



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 940 OF 2015

BETWEEN:

LAWRENCE NOHITO.....CLAIMANT

AND

IMRAN MUHAMMEDDEFENDANT

CORAM

Mrs T. Soko : Assistant Registrar
Mr Chayekha : Counsel for the claimant
Mr Kaliwo : Counsel for the defendant
Ms Munthali : Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

BACKGROUND

This is an order on assessment of damages following a default judgment entered on 13th January 2016. The Claimant is claiming for damages for pain and suffering, loss of amenities of life, deformity and costs of the action. The facts of the case extracted from the statement of claim state that the claimant was employed by the defendant as the supervisor in July 2009. On 2nd July 2014, while working for the defendant at Chikangawa his fellow employee caused a tree to fall onto his head and injured him. Consequently the

Claimant sustained head injury with laceration on the head and fracture of left humerus. Additionally, the Claimant has a limited motion of elbow and shoulder, healed with scars and still experiences headaches and dizziness.

EVIDENCE

The claimant's evidence is that the claimant was an employee of the defendant from July 2009. His duty was to make pillar logs for matches' production at Chikangawa forest. On 2nd July 2014, the claimant was busy at his work measuring logs. In the course of doing his work, the machine operator fell a tree which fell on the claimant and injured him. The Claimant was rushed to Mzuzu Hospital where he was admitted for a day and later on the claimant was transferred to Queen Elizabeth Central Hospital where he was admitted from 3rd July 2014 to 7th November 2014. The Claimant stated that he sustained head injuries with some lacerations on it and he also fractured his left humerus. The Claimant stated that he still experiences headaches and dizziness at times. He honestly stated that he healed with scars and experiences weakness to the arm such that he cannot lift anything heavy and he is unable to do heavy manual work such as gardening as he used to. The Claimant tendered medical reports as part of evidence. There was no cross examination by Counsel for the defendant.

SUBMISSIONS

Counsel for the claimant submitted that a sum of K4, 500,000.00 would adequately compensate the Claimant for the injuries he suffered. Counsel cited a case of **Kafeleni Kazembe vs Charity Mseka and NICO General Insurance Company Limited Personal Injury Cause No. 8 of 2011** where the claimant suffered cut wounds, bruises, pain to the elbow and ankle with limited motion. The Court awarded the claimant a sum of K1, 700,000.00 for pain and suffering and K290, 000.00 for loss of earning capacity in 2013. The case of **John Muheka and Francis Katsala vs The Prime Insurance Co Ltd Civil Cause No. 1649 of 2010** the claimant suffered a fracture of tibia and fibula and soft tissue injuries and a leg shortening of 10 cm was awarded a sum of K1, 500,000.00 in May 2011. In addition Counsel cited a case of **Wongani Kayira vs James Namanda vs Prime Insurance Co. Ltd Civil Cause No. 1909 of 2013** the claimant suffered a fracture of femur and soft tissue injuries and the claimant was awarded a sum of K2, 500,000.00 for pain and suffering.

On the other hand Counsel for the defendant submitted that the claimant will be adequately compensated with K1, 250,000.00 damages for pain and suffering and K250, 000.00 as damages for permanent incapacity. Counsel stated that the injuries are less serious. Counsel among other authorities cited a case of **Kumbuyo vs Prime Insurance Company Limited** where the claimant suffered a fracture of humerus, fracture of right clavicle, fracture of pelvis and fracture of left tibia. The claimant walked with sticks and could not sleep on the side of fractured shoulder. The claimant was awarded a sum of K3, 500,000.00 on 3rd May 2012.

ISSUE

The quantum of damages to be paid to the Claimant.

GENERAL LAW ON DAMAGES

In assessing damages for personal injuries, the intention of the court is to compensate the injured party as nearly as possible as money can do. The principle is to put the plaintiff at the position he would have been if it would have not been for the tort committed. **See Namwiyo v Semu (1993) 16 (1) MLR 369.**

In calculating damages , therefore, the Courts consider, in monetary terms, the sum which will make good to the sufferer, as far as money can do, the loss he has suffered as a result of the wrong done. **See Admiralty Commisioners vs S.S Valeria (1992) 1 A.C. 242 at 248.**

In Christina Mande vs Charter Insurance Co. Ltd Personal Injury Cause No. 329of 2016 the Court quoting Wright vs British Railway Board 1938 AC 1173, 1177 stated that:

'Non-economic loss.., is not susceptible of measurement in money. Any figure at which the assessor of damages arrives cannot be other than artificial and, if the aim is that Justice meted out to all litigation should be even handed instead of depending on idiosyncrasies of the assessor, whether Judge or Jury the figure must be basically a conventional figure derived from experience and from awards in comparable cases.'

In the case of **City of Blantyre vs Sagawa** the court said the following:

'It would appear to us that if the award is to be conventional, an award for a similar injury should be comparable and should, to some extent, be influenced by amounts awarded in the previous case,

either in the same or neighboring jurisdictions. In citing previous awards the court should not lose sight of factors like devaluation of the currency since the awards were made.

PAIN AND SUFFERING

In damages for pain and suffering, the court considers the physical experience of the nerves and mental anguish which comes as a result of the injury. **See Lemon Banda and 19 others V Mota Engil Limited and General Alliance Insurance Limited, personal injury cause number 178 of 2012 (unreported).**

In the **City of Blantyre vs Sagawa 1993 16 (1) MLR 67** the court quoted Kemp and Kemp volume II paragraph 1007 where it was stated that;

Pain is, it is suggested, used to describe the physical pain caused by or consequent upon the injury, while suffering relates to the mental element of anxiety, fear, embarrassment and the like.

Page 831 of **Mc Gregor** on damages defines pain as the immediately felt effect on the nerves and brain of some lesion or injury to a part of the body, while suffering has been defined as the distress which is not felt as being directly connected with any bodily condition. Pain includes any pain caused by medical treatment or surgical operations rendered necessary by the injury inflicted by the defendant. Suffering includes fright at the time of the injury and fright reaction, fear of future incapacity, either as to health, sanity or the ability to make a living, and humiliation, sadness and embarrassment caused by disfigurement. **Also see Gedion Mhango vs Nico General Insurance Co. Ltd Personal Injury Cause No. 703 of 2016 (unreported).**

LOSS OF AMENITIES OF LIFE

Loss of amenities is concerned with loss of enjoyment of life. This follows from the fact that human beings enjoy certain activities which may as a result of the injury be curtailed. **See Lemon Banda and 19 others V Mota Engil Limited and General Alliance Insurance Limited, personal injury cause number 178 of 2012 (unreported).**

Birkett L.J in **Manley vs Rugby Portland Cement Co. (1951) C.A No. 286** stated that 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 familiar things he has seen all his life, the man who had both legs removed and will never again go upon his walking excursions- things of that kind- loss of amenities. **Mc Gregor on damages at Page 834** explains that loss of impairment of any one or more of the five senses is compensated under this head. Besides loss resulting from interference with the plaintiff's sexual life

DISFIGUREMENT

Disfigurement is concerned with change of looks of the individual. This may be scars, amputations and postures. See *Lemon Banda and 19 others V Mota Engil Limited and General Alliance Insurance Limited, personal injury cause number 178 of 2012 (unreported)*. Damages for disfigurement are normally awarded as part of pain and suffering. They are awarded separately if the plaintiff has been ridiculed, lost his social status, or that his is in need of plastic surgery. See *Mary Kamwendo vs Stage coach Malawi Limited Civil Cause No. 840 of 1995*.

DETERMINATION

In the present matter I must state that the Claimant went through excruciating pain due to the injuries he suffered and the treatment he received. This is shown in the medical report where it is stated that the claimant suffered head injuries with laceration and a fracture of left humerus. He was put a plaster of Paris and a bone grafting had to be done. Besides, the claimant was admitted to the hospital for a long period of time meaning that it took time for him to recover. Although he recovered, the claimant still feels headaches and dizziness at times. It means he cannot run since that can affect him or do sporting activities that need running. Besides, the claimant cannot lift heavy objects since he is still weak. In the Court's view, his life has been affected greatly. I have considered the argument of the defendant that the injuries that the claimant suffered are not serious. Perhaps it is because the claimant's permanent incapacity was assessed at 18%. However, I have considered not only one aspect but all aspects as follows; the nature of injuries, the devaluation in currency and authorities of both counsel and in the Court's view the claimant will be sufficiently compensated with a sum of K3, 000,000.00 in all heads of damages.

The defendant will bear the costs of the action.

Pronounced in chambers on this ^{26th} day of June 2018.



T. SOKO

ASSISTANT REGISTRAR