

no. of  
court  
no. of  
receipt  
This  
damage  
showed  
in the  
court  
case  
The  
claim

10/5. D.F. Nwambigwa

HIGH COURT  
LIBRARY

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO 5 OF 1992

BETWEEN:

K12,500

what SAULOSI MAIMBA ..... PLAINTIFF

defend

and

The MANGOCHI DIOCESE OF ROMAN

towing CATHOLIC CHURCH ..... DEFENDANT

treatment

CORAM:

JANE MAYEMU ANSAH (MRS) DEPUTY REGISTRAR

alred

Msiska of Counsel for the Plaintiff

the

DEFENDANT: Unpresented, absent.

not

course

nothing

receipt

RULING

This is the plaintiff's claim for damages arising out of damage to his vehicle, Datsun 180B Coupe. The action is based on negligence. On 30th July, 1992 the court entered judgement in default of intention to defend, damages to be assessed. This is an ordinary case of road accident involving a collision of two vehicles along the Lilongwe Zalewa road and the plaintiff's vehicle was extensively damaged. The plaintiff took out summons against the defendant and the defendant's insurance company paid the maximum premium of K12,500. The plaintiff's claim is the difference between what the defendant's insurance company has already paid to the defendant and his total claim.

The plaintiff's claim is for repair charges, hiring charges, towing charges, cost of a police report, charges for treatment, pain and suffering and the cost of this action.

The claim for treatment charges, pain and suffering was alreday settled between the parties at K500. The claim for the cost of a police report is dismissed. The plaintiff did not plead this claim, it just cropped up suddenly in the course of the plaintiff's evidence in court. There is also nothing to back up that claim, there is no police report or receipt exhibited.

Coming to the main claim on damages; the law is clear, it provides that an injured party is entitled to restitutio in intergrum against the wrong doer. Damage done to an item is measured by the cost of repair. In The London Corporation (1935) C.A p. 70 the learned judge said:

HIGH COURT  
LIBRARY

the  
no. of  
court  
no. of  
receipt  
conting

"Prima facie, the damage occasioned to a vessel is the cost of repairs - the cost of putting the vessel in the same condition as she was in before the collision, and to restore her in the hands of the owners to the same value as she would have had if the damage had never been done; and prima facie the value of a damaged vessel is less by the cost of repairs than the value it would have if the undamaged."

In this case the plaintiff is entitled to get the reasonable cost of repairs to be affected on his damaged Datsun 180B. However the cost of repairs must be reasonable and appropriate taking into consideration the circumstances and the condition of the damaged item. In the case of Darbishire vs. Warran 1963 1 WLR 1067 (CA) Harman L J said that:

"It can be proved that the cost of repair greatly exceeds also the value in the market of the damaged article"

The evidence of the plaintiff leaves a lot of unanswered questions concerning the accident and damage to the vehicle. The courts have always said that it is wrong for a plaintiff to lay a cause of action before a court and lead no enough evidence to support the claim and then expect the court to do guess work and award damages, claimed. The plaintiff has not explained the nature of the accident whether it was head on collision or whether his vehicle was hit on the side or whether as a result of some collision, his vehicle overturned. The nature of the accident would somehow throw some light on the nature of damage suffered by the vehicle. There is no police report to show what damage the vehicle suffered or even a photograph to show the same. One is left to wonder as to the nature of damage the vehicle suffered. The only indication is the handwritten parts estimate from a big and well established Mandala Limited. The parts estimate bears a signature without a legible name on it. Going through the list of parts to be replaced one gets the impression that the vehicle was damaged beyond repair. Both the front and rear windscreens need to be replaced, right hand and left hand door rubbers, rings, conrod bearing, roof ceiling (lining), to mention a few out of the total forty one items listed down. It appears the vehicle's body work was completely damaged and also the engine needs to be done completely. As indicated earlier on, the cost of repairs need to be reasonable. The year of make of the plaintiff's vehicle is not known and its condition before the accident is not known. It is the plaintiff's duty to prove before the court that the vehicle was in a good condition and all the listed parts are needed as a result of the accident. The plaintiff in his evidence has not said that the vehicle was new or in very good condition I therefore believe that the vehicle was an old one. The old Datsun 180B would fetch the sum of between K12,000 - K15,000.

I find that it is unreasonable to claim the sum of K23,000 as being the cost of repairs when the vehicle could most likely have been replaced by K15,000. I allow the sum of K14,000 to be the sum of money which can be spent to put the vehicle in its original condition or to replace it.

It is further the plaintiff's contention that the vehicle was being used for business in Lilongwe and Blantyre

The plaintiff has not disclosed to the court the nature of his business. He contends that to avoid his business from collapsing he had to hire vehicles in Balaka so that he could continue to visit these two cities. The cost of car hire during the period of repair is recoverable. However it must be reasonable, considering the quality of the vehicle. In the case of Watson vs. Shaw (1967) R.T.R. (CA) a high quality vehicle was hired as a substitute to another high quality vehicle, the court held that the defendant was liable to pay the cost of hiring a low quality vehicle. In this case, the plaintiff owned a Datsum 180B and as a substitute he hired a BMW then a Nissan Patrol. Both vehicles are higher than his own vehicle and they are expensive vehicles. His explanation is that these were the only vehicles available in Balaka. If indeed he hired them for the sake of his business in Blantyre and Lilongwe he would have not restricted himself to Balaka but he would have checked other hiring places in Blantyre and Lilongwe. I find that the defendant cannot be condemned to pay the full hire charges of these prestigious and expensive vehicles when he would have hired a Fiat or any other cheap vehicle. Almost all other hiring vehicle have mileage free periods depending on how long a vehicle is hired, therefore the plaintiff's contention that he hired these vehicle because of that privilege fails. His claim for three months is K17,550. I believe the sum of K8,000 would be enough to hire a cheap vehicle for 3 months.

The final claim is for tow charges. There is a receipt exhibited in court, I therefore award the sum of K350 being tow charges. The total sum awarded to the plaintiff is K22,850 minus the sum of K12,500, which was already paid by the defendant's insurance company. The plaintiff is further entitled to the cost of this action fees to be taxed.

Made in Chambers this 20th day of April 1993, at Blantyre.



Jane Mayemu Ansah (Mrs)  
DEPUTY REGISTRAR OF THE HIGH COURT