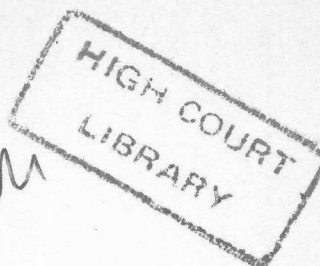


IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY



CIVIL CAUSE NO. 412 OF 1988

BETWEEN: C. Y. KAWONGA ..... PLAINTIFF

- and -

A. A. KATALAMA ..... DEFENDANT

CORAM: TAMBALA, J.

Zimba (Miss), of Counsel for the Plaintiff  
Jumbe (Miss), of Counsel for the Defendant  
Chigaru, Official Court Interpreter  
Phiri, Court Reporter

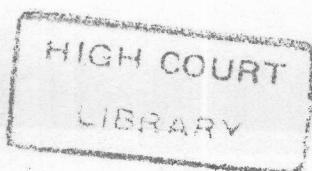
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JUDGMENT

This is a plaintiff's claim for damages for personal injuries sustained after he was hit by the defendant's motor vehicle, a Datsun Saloon, registration number BG 6760. It is claimed that the defendant was negligent in the manner that he drove the vehicle at the time of the accident.

The accident from which the plaintiff received the injuries, the subject of this claim, was witnessed by a number of persons. Unfortunately, there is so much conflict between the evidence for the plaintiff and the evidence supporting the defendant that it must be clear that most of the witnesses who came to give evidence told lies.

The evidence shows that during the early morning of 6th March, 1987, the plaintiff was walking along Ndirande-Blantyre Road near Blantyre Girls Primary School when he was suddenly hit by a vehicle driven by the defendant. The impact knocked him to the ground and he became unconscious. He sustained a fracture on his right leg. He also had a cut on his head. He was rushed to Queen Elizabeth Central Hospital where he was admitted. While in hospital Plaster of Paris was applied to the injured leg on three occasions essentially because on the earlier occasions it was not properly done. He was discharged from hospital on 19th March. He thereafter continued to attend hospital as an outpatient. The injured leg remained cast in the Plaster of Paris till November, 1987 when it was removed.



He has since healed. There is, however, a shortening of the leg by about  $\frac{1}{4}$  of an inch.

There is serious conflict of evidence regarding how the accident took place. The exact place of the accident is also contested. The evidence of the complainant is that he was walking on the dirty verge of the road when the vehicle hit him from behind. He said that there was no other vehicle moving from the opposite direction when he was hit. He said the collision took place about a meter from the end of the tarmac road. This evidence was supported by several witnesses who came to testify in favour of the plaintiff.

The defendant said that the accident took place at a bend soon after he took off from a Zebra crossing. He said that he was passing a bus coming from the opposite direction when he suddenly saw the plaintiff crossing the road from the right going to the left. He said that he applied emergency brakes and tried to avoid hitting the plaintiff. He said that his vehicle caught the plaintiff's right leg and he was forced to swing round and fall on the tarmac road. This evidence was materially supported by that of Stanley Kamwendo, DW2.

There was evidence given by Saizi Faki, PW2 that the defendant was driving his car very fast as he approached the place where the accident occurred. The defendant denied that he was speeding at the material time. He explained that he had stopped at a Zebra crossing which is near the scene of accident. He said that after starting his car from the Zebra crossing he had just changed from second into the third gear when the accident happened. He denied that he was speeding. I found the evidence of the defendant more credible. There is indeed a Zebra crossing near the scene of accident and before the crossing there is a sign warning that school pupils may be crossing the road. During the time of the accident the road must have been busy with pedestrians and school pupils going to Blantyre Girls Primary School. It is very likely that some school pupils were crossing the road at the time when the defendant reached the Zebra crossing. The defendant would have been forced to stop at the crossing. PW2 and a number of witnesses for the plaintiff lied that there was no Zebra crossing at the place. They also lied when they said that there was no stop sign a few meters before the road joined Blantyre-Chileka road. The defendant adduced credible evidence which showed clearly that there was a warning sign and a Zebra crossing just before the place of accident and a stop sign after it. I am inclined to believe the defendant that he was not speeding at the time of the accident.

After a close examination of the evidence adduced before me, I would find, as contended by the defendant, that the collision occurred soon after the defendant's vehicle passed a bus travelling in the opposite direction. I also find that the plaintiff was crossing the road from the right to the left when he came into contact with the defendant's vehicle. I further find that the collision occurred on the tarmac road. This finding is supported by the fact that the sketch plan drawn by the Police who visited the scene soon after the accident took place shows blood stains on the tarmac road. After considering these facts, I get the impression that the accident occurred because the plaintiff did not take care to check and ensure that the road was clear of motor vehicles before he crossed the road.

The plaintiff's claim is based on negligence. The law relating to negligence liability is based on the concept of the duty to take care. Regarding the duty placed on a driver of a motor vehicle Mtegha, J., in the case of Zidana -v- Professor Chimphamba, Civil Cause No. 440 of 1987 (not reported) said at page 7:-

"The duty of a motorist is to take reasonable care, such as keeping a good look out, avoiding excessive speed, (taking) proper control of his vehicle and observing road signs."

The law also casts similar duty on a pedestrian. This duty was described by Banda, J., as he then was, in the case of Christina Banda an infant by H.T. Banda her next friend -v- Admarc and Another, Civil Cause No. 273 of 1987 (unreported), at page 4, in the following terms -

"A pedestrian also owes a duty of care to other road users to move with due care. Although a pedestrian is entitled to walk along the carriage way, he is only entitled to the exercise of reasonable care on the part of drivers of motor vehicles."

I have considered the facts of this case and the duty to take care which the law casts on a motorist and I am constrained to come to the conclusion that the defendant did not breach this duty to drive his motor vehicle on the relevant road with reasonable care. The plaintiff's claim, therefore, fails. It is dismissed with costs.

PRONOUNCED in open Court, this 20th day of January,  
1993, at Blantyre.

*D. G. Tambala*  
D. G. Tambala  
JUDGE