



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CASE NO. 97 OF 2020

BETWEEN

M.D.¹ (minor suing through her mother
and litigation guardian Eliza Alidi).....CLAIMANT

AND

ELECTRICITY SUPPLY CORPORATION OF MALAWI.....DEFENDANT

Coram: **WYSON CHAMDIMBA NKHATA (AR)**

Mr. Mussa- of Counsel for the Claimant

Mr. Mwakhwawa – of Counsel for the Defendant

Mr. Chintengo - Court Clerk and Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

On the 16th November 2019, the claimant, who was at the material time 14 years old, with her friends were passing through a footpath to her house when she came into proximity with a long piece of live electric wire of 33KV high voltage that runs in the vicinity of her house in the village of Chumba. The wire was hanging slightly lower overhead after a supporting pole had fallen. Apparently, due to the high voltage involved as a result of the ionization of the air between the wire and the claimant, the electricity current arced from the electric wires to the body of the claimant who was electrocuted and suffered severe

¹ Name withheld for her own interest

burns all over her body. By way of a specially endorsed writ of summons which was issued on the 30th of January 2020, the claimant through her mother and litigation guardian commenced these proceedings against the defendant claiming damages for pain and suffering, loss of amenities of life, disfigurement and costs of the action. On 18th May 2020, a default judgment on liability was entered in favour of the claimant. This is the court's order on assessment of damages pursuant to the said default judgment.

The matter came for hearing on assessment of damages on the 5th of November 2020. The claimant's sole witness was her litigation guardian. She adopted her witness statement in which she stated that the Claimant is her biological daughter and she is 14 years of age. She goes to Khaya F.P. School and she is in primary standard 6. She recalls that on 16th November 2019, she left the Claimant at home and she went to her farming field when she was called later after 9 am that her daughter had been electrocuted by the defendant's high voltage un insulated electric wires that pass through close to their home. She averred that the Claimant fell unconscious on the spot and she was rushed to Mulanje District Hospital. She rushed to the Hospital and when she arrived, she was being transferred from the emergency ward and being taken to the wards where she was admitted. She depones that the Claimant suffered partial and full thickness electric burns that exposed the tendons on the whole body from head to toe sparing the upper extremities and the genitalia only. She had severe burn wounds on her head which took over 2 months to fully heal. She was covered in bandage the whole body at the time she arrived. She was put in a caged bed. The Claimant remained in hospital from 16 November 2019 and was discharged on 13th January 2020.

She further averred that while at home the claimant kept taking pain killers and she was still cleaning her wounds on the legs and head which had not fully healed and kept going to the hospital weekly for checkup. On the 8th June 2020, the wounds on her legs which had healed opened up again. She took her back to the hospital where she was treated and she was given medication. It was her testimony that the Claimant was in severe pains throughout the period she was in Hospital. They barely slept and she kept weeping all night. She has lost confidence in her body due to the scars which formed all over the body due to the burns. She was referred to Queen Elizabeth Hospital for further treatment after she was discharged and the Doctor at Queens indicated that she will require to undergo a surgery on her neck to release the contracture on her neck.

She still complains of severe pain on affected areas, her skin has now become so sensitive that she cannot come close to fire or cold weather. The claimant cannot cook now because she does not need to be exposed to fire heat. She developed a stiff neck after the accident. she can no longer turn her neck/head the way she used to. The doctors advised that we should wait for a year before she can go for the surgery. Her body has been disformed and disfigured due to the burns and the life of the Claimant will never be the

same again. She exhibits a Medical Report from Queen Elizabeth Central Hospital and Mulanje District Hospital, a referral letter from the police, images of the claimant while in Hospital and after being released from Hospital, all have been marked "EA 1".

She further stated that since the injuries, the Claimant is unable to do any work which she used to do like cooking, washing. That she cannot get near the fire because her body reacts to the heat. She further stated that she always has to be in her shoes that she cannot walk barefoot due to the burns she suffered under her feet. It was further her testimony that from the time she was discharged in January she continued to go to the hospital for wound cleaning. She explained that on or about 8th June 2020 she went again to the hospital because the Claimants wounds had resurfaced. She was treated as an out-patient. The claimant the tendered medical reports from Queen Elizabeth Central Hospital, Mulanje District Hospital and images as part of her evidence.

In cross-examination, she stated that the claimant can assist in carrying the baby but only for a short period of time.

Such was the evidence tendered for the assessment proceedings. The defendant did not parade witnesses however Counsel sought 14 days to file written submissions. I must express my profound gratitude for the same considering that the submissions went a long way in informing the court in its decision herein. Suffice to say for now, that the court shall refer to the same as and when necessary. I must reiterate that this court has been called upon to assess damages that would adequately compensate the claimant for the injuries and losses suffered.

The law generally provides that a person who suffers bodily injuries or losses due to the negligence of another is entitled to recover damages. The fundamental principle which underlines the whole law of damages is that the damages to be recovered must, in money terms, be no more and no less than the Plaintiff's actual loss. The principle was laid down in numerous case authorities more particularly by **Lord Blackburn** in the case of **Livingstone v. Rawyards Coal Company (1880) 4 AC 25** in the following terms:

where any injury or loss is to be compensated by damages, in settling a sum of money to be given as damages, you should as nearly as possible get at the sum of money which will put the party who has been injured, or who has suffered loss, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.

The matter before this court is premised on three heads of general damages *to wit* pain and suffering, loss of amenities of life and disfigurement. In a nutshell, with regard to damages for pain and suffering, the Supreme Court of Appeal in the case of **City of Blantyre v. Sagawa [1993] 16 (1) MLR 67** stated that

pain is used to suggest physical experience of pain caused by and consequent upon the injury while suffering relates to the mental elements anxiety, fear, embarrassment and the like. As for damages for loss of amenities of life, in the case of **Kanyoni v Attorney General** [1990] 13 MLR 169, 171 the court held that loss of amenities of life must include the loss of all the things the claimant used to be able to do, see, and experience. His Lordship Honourable Justice Mwaungulu (as he then was) in the case of **Mtika v. US Chagomerana t/a trans Usher (Zebra Transport)** [1997] 2 MLR 123, 126 explained that this head covers the loss caused by the injury in that the Plaintiff will be unable to pursue the leisure and pleasures of life that he used to enjoy but for the injury. On the other hand, damages under the head of disfigurement are paid for the change in physical form of a person injured either as a result of the impact of the injury or its treatment, such as scar coming in as a result of surgical operation necessitated by the injury. It is a change in appearance but it is capable of limiting a person from doing certain things- see- **Francis Chikoti vs- United General Insurance Company Limited** Personal Injury Cause No. 730 of 2016.

Be that as it may, in determining general damages a broad discretion is exercised by the court based on what it considers fair and adequate compensation. The nature, severity and permanency of the injuries sustained, together with pain and suffering, disfigurement, permanent disability and the effect thereof on the person's lifestyle are aspects to be considered. See **Wright -vs- British Railways Board** [1983] 2 A.C. 773, and **Kalinda -vs- Attorney General** [1992] 15 M.L.R. 170 at p.172. However, it ought to be borne in mind that it is not possible to quantify damages for pain and suffering, loss of amenities and deformity as claimed in this matter with mathematical precision. In considering the amount to be awarded for general damages it is acceptable to have regard to awards issued in comparative cases, although it is immediately recognized that it is hardly possible to find a case or cases that are on all fours with a particular set of facts.

In the present matter, Counsel for the claimant called upon the court to have recourse to the following cases:

Richard Chinsinga vs Ellectricity Supply Corporation of Malawi Personal Injury Cause No. 89 of 2018 in which the claimant suffered wounds on the neck which exposed the tendons, serious injuries to the eyes which led to an operation, very large burn wounds on the left cheek and ear and burn wounds on the shoulder. He ultimately had the arm amputated. He was on 30th August 2018 awarded K20,000,000.00 damages for pain and suffering, K5,000,000.00 damages for loss of amenities of life, K5,000,000.00 damages for deformity and disfigurement and MK10,000,000.00 damages for loss of earning capacity.

Fainess Kaphatikira and Wema Tepani (Suing as Administrator and on her own behalf as sister of the deceased and on behalf of the other beneficiaries of the deceased-Bibi Kaphatikira) v ESCOM, Personal Injury Cause No 216 of 2011 where the 1st claimant suffered multiple and heavy electric burns

at the back, multiple and heavy electric burns on the right leg exposing the bones and tendons, heavy burns wounds on the hip, heavy burn wounds on the back, heavy burn wounds on the chest exposing the ribs, suffered deformity, permanent scars, had difficulties in walking, is not able to do any work to earn a living, was admitted for 7 weeks and follow up checkups for 8 months. The court awarded K18,500,000.00 for pain and suffering, loss of amenities of life, loss of earning capacity and for deformity. The award was made on 5th November 2014.

It is Counsel for the claimant's submission that from the physical examination of the claimant's body, one does not need a set of magnifying glasses to see that she suffered serious electric burns. He points out that these burns covered almost all parts of her body only sparing the genital area. He submits that her skin has been hugely deformed considering that she developed huge scars from her legs, thighs, abdomen, a flexion contracture on her neck, head, ears and back. He further submits that her physical appearance has been changed completely due to the accident. He further avers that the claimant has lost confidence in her own skin. It is also his submission that the scars are permanent and the claimant has to live with them for the rest of her life. He further states that from the medical reports, it is clear that the Claimant requires a surgery. Apart from that, he indicates that due to the accident, the Claimant has a stiff neck, she cannot turn easily due to the flexion. He points out that she was admitted and stayed in hospital from November to January. Lastly, he submits that the Claimant spent sleepless nights due to the severe pains brought by the burns.

In view of the foregoing, Counsel for the Claimant's prays for the award of K30, 000,000.00 for damages for pain, suffering and K10,000,000.00 for loss of amenities of life and K10,000,000.00 for disfigurement and deformity.

On the other hand, Counsel for the defendant submits that at trial it was observed that the minor was able to walk unaided and was also able to help her mother with carrying a baby the mother had brought to court. He further submits that it was observed that her hands were unscarred, there were no burns under the feet as was claimed and that the actual face was not scarred. He invites the court to have recourse to the following cases:

George Sakonda v S.R. Nicholas, Civil Appeal No 67 of 2013, (unreported) the Applicant suffered paraplegia following fracture spine described (weakness of the lower extremities due to fracture of spine (12) and other injuries. The applicant lost permanent and complete control of lower limbs and cannot stool, urinate or walk. The applicant suffered **100% permanent incapacity**. Justice Mwaungulu after evaluating the law and applying it to the facts awarded the Applicant the sum of K4, 037, 760.00 as damages for pain

and suffering and loss of amenities of life. K500, 000.00 was awarded for disfigurement. The award was made on 26th September 2014 and has changed the jurisprudence in personal injury awards.

With regard to the case of **Richard Chinsinga v Electricity Supply Corporation of Malawi** cited above, Counsel for the defendant motivates the court to consider that the case cited had an amputation, which is not the case herein; the case cited involved serious facial burns and injuries which is not the case in the present case; and that the case cited exposed tendons which is not the case in the present case. Counsel submits that without undermining the injuries suffered by the claimant in the present case, most of her scars are not visible to the public because of clothing and as such the degree of embarrassment if any is lower. Further, Counsel is of the view that the claimant in the present case is a minor whose healing is known as a notorious fact to be better with time than an adult.

It is therefore Counsel's prayer that the court awards damages for pain and suffering in the region of not more than K5,000,000.00, damages for loss of amenities of life in the region of not more than K2,000,000.00 and damages for disfigurement in the region of not more than K3,000,000.00.

With all that at the back of my mind, I must begin by indicating that the court had an advantage of seeing the claimant. Frankly, I did not think that the question as to the extent of the injuries could arise save perhaps for what she is still able to do or not as observed in court as she interacted with her mother and the baby her mother had brought. Upon going through the submissions, I observed that the defendant suggests that the claimant did not suffer facial burns and burns under her feet. Initially, I thought my memory had chosen to betray me considering that the vivid image that I had of the claimant was one of a child covered by a huge scar from burn injuries from the head to the toes. I quickly went back to the record to refresh my mind by perusing the pictures that had, thoughtfully, been tendered as part of evidence. Indeed, they confirmed what I thought I had seen. The child is dressed up in bandages from the legs to the head in a very unsettling sight. In some pictures the bandages are removed exposing injuries on the face, hands, legs and the head. In my opinion, efforts to downplay the injuries are quite unfortunate. There is no doubt that the child was severely injured and it is not an overstatement that her injuries covered almost all her body parts.

On the same note, the defendant submits that most of the claimant's scars are not visible to the public because of clothing and as such the degree of embarrassment if any is lower. I am of the view that the concealment of the scars and the embarrassment they may cause should be treated as a secondary consideration. First of all, let us not stray away from the fact that the claimant suffered excruciating pain and deformity in this unfortunate happenstance but for the defendant's negligence. It has been lamented that the said scars have dealt a considerable blow to the child's confidence on her body, concealable or

not. Indeed, the scars have robbed the child of the natural aesthetics she would have loved to cherish just like any other person.

Further, it may be a notorious fact that a minor tends to be better with time than an adult. The defendant submits that the claimant is 14 years and will eventually recover. Be that as it may, I must emphasise that we cannot lose track of the fact that she is suffering and has to deal with therapies and all sorts of treatment for now. The evidence indicates that she is still undergoing physiotherapy to avoid stiffness of the joints and again she will require to undergo a contracture release surgery on her neck. In my view, the fact that the child will eventually heal has little or no bearing to the extent of liability on the injuries suffered by the claimant. In any case, the scars are conspicuous in some of the body parts that she cannot always keep covered such as hands and face. Further to that, speaking without medical certainty, I have doubts if at all the scars will eventually heal without cosmetic surgery or any treatment of that such nature.

I shall therefore proceed on the understanding that the claimant suffered electric burns on the whole body from head to toe sparing upper extremities and the genitalia only. She was admitted from 16th November 2019 and was discharged on 13th January 2020. She has suffered permanent incapacity of 75%. Her body has been hugely deformed and she is still undergoing therapies consequent to the injuries. I have no doubt that at the time of infliction of the injuries by the electrocution, the intensity of the associate pain, the shock and discomfort were imaginable. She spent sleepless nights for days on end crying with pain. Several months later the injuries that seemed to have healed resurfaced and had to undergo further treatment. In as far as pain and suffering is concerned, I do not see the reason why this court should be shy to make a substantial award.

On loss of amenities of life, the defendant argues that there is no evidence to that effect in this matter. They contend that loss of amenities of life cannot be assumed and that one has to state in their evidence that they lost amenities of life. They are of the view that there is nothing in the witness statement and therefore no evidence of loss of amenities of life before the Court. Observably, however, the claimant did indicate the same in her witness statement and even in her oral testimony in court. Paragraph 15 of the witness statement says that the claimant cannot cook now because she cannot stand being exposed to the fire or heat. In her oral testimony, the claimant's witness indicated that she could assist with chores like fetching water and I believe that is what prompted Counsel for the defendant to ask if she could still assist with taking care of the baby as was seen in court. It was also averred that the claimant cannot walk without putting on a pair of shoes consequent of the injuries herein. These assertions were not controverted save for the fact that she can assist her parents albeit in a limited manner. In the case of **Kanyoni v Attorney General [1990] 13 MLR 169 (HC)** is stated that loss of amenities of life had to do and had to include the loss of all the things the claimant used to be able to do, see, and experience – they need not be of a leisurely

nature at all. With that, I am compelled to hold the view that loss of amenities were duly proved in this matter.

Lastly, the defendant submits that the court must be cautious in awarding huge sums of money where the court did not have the full benefit of evidence from the author of a Medical Report who could have been interrogated to appreciate the full extent of injuries and mitigation factors as was the case in the present case. Respectfully, I must say I found this contention quite strange. The defendant did not have any qualms about the tendering of the Medical Report during the hearing. Even if they did, I wish to put it on record that this court did not rely entirely on the Medical Report. As earlier stated, the extent of the injuries suffered by the claimant are conspicuously imprinted all over her body. The claimant showed the court the scars spread on her legs, hands, face and even on her head. It is true that we cannot throw away the valuable evidence from medical experts in such cases however the scars in this case spoke volumes of the extent of the injuries suffered by the claimant.

Apart from that, the defendant submits that in any event, damages in the total sum of no more than K10,000,000.00 a part of which obviously has to be or ought to be invested will yield the claimant a good return as compensation. I am of the view that the essential purpose and the most basic principle of tort law is that the claimant must be put at a position he or she was but for the defendant's negligence. I shall therefore strive to align the awards with this purpose than anything else.

On the cited cases, it is true that this case can be distinguished from the **Richard Chinsinga** case (supra) in that there was no amputation involved in this case or exposure of tendons. I take note that the case of **George Sakonda v S.R. Nicholas** was decided in 2013 which is about 7 years ago. In the case of **City of Blantyre v Sagawa** [1993] 16(1) MLR 67 (SCA) it is stated that in citing previous awards the court should not lose sight of factors like devaluation of the currency since the awards were made.

It is therefore upon a thorough consideration of facts and circumstances of this case, and upon an exhaustive consideration of the submissions by both Counsel in the light of the relevant and applicable law regarding damages for the claimed heads herein that I make the following awards:

Damages for pain and suffering	K15,000,000.00
Damages for loss of amenities of life	K3,000,000.00
Damages for deformity and disfigurement	K5,000,000.00

In total, the claimant is awarded **K23,000,000.00**. He is further awarded costs for the assessment proceedings to be taxed if not agreed by the parties.

DELIVERED IN CHAMBERS THIS 27th DAY OF NOVEMBER 2020

WYSON CHAMDIMBA NKHATA

ASSISTANT REGISTRAR

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