



REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CASE NO. 1007 OF 2015

BETWEEN

AARON FREDRICK.....PLAINTIFF

AND

CROWN AGRO-INDUSTRIES.....1ST DEFENDANT

POLYPACK LIMITED.....2ND DEFENDANT

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

Sauti- of Counsel for the plaintiff

Machika- of Counsel for the defendant

Chitsulo- Court Clerk and Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

Through a writ of summons that was issued by the court on the 24th of November 2015, the claimant commenced these proceedings claiming damages for pain and suffering, loss of amenities of life, special damages and costs of this action. This is the court's order on assessment of damages pursuant to a judgment by Honourable Justice Tembo in favour of the claimant made on the 9th of March 2018. The issue of the Defendant's liability having been settled already by the said judgment, the duty placed upon this court was to determine the reasonable quantum of damages that would adequately compensate the claimant for the losses and damages herein.

The parties appeared before this court on assessment of damages on the 30th of August 2018. The claimant was the sole witness for his case. He adopted his witness statement in which he had averred that at the material time he was employed by Poly Pack Limited as a welder and he would from time to time be sent to Crown Agro Industries Company Limited in Ntcheu to work. The said Crown Agro Industries is a sister company of Poly Pack Limited. On the 24th of June 2014, he was assigned to transport a gate from Poly Pack Plastics in Blantyre to Crown Agro Industries in Ntcheu. He was at the motor vehicle's body where the gate had been tied. His job was to hold it so that it did not fall. In the course of the assignment the gate went loose and fell on him. This resulted in pushing the claimant out of the moving vehicle into the tarmac road. As a result of the accident, he suffered grave injuries. He sustained a fracture of the right distal tibia and fibula, multiple bruises on hands and shoulder and has visible scars. He experienced post traumatic pains on the leg. His incapacitation was pegged at 12%. His leg was cast on POP, there was wound dressing and also analgesics given to him. He exhibits a Medical Report which is marked "AF1". In cross-examination, he stated that he sustained a fracture. He stated that an x-ray was done. He added that he left the x-ray photos with his lawyer. He stated that he was injured on the head and 12 sutures were applied.

With this evidence, the claimant closed his case. The defendant, on the other hand, opted not to parade witnesses and asked for 7 days to file written submissions which they did. Counsel for the claimant adopted his Skeletal Arguments as his final written submissions. I am highly indebted to both Counsel for the submissions. I must state here that they went a long way in informing the court in its decision in this matter.

With that, I must state that 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.

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. As a result, courts use decided cases of comparable nature to arrive at awards. That ensures some degree of consistency and

uniformity in cases of a broadly similar nature: 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. As such this court will have recourse to comparable cases to arrive at the appropriate quantum of damages for the claimant.

In the present matter, I have seen the medical evidence as to the injuries and the prognosis given by the medical expert. I had the opportunity to observe the injury on the leg and the present physical condition of the claimant. I went through the precedents cited by both counsel with a view to assist this Court to make a critical evaluation of the damages.

Counsel for the claimant is proposing that this court should consider making an award of K8,500,000.00 in that the injuries herein include a fracture of the right distal tibia, multiple bruises on hands and the shoulder and visible scars. He cites the following cases:

The plaintiff, through counsel, cited the case of **Harry Dyson and 6 Others v Auction Holdings Ltd Civil cause No. 394 of 2012** in which **Harry Dyson Jr.** suffered a fractured radius, a fractured ulna, a deep cut wound on the forehead and cheek and head injuries. This court awarded the sum of K4,000,000.00 for pain and suffering. The court into account the fact that this claimant was young and could recover from the fractures. Another claimant **Cecilia Gilisiano** suffered an open fracture of the radius, open fracture of the ulna and a fractured mandible. This court awarded the sum of K7,000,000.00. The court considered that the claimant was old and could not fully recover from the injuries. The decision was delivered on the 2nd of June, 2014.

Counsel also cited the case of **Suwali Lumbe v Wahiya & Prime Insurance Company Limited Personal Injury Cause Number 151 of 2011**, in which the plaintiff suffered multiple cuts on the head, deep cut on the arm pit and lost his ability to speak properly. He had persistent pain and lost his job. The court awarded him the sum of K6,000,000.00 as damages for pain and suffering, loss of amenities of life and disfigurement. The award was made on the 26th of October 2012.

Further Counsel cites the case of **Allan Steven Banda v Panganani Chinguwo & SDV Company Limited**. I found it hard to proceed with the case because it did not have a proper citation.

On the other hand, the defendants did not submit comparable cases in their written submission but rather they disputed the existence of a fracture in the claimant's injuries. It is argued that the claimant did not bring evidence supporting that he sustained a fracture. He went further to state that the claimant's reliance on the medical report only confirms the substance of the injuries and not the truthfulness and seriousness of the injuries which could have been testified to by the author of the medical report and or the x-ray picture. He further averred that the claimant ought to know that a scar is not conclusive evidence of a

fracture. It is the defendants belief therefore that the claimant failed to prove on a balance of probabilities. It is therefore their prayer that the claimant be awarded an amount less than what he prayed for.

The contention by the defendants seems to suggest that a person cannot prove his injuries without production of a medical report. Assuming indeed the position of the law is that the court should not consider the medical report for the cogency of its contents by virtue of not having been tendered by its author, should the court throw away all the assertions made by the claimant with regard to his injuries. I think this is not true. The proposition seems to dismiss every claimant as being not reliable in terms of credibility and cannot be taken for their word. In the present case, there was nothing in cross-examination that could be considered to have brought the credibility of the claimant as witness to disrepute. In fact, he went on to show the court the scars as evidence that he actually incurred the scars herein a thing the defendants consider not conclusive. In the case of **Olive Mtaila vs. National Bus Company and Nico General Insurance** Personal Injury Claim No. 295 of 2011 (unrep), in holding that in personal injury claims, a claimant can prove his injuries even without tendering any medical report, Mwaungulu, J. (as he then was) stated:

"....The purpose of a medical report or evidence is to confirm the medical condition of the victim. It must always be understood that injuries, like death, can be proved without medical evidence. It must therefore be possible for the court to accept other evidence, normally from the victim, which, apart from the medical evidence, proves rather than confirms injuries sustained by the victim. In this particular case, the claimant in her witness statement and all evidence testified to those injuries. That, in my judgment, suffices for this case."

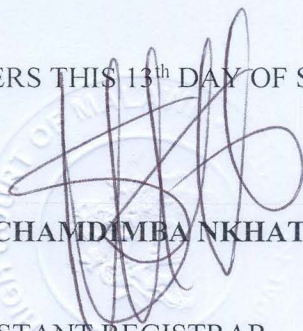
In the present matter, I accept the assertion by the claimant that he sustained a fracture. Nevertheless, in my view the K8,500,000.00 prayed for by Counsel for the claimant is much on the higher side even for a fracture and multiple bruises. I took note of the **Harry Dyson** and the considerations that were made in making the awards. In this case, the claimant has fully recovered save for the visible scars here and there. In the **Suwali Lumbe** case (supra) an award of K6,000,000.00 was made and I believe the court took into consideration that the claimant lost his job consequent to the injuries. The same does not come out clear in this case. His Medical Report in fact indicates he will still be able to do manual work and more so his previous work.

In the light of the above, I award the claimant K4,500,000.00 under all heads claimed and proved. The claimant also claims special damages. There was production of a Medical Report but it was not

accompanied by supporting evidence that the same was paid for. I will find it hard to make an award for a Medical Report.

The plaintiff is further awarded costs for the assessment proceedings to be taxed if not agreed by the parties.

DELIVERED IN CHAMBERS THIS 13th DAY OF SEPTEMBER 2018


WYSON CHAMDIMBA NKHATA

ASSISTANT REGISTRAR