

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CASE No. 275 OF 2002**

BETWEEN

A.W. SEGULA.....PLAINTIFF

AND

NATIONAL INSURANCE COMPANY..... 1ST DEFENDANT

EAGLE INSURANCE COMPANY..... 2ND DEFENDANT

CORAM: JUSTICE I.C. KAMANGA

Nkhutabasa Counsel for Plaintiff
Lawson Counsel for the Defendant Absent
Gonaulinji Court Interpreter

JUDGMENT

The plaintiff in this matter Amy Segula seeks compensation in respect of the death of her husband Andrew Wyson Segula who died in a road accident on 7th February, 2000. The motor vehicle in which he was a passenger was a Government motor vehicle under Ministry of Education. It was insured by the 1st defendant. The defendants dispute the application.

The history of the matter as per our court record indicates that the plaintiff filed a specially endorsed writ on 25th March, 2002. On 12th June, 2002 a judgment in default of notice of

intention to defend was adjudged in the plaintiff's favour. On 10th July, 2002 the court issued a notice of appointment to assess damages. The same was duly served on the defendant's legal representatives. On 18th July, 2002 the defendants filed an ex parte summons for stay of execution which was heard on 30th July, 2002. In their application the defendants sought that judgment be set aside on two basis: Firstly the judgment had been granted prematurely and secondly the defendants had a defence on merit to the plaintiff's claim.

The defence being the first defendants were not usurers of the motor vehicle in issue and neither was the accident caused by the 1st and 2nd defendant's insured or their agents. The warrant of execution was thereby set aside. Summons to set aside judgment were filed and 22nd October, 2002 was set down as date of hearing. The matter was not heard.

On 18th March, 2003, a consent order setting aside judgment was issued. On 22nd May, 2003 consent order for directions was issued. 29th May, 2003 the plaintiff's list of documents was served on defendant's legal practitioners. On 3rd January, 2007 the court bundles was served on the defendant's legal practitioners. 6th March, 2007 was set down as date of hearing. Affidavits of service verifying that the defendant's legal practitioners had been served with the court bundle and

notice of hearing were filed. A notice of hearing with the defendants' legal practitioners' endorsement that they had been served with the notice of hearing on 16th January, 2007 at 09:30 am was also filed. On the date of hearing, the defendants' legal practitioners never attended court, neither did they inform the court on reasons for non attendance. The court hereby ordered that matter should proceed to hearing hence this judgment.

One witness for the plaintiff testified. It was the plaintiff herself, the widow of the deceased. This was her uncontested testimony . Her husband Andrew Wyson Segula was working at Masongola Secondary School as Human Resource Officer. One of the students at the school died. He received instructions from the Regional Education Manager to escort the dead body to its burial place Chingale. As Masongola Secondary School had no appropriate motor vehicle, the Regional Educational Manager advised her to identify a motor vehicle that would ferry the remains. He got a motor vehicle from Balaka Secondary School. The motor vehicle Registration Number is 025MG320 or MG 724. The motor vehicle was involved in an accident and the husband died on the spot. The witness tendered a police report. This is the information of the police report: "On 07/02/2002, Mr. A.W. Segula was among the passengers who were traveling on a motor vehicle registration number 025 MG 320 Iveco Light Truck, carrying a dead body of a form one female student of Masongola Secondary School, Slara Juma which

was being driven by Mr. Ahmed Maulana C/O Balaka Secondary School, P.O. Box 222, Balaka from Zomba Central Hospital mortuary to Chingale.”

In the course of traveling as the vehicle was descending the Changalume Escarpment at about 1700 hours arrival at Nkoloti Bridge No. 2 the driver failed to negotiate sharp left corner and eventually plunged into a ditch of Nkoloti Bridge.

DOCUMENTS: The driver of the vehicle produced his driving licence number 0424896 issued on 15th March, 1999 to 22nd September, 2000 for classes G and K only. The motor vehicle was being covered by Certificate of Insurance Number 0150697 issued on 1st July, 1999 to 30th June, 2000 by Eagle Insurance Brokers.

Police investigation revealed that the accident was influenced by the recklessness of the driver in the sense that he was over speeding the steep slope. Therefore he causing death by Reckless Driving as 126(4c) of the New RTA.

This was the evidence.

As indicated, the defendants had filed a defence but had not presented themselves at the hearing. To that extent the hearing was uncontested. In the alternative the court had also looked at the defence in which in essence the 2nd defendant denies being the insurer of motor vehicle registration number

025 MG 320 or MG 724U; and the first and second defendant denies that the accident was caused by its insured and the court makes the following observation: The defence which is a general defence is a mere sham intended to delay the process. And if it is not a mere sham, the statement in the Police Report indicates that firstly the Certificate of Insurance for the mentioned motor vehicle was issued by the second defendants. And the period that was covered was from 1st July, 1999 to 30th June, 2000. And the accident that happened on 7th February, 2000 was within the period covered by insurance. The person that was driving the motor vehicle was an assigned driver by the insured. The accident happened when the deceased was in the course of his employment. Then there is a letter from the first defendants to plaintiff's legal practitioners (Ex P1) in which the first defendants indicated that the first defendants were indeed the insurers of the motor vehicle in issue. In this letter, they had other reasons other than those articulated in the defence for failing to honour the insurance liability. In that letter, they had claimed that the motor vehicle in issue was carrying four passengers the cab hence this was beyond its carrying capacity in the said cab. As observed, this does not appear in the defence. The particulars of the defence are as has been indicated above that they never insured and there was no negligence. This letter clearly endorses that the 1st defendants were the insurers of the motor vehicle in issue and the 2nd defendants were the

brokers. As the insurance broker is a mere agent, the insurer can not evade liability.

Hence the plaintiff succeeds in and her claim for damages for the loss by death of her husband. Costs to the plaintiff.

Assessment of damages to be done by the Registrar.

Made in open court at Lilongwe District Registry this 21st day of August 2007.

Mrs. I.C. Kamanga
JUDGE