

REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

Personal Injury Cause Number 646 of 2014

BETWEEN:

DENNIS SYMON TCHULU.....CLAIMANT
AND
BAKERS PRIDE.....DEFENDANT

CORAM: **A KANTHAMBI: ASSISTANT REGISTRAR**

Mr Mwangulube: Counsel for the Plaintiff of Mwangulube & Co

Defendants: Absent

Ms J Chilimampungu: Court Clerk

ORDER ON ASSESSMENT OF DAMAGES

INTRODUCTION AND BACKGROUND

This is an order for assessment of damages pursuant to a Default Judgment entered on 20th April 2015 by the Honorable Registrar. It was adjudged that the Plaintiff be compensated for pain, suffering, disfigurement and loss of amenities and costs from the Defendant.

The Plaintiff commenced the present action on 20th June 2014 claiming damages as stated above. The claim arose from an accident that occurred whilst in the Defendant's employ as the Plaintiff was installing electricity cables. The cables hit the plaintiff's right finger resulting in a deep cut on the right finger.

EVIDENCE

The Plaintiff, Dennis Symon Tchulu, lived in Lilongwe at the time of hearing. He told the court that in September 2013 he was working at Bakers Pride (the Defendant). He was laying an over cable and the tray fell on him and cut his finger. The Court had occasion to inspect the finger and noted that there was a scar on the right thumb. The Plaintiff received four stitches along the thumb. The Plaintiff further identified and adopted his witness statement as part of his evidence in chief. The witness statement stated as follows:

a) PARTY ON WHOSE BEHALF THE STATEMENT IS MADE

The Plaintiff

b) NAME OF WITNESS

Dennis Symon Tchulu

c) NUMBER OF STATEMENTS MADE IN RELATION TO THIS WITNESS

1

d) IDENTIFYING INITIALS AND NUMBER OF EACH EXHIBIT REFERRED TO

"DST 1", "DST 2"

e) DATE OF STATEMENT:

13th December 2016

1. *My name is Dennis Symon Tchulu. I am the Plaintiff herein.*
2. *I was at all material times working as a welder with the Defendant at Bakers Pride.*
3. *On or about 12th September 2013, I was installing electricity cable, whilst so working the cables hit my large right finger.*
4. *As a result of the said accident I sustained deep cut on the said right finger and other injuries.*
5. *The said accident occurred due to negligent failure of the Defendant to provide proper ways of installing the said cables and protection at the said workplace. The defendant also failed to provide us, as its employees, with a safe system of work under the common law. I exhibit hereto a copy of the police report of the said accident marked "DST1".*
6. *As a result of the said accident I sustained a deep cut on the right finger and other injuries*

VERIFICATION

I verify that the facts in this Witness Statement are true.

SIGNATURE:

(signed)

DENNIS SYMON TCHULU

The Plaintiff tendered a medical report signed and stamped at Kamuzu Central Hospital. It is stamped and dated 29th April It states: "Re: Denis Symon (Tchulu); Address - P/Bag 78, Lilongwe; Occupation - Welder; Age -....; Date admitted - 12-09-13. Date discharged from hospital: -----. Treated as outpatient from - to - .Nature of injuries - He sustained a deep cut on the right finger; name of doctor who treated patient - Louis Munyes; What surgical operation or other

treatment were accorded to patient – Debridement, POP Plastic; State what is the result of the surgical operation or treatment – good; has patient suffered permanent incapacity – yes; percentage – 13%; will patient be able to perform previous job – ----- will the patient be able to perform manual work – -----; Any further remarks– has post traumatic scar.”

SUBMISSIONS BY COUNSEL FOR THE PLAINTIFF

Counsel for the Plaintiff cited what he opined were comparable awards in the matter at hand. The Plaintiff cited a case of **Felista Kachaso v Peter Kondowe, Blue Bird Motel & NICO General Insurance Company Limited** Civil Cause Number 320 of 2009 where the Plaintiff sustained a fracture of the right humerus and fracture of the right lower leg near the ankle. The Plaintiff herein sustained a cut wound and not a fracture so this citation is off the mark.

THE LAW ON ASSESSMENT OF DAMAGES

The High Court in **Ngosi t/a Mzumbamzumba Enterprises v H Amosi Transport Co Ltd** [1992] 15 MLR 370 (HC) set the basis for assessment of damages:

‘Assessment of damages.....presupposes that damages have been proved. The only matter that remains is the amount or value of the damages.’

The rule is that prior to assessment, the injured party has provided proof of damage sustained – **Yanu-Yanu Co Ltd v Mbewe** (SCA) 11 MLR 405. Even in the face of difficulties in assessing damages, the Plaintiff is not disentitled to compensation – **Mkumuka v Mphande** (HC) 7 MLR 425.

The cardinal principle in awarding damages is ‘*restitutio in integrum*’ which means, in so far as money can do it, the law will endeavour to place the injured person in the same situation as he was before the injury was sustained – **Halsbury’s Laws of England** 3rd Ed. Vol. II p.233 para 400.

This principle was further enunciated in **Livingstone v Raywards Coal Co** (1880) 5 App Cas 25 at 39, where Lord Blackburn said:

‘...where any injury is to be compensated by damages, in settling the sum to be given for reparation 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, in the same position as he would have been in had he not sustained the wrong for which he is now getting his compensation or reparation.’

The law distinguishes general damages and special damages as follows – general damages are such as the law will presume to be the direct natural or probable consequence of the action complained of. Special damages, on the other hand, are

such as the law will not infer from the nature of the course - **Stros Bucks Aktie Bolag v Hutchinson** (1905) AC 515. In determining the natural consequences, the court considers if the loss is one which any other claimant in a like situation will suffer – **McGregor on Damages** p23 para 1-036.

Special damages must be specifically pleaded and must also be strictly proved - **Govati v Manica Freight Services (Mal) Limited** [1993] 16(2) MLR 521 (HC). A Plaintiff who claims special damages must therefore adduce evidence or facts which give satisfactory proof of the actual loss he or she alleges to have incurred. Where documents filed by the Plaintiff fail to meet this strict proof then special damages are not awarded – **Wood Industries Corporation Ltd v Malawi Railways Ltd** [1991] 14 MLR 516.

Although perfect compensation is impossible, what the plaintiff should get is fair and adequate compensation - **British Commission v Gourley** (1956) AC 185. Since it is difficult to assess damages involving monetary loss, courts resort to awarding conventional figures guided by awards made in similar cases and also taking into account the money value. Lord Morris buttresses this contention in **West v Shepherd** (1964) AC 326 at 346 where he states: ‘*money cannot renew a physical frame that has been battered and shattered. All judges and courts can do is to award a sum which must be regarded as giving reasonable compensation.*’

The court bears in mind the sentiments laid out in **Steve Kasambwe v SRK Consulting (BT) Limited** Personal Injury Cause Number 322 of 2014 (unreported):

‘At times, the court is faced with situations where the comparative cases have been rendered obsolete because of the devaluation of currency and inflation. It would not achieve justice if the court insisted on the same level of award as was obtaining in the previous cases. In such situation, when deciding the new cases, the court must take into account the life index, i.e. cost of living and the rate of inflation and the drop-in value of the currency. The court must therefore not necessarily follow the previous awards but award a higher sum than the previous cases.’

COMPENSATION

The Plaintiff sustained a cut on the right finger (thumb).

Pain and Suffering

The word ‘pain’ connotes that which is immediately felt upon the nerves and brain, be it directly related to the accident or resulting from medical treatment necessitated by the accident while ‘suffering’ includes fright, fear of future disability, humiliation, embarrassment and sickness. See: **Ian Goldrein et al**,

Personal Injury Litigation, Practice and Precedents(Butterworths, 1985) 8 and ***City of Blantyre v Sagawa***[1993] 16(1) MLR 67 (SCA).

This court must state that the Plaintiff's oral evidence and the medical report state different forms of treatment that were accorded to the Plaintiff. Both the Plaintiff and the medical report concurred that the Plaintiff sustained a deep cut wound on the right finger. However, the Plaintiff avers that he received stitches (suturing) on this finger while the medical report states that the Plaintiff was treated by way of debridement (the removal of damaged tissue or foreign objects from a wound) and with a POP Plastic. This court believes the Plaintiff's oral version of the treatment received is the true version of the treatment the Plaintiff received. This court therefore throws out the medical report for being false and will not consider it.

This court had occasion to see the Plaintiff and appreciated the extent of his injuries. The Plaintiff has a visible scar on his right thumb. He avers that he received sutures to treat the wound and this must have been painful.

For these reasons, this court believes an award of **MK300,000.00** would adequately compensate the Plaintiff herein in damages for pain and suffering.

Loss of Amenities

The expression 'loss of amenities of life' simply means loss of faculties of pleasures of life resulting from one's injuries. Damages for loss of amenities of life are awarded for the fact that the plaintiff is simply deprived of the pleasures of life, which amounts to a substantial loss, whether the plaintiff is aware of the loss or not. See: ***Poh Choo v Camden and Islington Area Health Authority*** [1979] 2 All ER 910 and ***City of Blantyre v Sagawa*** [1993] 16(1) MLR 67 (SCA) at 72.

The Plaintiff herein did not tell the court how his injury affected his life today. This was not stated through his oral or written statements, nor was any documentary or physical evidence provided to prove the same.

It is trite that all assertions must be proved before a court makes any award for damages. For these reasons this court awards nothing to the Plaintiff as damages for loss of amenities of life.

Disfigurement

In the matter of ***James Chaika v NICO General Insurance Co Ltd*** - the Honourable Justice Potani stated that '*Disfigurement is not a matter to be taken lightly and casually as it is something that one has to permanently live with. In this case, the plaintiff will most likely walk with a limp for the rest of his life which is not a pleasant thing.*' In this case, the Plaintiff was awarded the sum of MK300,000.00 for disfigurement.

This court had recourse to this court's assessments of damages in **Ronaldo Likoloma v Iqbal Mahomed** Civil Cause Number 870 of 2013 where the Plaintiff on 4th May 2017 was awarded the sum of MK350,000.00 being damages for disfigurement for dog bites that left very visible scarring. In the case of **Braidon Mayaka v Nico General Insurance Company Limited** Personal Injury Cause Number 882 of 2012 on 27th April 2017 this court awarded the sum of MK300,000.00 as damages for disfigurement to a Plaintiff who sustained scarring on the face and darkening of the chest. In the case of **Matthews Marko Satewani v Prime Insurance Company Limited** Personal Injury Cause Number 628 of 2013 this court awarded the sum of MK300,000.00 to a Plaintiff who had a scar on the right leg as well as an indenture where the scar is.

With these awards in mind, this court is aware that the Plaintiff did not sustain injuries as serious as those cited above. However, the court did see the Plaintiffs scar on the right thumb and appreciates that this is something he will have to live with for the rest of his life. For this reason, this court awards the Plaintiff the sum of **MK100,000.00** as damages for disfigurement.

DISPOSAL

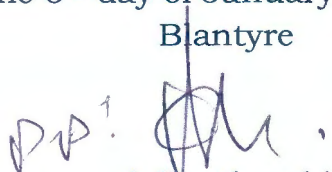
The Plaintiff is therefore awarded MK300,000.00 being damages for pain and suffering, nothing for loss of amenities of life and K100,000.00 being damages for disfigurement.

The Plaintiff's total award is MK400,000.00.

Costs to be taxed, if not agreed.

Each party is at liberty to appeal to the Supreme Court of Appeal within the requisite time frames.

Ordered in Chambers on the 5th day of January 2018 at the Chichiri Courthouse,
Blantyre


A Kanthambi

ASSISTANT REGISTRAR