



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 3716 OF 2001**

BETWEEN:

ROSEMARY MDACHI PLAINTIFF

A. MAGOMBO1ST DEFENDANT

-and-

NICO INSURANCE2ND DEFENDANT

CORAM: Hon. Justice M.L. Kamwambe
Ms Mndolo of counsel for the Applicant
Ms Kapezi of Counsel for the Respondent
Ms Nyirenda, Official Interpreter

JUDGMENT

Kamwambe J

The Plaintiff commenced action by way of writ on 14th December, 2001 claiming against 1st Defendant as owner of Toyota Hiace Minibus MZ 3303 and the 2nd Defendant as insurer of the said vehicle. The Plaintiff's claim follows a road accident involving her Toyota Hiace Minibus MH 1278 and the 1st Defendant's vehicle that occurred around 10.00 am at old Limbe Bus Depot on 3rd July 2001.

When I heard this case on 3rd of August 2007 the Plaintiff closed its case after calling one witness, the minibus conductor. The defence was not ready to proceed as it had

not filed a court bundle as should be the case and consequently requested the court to adjourn to next session. The defence undertook to file submissions upon failing to call any witnesses. The Plaintiff was definitely not amused with this development as the case had been adjourned in the past at the auspices of the defence and considering how old the case is, any adjournment was inexcusable and unwelcome. However, court adjourned reluctantly to next session on condition that within 30 days the defence files its court bundle and failing which court shall proceed with submissions.

To date the defence has not filed the court bundle neither has it filed its submissions while the Plaintiff has complied with everything without much ado. I take it that the defence is not interested in this case and that it is appropriate and convenient to just proceed writing judgment and on the basis of the Plaintiff's case. This is why I have proceeded doing so.

The statement of claim reads as follows:-

- 1. The Plaintiff was at all material times a business lady and owner of motor vehicle, Toyota Hiace Minibus registration number MH 1278.*
- 2. The first Defendant was at all material times owner of motor vehicle Toyota Hiace Minibus registration number MZ 3303.*
- 3. The second Defendants are sued as insurers of the said first Defendant's motor vehicle registration number MZ 3303 pursuant to Section 148 (1) of the Road Traffic Act 1997.*
- 4. On or about the 3rd day of May 2001 around 1000 hours at Limbe Bus Station the Plaintiff's driver lawfully parked the Plaintiff's MH 1278 on a Minibus queue when the Defendant's driver driving the Defendant's MZ 3303 so negligently and in a rush manner jumped the queue; squeezed the vehicle in front of the Plaintiff's and moments later while reversing crashed into the Plaintiff's said MH1278.*

PARTICULARS OF NEGLIGENCE

- (i) Unreasonably jumping the minibus queue in a rash manner without regard to other vehicles already on the queue
 - (ii) Squeezing the Defendant's MZ 3303 too close in front of the Plaintiff's MH 1278
 - (iii) Reversing the Defendant's MZ 3303 without look out so as to avoid crashing into the Plaintiff's MH 1278
 - (iv) Failing to brake, swerve or otherwise control his vehicle so as to avoid crashing into the Plaintiff's MH 1278.
5. By reason of the matters aforesaid the Plaintiff suffered loss and damage to her vehicle for which she incurred repair costs and loss of business for 4 days when her motor vehicle was undergoing repairs.

PARTICULARS OF THE DAMAGES

- (i) Disjointed left side door
- (ii) Depressed left side door
- (iii) Depressed left fender
- (iv) Depressed mudguard

6. AND THE PLAINTIFF CLAIMS:

- (i) Repair costs assessed at **K145,320.00** as at 16th May 2001 and to be assessed.
- (ii) Loss of business in the sum of **K24,000.00** being **K6,000.00** per day
- (iii) Legal costs for this action"

It is appropriate to put down the defence as well which goes like this:-

“DEFENCE

1. *The defendants deny that the accident referred to in the Statement of Claim was caused by the alleged or any negligence on the part of the first defendant.*
2. *The defendant denies squeezing any vehicle, reversing or colliding into the plaintiff's minibus.*
3. *The defendant's minibus bearing registration number MZ 3303 was lawfully parked in front of the plaintiff's minibus with the kerb on its right hand side, whilst in the process of picking up passengers.*
4. *The plaintiff's driver wrongfully and without proper or any regard for the safety of potential passengers and the said minibus commenced to overtake the defendant's said minibus on the said offside in spite of constraints of space considering the presence of the solid kerb.*
5. *Whilst in the process of so overtaking the left hand door of the plaintiff's said minibus flung open and violently hit into the rear and right hand side of the defendant's vehicle causing damages to both vehicles.*
6. *The said accident was therefore caused by the negligence of the plaintiff's minibus driver whilst acting in the course of his employment.*
7. *The alleged or any damages are denied.*

The only prosecution witness was Chawanda the conductor then who basically stated in support of the statement of claim. He stated that buses to Mulanje, park on the right side of the depot road while those going to Zomba on the left side. The middle is left for vehicles to pass through. Plaintiff's

driver's door was therefore on the right while passenger's door was on the left. When the minibus in front of the Plaintiff's minibus left, the Plaintiff was entitled to fill the place but the 1st Defendant's driver in a bid to jump the queue tried to overtake the Plaintiff's minibus and thereby collided into the said Plaintiff's vehicle when he was reversing. The 1st Defendant's vehicle was coming from behind the Plaintiff's vehicle. More conspicuously, the Plaintiff's passenger door was damaged apart from other damage on the left side.

The Plaintiff took her vehicle to the garage for repairs and a quotation for K145,320.00 was produced. The quotation is dated 16th May, 2001. The Plaintiff's vehicle was thus off the road for four days. Estimated figure of K6,000.00 is given as loss of business per day. This totals to K24,000.00. A police report was produced and it puts blame on the Defendant. Of course I do not have to rely on this report in my finding.

Every road user owes a duty of care to other road users. It is not controverted that the Defendant's vehicle was behind the Plaintiff's and that the accident happened when the Defendant's vehicle was trying to overtake the Plaintiff's. It is unfathomable that Plaintiff's vehicle which was in front was overtaking the Defendant's vehicle. According to the orderly arrangement at the minibus depot it is highly improbable to overtake in reverse when everyone is expected to go one way in front. I do not wish to believe the story of the Defendant's side that the Plaintiff's driver was in the wrong. It is the Defendant's driver who drove the vehicle negligently without due regard of other road users such as the Plaintiff's driver. In this regard, I find him to have conducted himself negligently and therefore he is liable. I condemn him to pay costs as well.

The Plaintiff has asked this court to consider inflation. Over seven years have elapsed since the Plaintiff repaired the vehicle. In my view it would not be just that the Plaintiff be paid what money she spent on repairs. The amount would be meaningless today. This is why cases must be expeditiously dealt with so as to avoid inflationary impact

since our economy is not stable comparatively. I condemn the Defendant therefore to pay interest from then to date at 1% above the bank's lending rate on the total amount due.

The Registrar shall compute damages payable. It is so decided.

Made in Chambers this 20th day of October 2008 Chichiri, Blantyre.

M.L. Kamwambe
JUDGE