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HIGH COURT
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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO.512 OF 1990

BETWEEN:

J.L.M. PANGANI PLAINTIFF

- and -

RASHID HUSEIN JUSSAB DEFENDANT

CORAM: TAMBALA, J.

Nyirenda, Counsel for the Plaintiff
Chisanga, Counsel for the Defendant
Kaundama, Official Interpreter
Maore, Court Reporter

HIGH COURT OF MALAWI
16 JUL 1992
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JUDGMENT

This is a plaintiff's claim for damages arising out of damage to his Isuzu Pickup registration No. BF 7156. The action is based on negligence. The defendant denies negligence.

This is an ordinary case of road accident involving a collision of two vehicles moving in the opposite direction. It was during the afternoon of 17th February, 1990 that the plaintiff was driving his Pickup from Muloza near the border between Malawi and Mozambique towards Mulanje Boma. The road is tarred, but only on the middle of the road. The tarred portion is narrow and two vehicles cannot pass each other on the tarred portion. The entire road including the dirty portion on both sides is generally narrow. When passing each other vehicles have to drive carefully. There are a number of slopes on this road between Muloza and Mulanje Boma. In a number of places the road curves to the left as one drives from Muloza towards the Boma.

The plaintiff came to a place near Eldorado Tea Estate and saw the defendant's truck at a crown of a slope about half a kilometre away. He said that during this time he was also on a crown of a slope and started descending. He said that he noticed that the truck was moving very fast. According to him it was flying like a private car. It was coming towards him. He said that he slowed down and stopped down the slope a few metres from the top of the slope. It was his evidence that his right side tyres were close to the edge of the tarmac road while the tyres on the left side were on the dirty portion of the road. He stopped on his left side of the road. He said that the defendant's truck came to his side and banged his Pickup in front of its right side.

After the impact the defendant's truck moved a few metres and stopped behind the Pickup. When it came to its resting position the truck had crossed the road and faced the tea bushes on the left side of the road as one travels from Muloza. It obstructed the road partially. It left just enough space to enable small cars to pass.

The plaintiff's vehicle was badly damaged. The right wheel and chassis were seriously damaged. The driver's door was smashed. The cab was squeezed and the windscreen was shattered. It could not move. It was later towed to Mr. Ingle's Modern Way Garage.

The evidence of the defendant was that he was driving his Fuso truck and came to a bridge. He slowed down. When he started climbing a slope near Eldorado turn off he saw a Pickup coming towards him. He said that he slowed down and gave way. The left tyres of the truck were moving on the dirty road on his left side of the road; the right tyres were moving on the tarmac road. He said that he left enough room for the Pickup to pass. It was his evidence that the Pickup did not give way. It came and hit his truck. It hit the bumper and mudguard together with the wheel on the right handside.

The defendant's vehicle was also damaged. A spring hanger on the right side was damaged, few springs were broken and the steering box was bleeding oil.

Negligence is based on a duty to exercise care. Regarding the duty imposed on drivers of motor vehicles BANDA, J. as he then was, in the case of Christina Banda an Infant by H.T. Banda her Next of Friend v. Admarc and Another, Civil Cause No. 273 of 1987 at p.3, said:

" A driver of a motor vehicle owes a duty of care to other road users not to cause damage to persons, vehicles and property of anyone on or adjoining the road. He must use reasonable care which an ordinarily skilful driver would have exercised under all the circumstances. A reasonably skilful driver has been defined as one who avoids excessive speed, keeps a good lookout, observes traffic signs and signals."

This is a civil case. I bear in mind that the duty of the plaintiff is to prove his case on a mere balance of probabilities. I carefully considered the total evidence before me. The plaintiff said that he stopped and parked his vehicle to his extreme left when he first saw the defendant's truck about half a kilometre away. I had the impression that he did not tell the truth. Considering the nature and width of the road I do not think that he could have found it necessary to stop and park his car on his left when the defendant's truck was far. I thought that he was exaggerating. I was however inclined to think



that the defendant was driving very fast and as a result saw the plaintiff's truck at a short distance. I would find that the defendant failed to give the plaintiff's Pickup sufficient room to pass because of the speed at which he was driving.

After the impact the defendant lost control of the truck and ended up blocking the road at right angles. It would seem to me that this happened because he was speeding. I had the privilege of visiting the scene of the accident. I observed that because of the road which goes to Eldorado Tea Estate after branching from the Muloza-Mulanje road the defendant had a lot of room on his left. He could have avoided the collision by using part of that road or by simply following it. On the other hand the plaintiff did not have similar opportunity. There were tea bushes on his left; but before reaching the tea there was a ditch. It would seem to me that the defendant did very little to avoid the accident.

I come to the conclusion that the accident occurred due to the fault of the defendant. He was in my view guilty of negligence. I am unable to find conduct on the part of the plaintiff which can lead me to find contributory negligence on his part. The plaintiff's action based on negligence succeeds.

The plaintiff claims the sum of K8,628.15 as special damages. This money represents what he spent in repairing his vehicle. He stated in his evidence that he bought a second hand cab together with dashboard and steering wheel and fitted them on his vehicle. He bought these items from Motorcare. He said that he paid about K4,000.00 for the items. He was unable to produce receipts to support the payment. During the course of the trial the plaintiff produced a picture showing damage to his Pickup. I observed that it was badly damaged. I was satisfied that the nature and extent of the damage to the cab was such that it necessitated the replacement of a cab. It would seem to me that K4,000.00 is a reasonable price for a second hand cab together with dashboard and steering wheel. I am prepared to grant him the sum of K4,000.00 for replacement of cab, dashboard and steering wheel.

He produced various cheques made payable to Mike Appel and Gatto, Agason Motors and Salvage Industries and also some cash sales for a total amount of K2,479.92. He said that he used this money in purchasing spare parts from Mike Appel and Gatto, Agason Motors and Salvage Industries. Mr. Chisanga disputed that the cheques and cash were used for the purchase of spare parts which were fitted on the plaintiff's Pickup. He pointed out that the documents do not show what the cheques and cash were paid for. I would agree with Mr. Chisanga. These cheques and cash sales do not tell us what was bought from the various places where payment was made. I am not prepared to accept that the K2,479.92 was used by the plaintiff in purchasing spare parts which he fitted on his Pickup.

The plaintiff said that Modern Ways Garage charged him K1,378.91 for labour. He is entitled to this sum of money as special damages.

The evidence revealed that the Pickup was in the Garage from March, 1990 to August, 1991. He was deprived of the use of his vehicle for 17 months. He was obviously put to great inconvenience and hardship. It must also be appreciated that although he has failed to prove as special damages the money which he spent for the purchase of spare parts it is quite clear that he spent some money in purchasing spare parts which were eventually fitted on the Pickup. He should be compensated for the financial hardship which he experienced as a result of the fault of the defendant. I would grant him K5,000.00 for loss of use, inconvenience and hardship.

He shall get a total of K10,379.91 and costs of these proceedings.

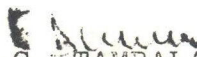
PRONOUNCED in open Court this 21st day of May, 1992 at Blantyre.

D.G. TAMBALA
JUDGE

MR. CHISANGA: I would like a stay of execution for 14 days to get instructions from my client and effect payment.

MR. NYIRENDA: If it is only for the purpose of effecting payment I would have no objection.

COURT: I shall not allow the application. I believe that it does not require 14 days to effect payment. I am sure that Mr. Nyirenda will not insist on payment of judgment debt and costs today.


D.G. TAMBALA
JUDGE
21/5/92