



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 270 OF 1990

BETWEEN:

CAPS LIMITED.....PLAINTIFFS

- and -

LOTUS MOTORS LIMITED.....DEFENDANTS

CORAM:

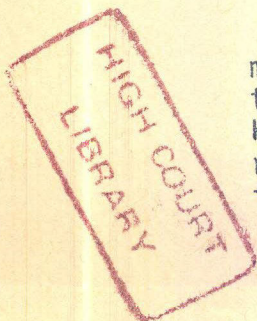
UNYOLO, J.
Mwafulirwa, of Counsel, for the Plaintiffs
Chisanga, of Counsel for the Defendants
Tsoka (Mrs)/Jere, Official Interpreters
Maore, Court Reporter

J U D G M E N T

The plaintiffs' claim in this action arises from a road accident which occurred on the section of the road which runs parallel to the Kamuzu Highway from Universal Industries down to Lotus Motors Workshop in Blantyre. It appears that the said road has not yet been named. It is really a service road. For convenience, I shall refer to it in this judgment as "the service road". Specifically, the accident occurred near the Tambala Food Products building where what is known as Kidney Crescent Road cuts across the service road to come into the Kamuzu Highway.

The accident involved the plaintiffs' motor vehicle, Registration Number BF 6001, a Ford Lasser saloon (hereinafter referred to as "the Ford Lasser") which was being driven at the time by the plaintiffs' Managing Director, PWi, and the defendants' motor vehicle, Registration Number BF 3696, a Mazda van (hereinafter referred to as "the van") which was at the time being driven by one, Steven Nkhoma, a mechanic in the employ of the defendants' company. The Ford Lasser sustained extensive damage in the accident. A greater part of the front was damaged. The damage caused to the van was, however, minimal, only a dent near the rear nearside wheel.

The Court visited to the scene of the accident. It might be useful to describe what we saw there. I have said that at this place Kidney Crescent road comes to join the Kamuzu Highway soon after intersecting with the service road. This Kidney Crescent road goes northward from both the highway and the service road.



If a motorist travelling from Limbe wants to turn at this point from the highway into the service road or to Kidney Crescent road, he moves to the right on the left lane and there is a "give way" sign written in bold white on the highway itself. Here the motorist is supposed to give way to traffic coming in the opposite direction from Blantyre side. If there is no traffic or once the traffic has cleared, he can then turn right to join the service road and drive on if he wants to go to, say, Dulux Paints or beyond. If the motorist wants to go into Kidney Crescent road, again he will turn in right, cross the service road and drive on in the northern direction to whatever place he wants to go. That is the only "give way" sign there is so far as traffic turning in from the highway is concerned.

There is also a "give way" sign on the service road just before its intersection with Kidney Crescent road, on the Universal Industries side. Motorists driving on the service road from this side are expected to stop at the said "give way" to yield to traffic coming in from the highway as described above. It is to be noted that motorists coming from this side of the service road are not allowed to join or enter the highway at this point.

There is yet another "give way" sign, this one on Kidney Crescent road, just before it intersects with the service road. Motorists coming from the bottom of Kidney Crescent road are supposed to yield here to traffic turning in from the highway, particularly those motorists intending to turn left and drive down the service road. Motorists from this road, Kidney Crescent road, are, however, allowed to enter the highway at this point, either to go to Limbe or to Blantyre, but there are "give way" signs just at the mouth, where they must yield to traffic on the highway.

So much for the description of the scene of the accident and the features there.

And now concerning what happened and how the accident occurred, there are three versions. The first version is that of PW1. This witness told the Court that he was at the material time driving from his house in Chigumula going to his place of work which is situated off Kidney Crescent road, at the bottom. He said that when he approached the turn-off above-mentioned, he put on the indicators, showing that he intended to turn to the right and then stopped at the "give way" sign, since there were motor vehicles on the highway coming from the opposite direction. The witness went on to say that when the motor vehicles passed and the highway was clear, he turned in to the right in order to cross the service road and join Kidney Crescent road. He said that suddenly there was a bang as he was about to cross the service road. He had collided with the van. It was his evidence that he did not see the van before the collision and that he was unable to tell where precisely it came from.

as everything happened in a split of a second. By this, the witness meant he was unable to say whether the van emerged from the service road or Kidney Crescent road. He said that the only vehicles he saw before the accident as he stopped at the "give way" were two motor vehicles which had stopped at the mouth of the highway waiting to enter the highway, but yielding to traffic on the highway.

The second version is that of the plaintiffs' second witness, PW2. The witness told the Court that he was at the material time driving his car on the service road from Universal Industries side going to Blantyre. He said that when he came to the "give way" sign I have referred to above, he saw the van pull out at great speed from Tambala Food Products building and then turn at the intersection, intending to proceed down the service road. The witness said that it was in the course of this that the van collided with the Ford Lasser which had just turned in from the highway. It was put to the witness in cross-examination that the van was coming from Universal Industries side at the time of the collision, but he denied this.

The third version is that of the driver of the van, DW1. I have indicated that this gentleman works for the defendants at their factory situated at the bottom of the service road on the Blantyre side. He told the Court that when he reported for duty in the morning on the material day, he was detailed to take some tyres to Firestone for mending. This place, Firestone Tyres, was at the time also situated off the service road, but on the other end, near City Motors, in the direction of Limbe. He said that he was driving back when the accident occurred. It was his evidence that as he approached the intersection he stopped at the "give way". He said that the road ahead was clear at the time and that the only vehicles were those on the highway, coming from Blantyre side. The witness stated that having noticed that those vehicles were going straight and not turning, he started off from the "give way" and that he was in the process of finishing to cross the intersection when he heard a bang in the rear. He said that he stopped a few yards away and noticed when he came out that the van had collided with the Ford Lasser. It was his evidence that he did not see the Ford Lasser at any time, either when he was at the "give way" or when he drove off from there. He said that PW1 must have come from Limbe and turned in at this place at great speed, hence the collision.

So much for the evidence.

Now, I must decide which of the three versions is reasonably true. I think that I should mention here before I go any further that I have considered the evidence with religious care.

I will take first the account given by PW2. The first observation to be made is that the witness came out unchallenged in his evidence as to how he came to be at the scene of the accident. He said that he had just left his office nearby going to his Head Office in Blantyre. In short, I am satisfied and I find that the witness was indeed at the scene and that he did witness the accident. Secondly, it is to be noted that this witness was an independent witness. He was not involved in the accident, either directly or indirectly. He was only an innocent by-stander and, as has been shown, his version of the accident was different from that of both PW1 and DW1, the people who were involved in the accident. He impressed me as a person who had no interest in the case, or an axe to grind. There is also no doubt in my mind that the witness is an intelligent man and that he knew what he was talking about. He also impressed me as a witness of truth. Put shortly, I believe him.

The matter does not, however, end there. There still remains the question whether the witness's evidence does support the allegation that the defendants' driver, DW1, was negligent in his driving at the material time. Having been to the scene of the accident, we saw that after coming out of the Tambala Food Products yard, DW1 should have crossed to the left lane of Kidney Crescent road and then stop at the "give way" sign clearly marked on the road, just before the intersection, or at least he should have driven carefully, if only to make sure that there was no traffic coming through from the highway to which he had to yield. Indeed, he ought also to have had in mind traffic travelling along the service road from both sides of the intersection. It will be recalled that PW2 did say that as he came to the "give way" sign on the service road, he saw the Ford Lasser on the highway with the indicators on, showing that it was turning into Kidney Crescent road. There is little doubt in my mind that had DW1 taken a similar course of action as PW2, had he driven cautiously as PW2 did, he should have seen the Ford Lasser and yielded to it, since it clearly had the right of way at that point. As I see it, it was because of the speed, lack of proper lookout and poor judgment on the part of DW1 that the collision occurred.

Assuming, for argument's sake, that I am wrong and that it is DW1's evidence which has the ring of truth, would my conclusion then be different? With respect, I do not think so. Even in that case, as he approached the intersection, DW1 was required to ensure that he did not proceed past the "give way" sign to cross the intersection without checking that there were no motor vehicles turning in or likely to turn in from the highway. As a matter of fact, extra care was called for, considering, *inter alia*, that the highway is a busy road and that this was a peak hour of traffic. Further, I did not find it plausible that PW1 could have just come in from far up the highway and collide with the van after DW1 had taken off from the "give way" sign.

Again, I would fault DW1, going by PW1's evidence.

I have considered the question whether it can be said that the accident was contributed to by the negligence of PW1. With respect, I don't think so. The total evidence shows that DW1 came into the intersection unexpectedly and in a matter of seconds, giving PW1 no time, or very little time, in which to try and avoid the collision. Perhaps I should say that if there was any contribution at all, then it was very trifling and can be dismissed upon the maxim *de minimis non curat lex*.


In short, I find that DW1 was negligent in the manner of his driving and that the accident was the result of such negligent driving.

I now turn to damages.

With respect, the plaintiffs' evidence was very clear on this aspect. There is ample evidence that the plaintiffs hired several motor vehicles for PW1's use while the Ford Lasser was being repaired. I am satisfied the plaintiffs were entitled to hire the motor vehicles in question. PW1, as I have already indicated, is the plaintiffs' company's Managing Director and he clearly needed a replacement motor vehicle. I have considered the point that at one time the plaintiffs hired PW1's own personal car, but I think that that is really neither here nor there. Indeed, an explanation was offered as to why PW1's car was hired. It is to be noted that the plaintiffs tendered in evidence documents which established the amount claimed for the said hire of motor vehicles.

In the premises, I find that the plaintiffs have proved their case against the defendants and I enter judgment for the sum claimed, namely, K15,714.29, and costs.

PRONOUNCED in open Court this 4th day of November 1993, at Blantyre.


L E Unyolo
JUDGE

