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NUMBER 1377 OF 1993

BETWEEN:

JAMES NANGWIYA ..... PLAINTIFF

and

MAKWASA TEA ESTATES ..... DEFENDANT

Coram: D F MWAUNGULU, REGISTRAR  
Mwafulirwa, Counsel for the Plaintiff  
Mrs. Ndalama, Interpreter

ORDER

On 16th December, 1993, when I heard evidence from the plaintiff on assessment of damages, I awarded the plaintiff K8,000 for pain and suffering and loss of amenities and K3,000 for loss of earning capacity. I now proceed to give reasons for the award.

The plaintiff, Mr. Nangwiya, was employed by the defendant, Makwasa Tea Estate Ltd., as a labourer. He was injured on the lift-processing machine. Three fingers were involved. One finger was cut off completely there and then. The other finger was cut. It was to be amputated at the hospital. The plaintiff's father intervened. There was skin grafting to save it. The other was injured and was treated. The plaintiff was hospitalised for two weeks. The incapacity has been worked out at ten percentage points.

After the injury, the plaintiff uses the hand with extreme difficulty. The hand swells from time to time. If the hand swells, he is off from a work, for a day or two before he resumes. He has the same problems when working in the garden.

The plaintiff is to be awarded damages for pain and suffering and loss of amenities. The plaintiff went through considerable pain and suffering. He continues

to have pain and suffering. It is difficult to know how long this pain will last. The amputation of the finger will affect his enjoyment of the jobs he was involved in. Counsel, has cited some awards that have been made in this Court for akin injuries. I am grateful to counsel for them. In the present case I award K8,000 for pain and suffering and loss of amenities.

The plaintiff is also entitled to damages for financial loss. He is aged twenty-four. He continues in the same employment at the same salary. He is not entitled to loss of earnings. He is entitled, however, to loss of earning capacity.

When deciding on whether the plaintiff is entitled to loss of earning capacity where the plaintiff continues in the same employment and there is no reduction in the earnings the court must consider whether there is a substantial, as opposed to a speculative, risk that the plaintiff would lose his job if he was thrown in the labour market. It must always be remembered that when things go tough, employers want to safeguard their interest. When that happens, they do not lay down employees who are able-bodied. They lay down those who in some way are infirm or deficient.

Given the nature of the plaintiff's job and the injuries he has sustained, he is more likely to get the hatchet. There is, therefore, substantial risk that the plaintiff could lose his job.

The next hurdle is to quantify the loss. Although it is difficult to come up with a mathematical formula, courts have regard to the plaintiff's earnings. Courts evaluate the chance. They then come with an award. The plaintiff's earnings are K946 per annum after deducting tax. He is twenty-four. He would be in employment up to the age of fifty-five years. Whatever the award, it must take into account that the award is global and it will earn income for the period in which the plaintiff could have worked. I award the plaintiff the sum of K3,000 for loss of earning capacity.

Made in chambers this 21st day of December, 1993.

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a series of loops and a final flourish.

D F Mwaungulu  
REGISTRAR OF THE HIGH COURT