



**REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
Civil Cause Number 791 of 2019**

**BETWEEN:**

**AUSTIN CHIMTEDZA.....CLAIMANT  
AND  
LLOYD MMANJA.....1<sup>ST</sup> DEFENDANT  
NICO GENERAL INSURANCE COMPANY LIMITED.....2<sup>ND</sup> DEFENDANT**

<b>CORAM:</b>	<b>C MANDALA:</b>	<b>ASSISTANT REGISTRAR</b>
	Kambalame:	Counsel for Claimant of Silungwe Law Consultants
	Defendants:	Absent (Unrepresented)
	Matope:	Court Clerk

**ASSESSMENT OF DAMAGES**

**CM MANDALA, AR:**

**INTRODUCTION AND BACKGROUND**

This is an order for assessment of damages pursuant to a Default Judgment entered on 10<sup>th</sup> January 2020. The Defendants are liable for: damages for pain and suffering, damages for loss of amenities of life, damages for disfigurement, damages for loss of earnings and earning capacity, K10,000 damages for the costs of medical and police reports, and costs of the action. The hearing on Assessment of Damages was conducted on 21<sup>st</sup> January 2021.

This matter arose from a road accident that occurred on 12<sup>th</sup> April 2019 when the 1<sup>st</sup> Defendant was driving a vehicle along the Lilongwe Salima road. At/around Kambwiri, the 1<sup>st</sup> Defendant hit the Claimant who was cycling on the far left dirt verge of the road.

**EVIDENCE**

**Claimant's Evidence**

The Claimant adopted their witness statement as evidence in chief. The witness statement states:

6. *I am Austin Chimtedza of Msamati village, Traditional Authority Kalembo, Balaka.*
7. *I stay at Liwonde roadblock, Balaka.*
8. *I am 24 years old.*
9. *I am the Claimant in this action.*
10. *All the statements I make are within my knowledge.*
11. *On or around 12<sup>th</sup> April 2019 at about 18:15 hours I was a pedal cyclist riding at the far left dirt verge of the road from the direction of Lilongwe going towards Salima. Upon arrival at Kambwiri, the driver of a motor vehicle followed me at an excessive speed that he hit me from the while he was going the same direction.*

12. For further details of the accident, I refer to a copy of the police report that I obtained marked “AC 1.”
13. As a result of the accident, I sustained a fracture of the left metacarpal of the index finger and dislocated left shoulder.
14. I was hospitalized at Salima District Hospital for a week where my left arm was cast in a plaster of paris, thereafter I was treated as an outpatient for six weeks.
15. I still engage in physiotherapy up to date.
16. I still feel pain on my left arm.
17. I have a scar on my left arm.
18. I was writing using my left hand but the accident forced me to be using my right hand.
19. I cannot carry heavy objects using my left hand or do manual work.
20. I am a builder. I can no longer mix cement and carry boxes of tiles.
21. I used to make around MK300,000.00 – MK400,000.00 a month. Now I do not do any work and I am being helped financially by my mother
22. My permanent incapacity was assessed at 22%.
23. For further details of the injuries I suffered, I refer to copies of the medical report and health passport that I obtained marked “AC 2a” and “AC 2b”.
24. I believe that the facts stated in this witness statement are true.

#### SUBMISSIONS BY COUNSEL FOR THE CLAIMANT

Counsel for the Claimant filed written submissions in support of the application. Counsel avers that the extremity of the Claimant’s injury and the devaluation of the Kwacha would attract a total award of K46, 416, 000.00 as compensation. Counsel for the Claimant cited the following comparable awards in support:

- ***Martin Chathyoka and another v Banda and another***– Civil Cause Number 484 of 2016 where the Claimant sustained ipsilateral acromioclavicular joint dislocation, multiple facial and body abrasions and scapular trauma. On 16<sup>th</sup> May 2017, the Claimant was awarded K3,000,000.00 for pain and suffering and loss of amenities of life, and K500000.00 for disfigurement.
- ***Jessie Felix v Davie Juma & another*** [2019] MWHC 26 where the Claimant sustained a dislocation of the right shoulder, fracture of the right clavicle and tenderness of the left shoulder. On 16<sup>th</sup> January 2019, the Claimant was awarded a total sum of K4,800,000.00
- ***Black Luwayo v Adam Msimuko & others*** – Civil Cause Number 402 of 2012 where the Claimant sustained a fracture of the 4<sup>th</sup> finger and 5<sup>th</sup> metacarpal, deep cut wound on the forehead and a wound on his right hand. On 26<sup>th</sup> October 2015, the Claimant was awarded K5, 000,000.00 for pain and suffering, loss of amenities of life, and disfigurement.

#### ASSESSMENT GUIDELINES

Damages for personal injuries are awarded for a Claimant’s pecuniary and non-pecuniary losses. The pecuniary losses include the loss of earnings and other gains, which the Claimant would have made had they not been injured, and the medical and other expenses which accrue from care and after-care of the injury. The non-pecuniary losses include pain and suffering, loss of amenities of life and loss of expectation of life. The principle underlining the award of damages is to compensate the injured party as nearly as possible as money can do it.<sup>1</sup>

Perfect compensation for a Claimant is unlikely. The Claimant, however, is entitled to fair and adequate compensation.<sup>2</sup> Since it is difficult to assess damages involving monetary loss, courts resort to awarding

<sup>1</sup> See *Cassel and Co v Broom* [1972] AC 1027. See also *Tembo v City of Blantyre and The National Insurance Co Ltd* – Civil Cause No. 1355 of 1994 (unreported).

<sup>2</sup> *British Commission v Gourley* (1956) AC 185.

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*<sup>3</sup> by stating: ‘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 mode of assessment of damages requires the court to consider comparative awards of a similar nature. In doing so, regard must be had for fluctuations in the value of the currency. The court should make an award that is commensurate with the value of the currency at the time the award is made. In *Malamulo Hospital (The Registered Trustees) v Mangani*<sup>4</sup>, the Supreme Court states: “It is, therefore, recognised by the courts that awards of comparable injuries should be comparable. This is done by looking at previous awards of similar cases and adjusting the award according to the fall of the value of the money.” In *Tionge Zuze (a minor, through A.S. Zuze) v Mrs Hilda Chingwalu*,<sup>5</sup> the Court states: “Where a claim relates to non-monetary loss in respect of which general damages are recoverable it is not possible to quantify the loss in monetary terms with mathematical precision. In such cases courts use decided cases of a comparable nature to arrive at an award.” In *Steve Kasambwe v SRK Consulting (BT) Limited* Personal Injury Cause Number 322 of 2014 (unreported), the High Court states thus: ‘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 Claimant sustained a fracture of the left metacarpal of the index finger and dislocated left shoulder.

#### *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).

The Claimant herein sustained a ‘fracture of the left metacarpal of the index finger and dislocated left shoulder’ as per the medical report. The Claimant needs physiotherapy.

Counsel for the Claimant cited comparable awards of K3,000,000.00, K4,000,000.00 and K5,000,000.00 as total awards for compensation awarded in 2017, 2019 and 2015. See: *Martin Chathyoka and another v Banda and another, Jessie Felix v Davie Juma & another and Black Luwayo v Adam Msimuko & others* (cited above).

Based on this, this court awards the sum of K2,000,000.00 as damages for pain and suffering.

#### *Loss of Amenities of Life*

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*

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<sup>3</sup> *West v Shepherd* (1964) AC 326 at 346.

<sup>4</sup> [1996] MLR 486.

<sup>5</sup> Quoting from *HQ Chidule v Medi* MSCA 12 of 1993.

*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.

To date, the Claimant needs physiotherapy.

Counsel for the Claimant cited comparable awards of K3,000,000.00, K4,000,000.00 and K5,000,000.00 as total awards for compensation awarded in 2017, 2019 and 2015. See: *Martin Chathyoka and another v Banda and another, Jessie Felix v Davie Juma & another and Black Luwayo v Adam Msimuko & others* (cited above).

Based on the foregoing discussion, this court awards the sum of K1,200,000.00 as damages for loss of amenities of life.

#### *Disfigurement*

In the matter of *James Chaika v NICO General Insurance Co Ltd* the High Court 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 *Nyirenda v Moyo and other*, the claimant was awarded the sum of K500,000.00 as damages for disfigurement in 2018.

Following the sentiments made in the *James Chaika Case*, the Claimant is hereby awarded K500,000.00 as damages for disfigurement.

#### *Damages for Loss of Earnings and Earning Capacity*

Counsel for the Claimant submits that the Claimant ought to be awarded loss of earnings as the total loss or actual reduction in the income of the Claimant because of the injury suffered, and loss of earning capacity that is the prospective loss or reduction in income as a result of the injury suffered. Counsel proposes the use of the multiplicand and multiplier formula as is used in claims for loss of dependency. Counsel, based on his computations, proposes a total award of K4,998,022.00.

Unfortunately, Counsel bases his computations on sums that have not been proven to the court. The Claimant stated in viva voce that he made between K1,000.00 and K5,000.00 per day from the bicycle taxi business. Unfortunately, no documentation is provided to show this. This being an unliquidated claim, it ought to have been specifically proved, but this does not disentitle the Claimant from damages – see *Jumbe Jere v Moses Blessings & Prime Insurance Company Limited* – Civil Cause Number 785 of 2019. The Court will therefore award the sum of K300,000.00 as damages for loss of earnings and earning capacity.

#### *Special Damages*

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 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 do not meet this strict proof then special damages are not awarded – *Wood Industries Corporation Ltd v Malawi Railways Ltd* [1991] 14 MLR 516.

The Claimant here was awarded special damages for costs of obtaining medical and police reports. No evidence was provided to the court to support this award. Special damages ought to be specifically claimed and proved.

Though the Claimant specifically claimed special damages, they were not proved during trial and/or submissions. For these reasons, no award will be made under this head.

DISPOSAL

The Claimant is therefore awarded K2,000,000.00 for pain and suffering; K1,200,000.00 for loss of amenities of life; K500,000.00 for disfigurement, K300,000.00 as damages for loss of earning capacity, K0 as special damages and costs of the action (to be taxed by the court). **The Claimant's total award is therefore K4,000,000.00 (four million kwacha).**

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

Ordered in Chambers on the 4<sup>th</sup> day of March 2021 at the High Court, Lilongwe.

A handwritten signature in blue ink, appearing to be 'C Mandala', is centered on the page.

C Mandala

**ASSISTANT REGISTRAR**