

Banda J.

IN THE HIGH COURT OF MALAWI, BLANTYRE

CIVIL CAUSE NO. 105 OF 1985

BETWEEN:

MALAWI BUREAU OF STANDARDS ..... PLAINTIFF

- and -

CONTINENTAL MOTORS LIMITED ..... 1ST DEFENDANT

- and -

M.A. CHIMBAYO (MALE) ..... 2ND DEFENDANT

Coram: JERE, J.

Banda, Counsel for the Plaintiff  
Nakanga, Counsel for the Defendant  
Manda, Court Reporter  
Chalunda-Mvula, Official Interpreter

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J U D G M E N T

The Malaŵi Bureau of Standards claims in negligence against Continental Motors Company Limited and Mr. M.A. Chimbayo special damages K1,110.50, general damages and costs for this action, damages which the Malaŵi Bureau of Standards sustained as a result of a road accident which occurred on the 22nd February, 1983. Continental Motors Company, through its servant, Mr. M.A. Chimbayo, denies that the accident happened because of the negligence of the defendant's driving. Damage is not denied.

The defendant denies that its servant, M.A. Chimbayo, was negligent. The defendant in his pleadings puts the blame on the plaintiff alleging that he stopped abruptly without any necessity to do so. He counterclaims in the sum of K3,736.04 as special damages and the Company further claims general damages and any other relief.

I remind myself about the burden of proof in civil actions.

The plaintiff called two witnesses to prove their case against the defendant and the defendant called only one witness. The story of Mr. Julius Malula is that on the 22nd of February, 1983, he was returning from the Polytechnic, where he had gone

2/.....



to leave members of staff. He is a driver employed by the Malaŵi Bureau of Standards. At the material time he was driving a vehicle BD 3694, the property of his employers. He was driving along Kamuzu Highway in the direction of Limbe to Blantyre. The time was around 5.00 p.m. As he approached Ginnery Corner he noticed that the robots were green so he proceeded but as he came near the pedestrian crossing he saw many people crossing in front of him and some were running across the road. He slowed down and eventually stopped. After stopping he heard a hit at the back, he came out of his vehicle and found that the vehicle was hit by Mr. M.A. Chimbayo.

Before the Police arrived Mr. Chimbayo wrote a letter and asked him (Mr. Malula) to sign it. He said he did not read it. He thought that the document meant that the vehicle will be pannel-beaten or repaired and that there would be no further trouble. The document reads:

"22/2/83

STATEMENT OF ACCIDENT

(Translated from Chichewa)

I, J.R. Malula, stopped suddenly and the vehicle that was following me hit my car at the back. I stopped suddenly, even though the robots were at blue (green) because I saw a person crossing the road. Here, I admit that it was me who was wrong.

I am,

(Signed)

J. MALULA

Peugeot BD 3694

Volvo BC 792"

The Police came on the scene and he eventually gave a statement at the Police. He was warned for careless driving. He went to his place of employment and he gave another statement to his employers. This was reduced in writing. He denied that he was to blame but put the blame on the vehicle which had hit him. In cross-examination he said that he was forced to sign the

3/.....



document. He further stated that the Police were exaggerating.

The second witness for the plaintiff is Kenson E. Kachotsa. He is also employed by the Malawi Bureau of Standards as an accountant. He was informed of the accident involving BD 3694 and BC 792. He also read Exh.2. He told the court that they had expenses to pay as a result of this accident. The vehicle was damaged. These were reflected in Exhibits 3, 4, 5 and 6. He went further to state that Mr. Chimbayo made a claim which was not admitted.

The defendant's evidence is that Mr. Chimbayo was driving along Kamuzu Highway towards Blantyre. He reached the first robots opposite Malaŵi Book Service and he saw a vehicle coming from the Road Traffic Commissioner's side, he just passed by when the traffic was showing red and suddenly the vehicle stopped. He then hit it. The driver came out of the vehicle and he said that he, Chimbayo, was wrong. His friend wrote the letter and he signed it. He said he did not see anybody crossing the road as is claimed by the plaintiff witness. He produced DX1 and DX2 and DX3.

In cross-examination he denied instructing Lilley Wills and Company to write what they did. He denied that PW1 was driving along Kamuzu Highway but that he came from the road from the Road Traffic Commissioner's Office. He joined Kamuzu Highway abruptly and without warning he stopped. He then hit him from behind.

The evidence is now clearly a "Contest of Oaths", to borrow the language from Miranda.

The defendant has denied that he wrote Exh.1 and asked PW1 to sign it. This document states that the accident happened because the plaintiff stopped suddenly and was to blame. He, however, added a rider that he stopped because he did not want to collide with a pedestrian who crossed the road suddenly. The plaintiff witness says that he was forced to sign the document and the defendant says he does not know about it. The question is whose document is it? I do not know. I will, therefore, discard it. I put no weight on it.

The Police Report, which is challenged by PW1 seems to suggest that the accident had happened because he stopped abruptly. The reason for such action is that he was avoiding a pedestrian.

In the report to his employers PW1 stated that the accident happened because he was trying to avoid a group of pedestrians who were crossing as he approached the pedestrian crossing. He told the court the same story. The only snag is that in the pleadings it is stated that he was avoiding a



pedestrian and not pedestrians. The answer to this by Mr. Banda in his submissions to court, is that his client was trying to avoid loss of life.

I have watched the demeanour of both PW1 and DW1; of the two versions of the story told to me, I believe PW1, I do not believe DW1. He is entirely to blame, he was driving without care or attention. I have considered the evidence carefully, the question of contributory negligence does not arise. The problem is one of pleading, whether he was trying to avoid colliding with one pedestrian or more the fact remains that the defendant in either case was to blame.


The plaintiff has proved special damages as a result of the accident to the tune of K1,110.50. He has produced documents which show the above sum of money was paid on behalf of the plaintiff. Mr. Nakanga did not dispute this figure as claimed by the plaintiff. The only damage that I have to deal with is one of general damages. This has not been dealt with by Mr. Banda in his submission nor is there much in the evidence on which the court would have to base its decision. The law is correctly stated by Lord Halsbury in *Greta Holme* (1897) A.C. 596:

"The broad principle seems to me to be quite independent of the particular use the plaintiffs were going to make of the thing that was taken, except - and this I think has been the fallacy running through the arguments at the Bar - when you are endeavouring to establish the specific loss of profit, or of something that you otherwise would have got which the law recognises as special damage. In that case you must show it, and by precise evidence ..... But when we are speaking of general damages no such principle applies at all, and the jury might give whatever they thought would be the proper equivalent for the unlawful withdrawal of the subject-matter then in question."

This principle was applied in Birmingham Corporation Sowsberry (1969) 113 S.J. 877 (report not available to me).

In these circumstances I award the plaintiff the sum of K1,500 general damages. Costs for the plaintiff.

PRONOUNCED in open court this 15th day of August, 1985, at Blantyre.

  
N S. Jere  
JUDGE