

**REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
PERSONAL INJURY CAUSE No. 433 of 2020**

**BETWEEN:**

**GIFT BILLY.....CLAIMANT**

**AND**

**PATRICK SAIDI..... 1<sup>ST</sup> DEFENDANT**

**PRIME INSURANCE CO. LTD.....2<sup>ND</sup> DEFENDANT**

**CORAM**

<b>Mrs T. Soko</b>	<b>: Assistant Registrar</b>
<b>Mr Mickeus</b>	<b>: Counsel for the claimant</b>
<b>Mr Chibaya</b>	<b>Counsel for the defendant</b>
<b>N. Munthali</b>	<b>: Court Clerk</b>

**ASSESSMENT ORDER**

This is the order on assessment of damages pursuant a default judgment against the defendants dated 20<sup>th</sup> August 2020. The claimant claims for damages for pain and suffering, deformity and costs of the action. The facts avow that on 17<sup>th</sup> February 2018, at around 7:00 hours, the 1<sup>st</sup> defendant was driving a motor vehicle registration No. 259 Nissan Vannette Pick up lorry from the direction of Chinamwali heading Zomba City with two passengers on board. As he was driving through University Office junction bus depot, he lost control of the motor vehicle and swerved to the near side where he hit a stationery vehicle registration number MH 5374 Nissan Vanette

Minibus which had 8 passengers the claimant being one of the 8 passengers. As a result of the accident, the claimant suffered injuries.

In evidence, the claimant stated that as a result of the accident, he sustained fracture of the clavicle, painful limbs and painful arm. He said he was taken to Zomba Central Hospital for his treatment whilst in severe pain. The claimant stated that he no longer enjoys good health as he used to do. He said he experiences occasional pain on his right arm. He lamented that he no longer walks long distances or participate in any sporting activities. He added that he cannot carry heavy goods using his right arm for fear that the weight of the goods might induce pain on his right arm.

In cross examination, the claimant stated that he used the minibus as the mode of transport. He stated that other passengers also got injured. He said he went for ex-ray and afterwards he was given a 3 weeks bed rest. He stated that he did not bring the ex-ray evidence in Court. He complained that he cannot enjoy some of the activities he used to do. He also complained that the ribs still hurt.

In submissions, Counsel for the claimant submitted that the claimant should be awarded a sum of **K10,000,000.00 in all heads of damages. Counsel cited the following cases as comparable cases:**

**Rex Walala vs Davison Chikuta and Prime Insurance Co. Ltd PI Cause No. 461 of 2011** where the claimant suffered a fracture of the left tibia and bruises on the left arm. The claimant was awarded a sum of K6,500,000.00.

**Mhango vs Nico General Insurance Co Ltd Civil Cause No. 703 of 2016** where the claimant who suffered a fracture of the right leg was awarded a sum of K5,700,000.00 as damages for pain and suffering.

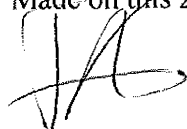
**Chilembwe Phiri vs General Alliance Insurance Co. Ltd PI Cause No. 350 of 2012** where the claimant who suffered a fracture on the right leg and dislocation on the left ankle and on 19<sup>th</sup> April 2013 the claimant was awarded a sum of K7,000,000.00.

In the present matter, there is sufficient evidence that the claimant sustained a fracture of clavicle with painful ribs. The defendants did not dispute this evidence. It is also clear from the evidence that the claimant was in pain and he still experiences such pain when using the arm. The injuries that the claimant suffered herein were serious in nature and the claimant went through pain and

suffering. Further, the claimant cannot do any sporting activities and perform manual activities with difficulties. I have considered the circumstances of this case, the comparable cases cited by Counsel for the claimant and all the factors of this case and award the claimant a sum of K5,000,000.00 in all heads of damages.

Costs are for the claimant.

Made on this 22<sup>nd</sup> day of November 2021.



**T.Soko**

**Assistant Registrar**