



IN THE HIGH COURT OF MALAWI

LILONGWE DISTRICT REGISTRY

CIVIL CAUSE NUMBER 537 OF 2015

BETWEEN

MAFFIN CHIKAONDA----- 1ST PLAINTIFF

WILLIAM LYSON-----2ND PLAINTIFF

AND

HENRY MUYAYA-----1ST DEFENDANT

F.G. BINALI-----2ND DEFENDANT

CORAM: HON. JUSTICE M.C.C MKANDAWIRE

Soko, Counsel for the Plaintiffs

Defendants, Absent

Mrs Namagonya, Court Reporter

Itai, Court Interpreter

JUDGMENT

The plaintiffs brought this matter against the defendants through a writ of summons dated 17th of April 2015. The plaintiffs' claim is premised on negligence. Particulars of the said negligence are as follows:

- a) Failure to observe and comply with road traffic signs
- b) Failure to control or swerve or otherwise maneuver the vehicle in such a way so as to avoid hitting the hip of sand
- c) Driving at an excess speed in all circumstances of the case.

As a result of the said accident the 1st Plaintiff suffered serious bodily injuries.

Particulars of the 1st Plaintiff's injuries are:

- a) Sustained a cut on his fore head and suffered a dislocation of his right femur.
- b) Degree of permanent incapacity was assessed at 30%.

Further, as a result of the said accident, a laptop, 5 speakers, a mixer, amplifier and generator belonging to the 2nd plaintiff which equipment and chattels the 2nd plaintiff had with him on the motor vehicle got irreparably damaged and he accordingly claims for the replacement costs of these chattels as special damages.

In conclusion by reason of what has been said above, the plaintiffs have suffered loss and damage. The plaintiffs therefore claim for:

- a) Damages for pain and suffering
- b) Damages for disfigurement
- c) Damages for loss of amenities
- d) Special damages for the damaged properties
- e) Costs of this action

The defendants filed a defence. The defendants denied that the plaintiffs suffered injuries as alleged. The defendants also denied that the plaintiffs' equipment or chattels were damaged. They also denied that such equipment or chattels belonged to the plaintiff. It is therefore not true that the plaintiffs are entitled to anything.

When we first met on 28th of July 2016, the court was informed by the defendants' counsel that the parties were discussing to have the matter settled out of court. I accordingly gave the parties that opportunity and adjourned the matter to a later date for hearing in case the discussions did not yield anything. It would appear that the discussions had reached a deadlock because later on the matter came back for full hearing hence this judgment. When the matter came for hearing on the 2nd of November 2017, the defendants or their counsel did not turn up. As there was evidence on record that the defendant were aware of the date for hearing, I ordered that we proceed with the hearing. The two plaintiffs who came as PW No 1 and PW NO 2 gave similar evidence through their witness statements. I will not repeat what they said for this is very clear on record. But from the totality of the evidence which the two had given there are several issues that have been settled as facts. It is true that on the 4th of October 2014, the 1st defendant was driving a motor vehicle Mitsubishi Fuso Lorry Registration Number BLK 3219 which belongs to the 2nd defendant. The plaintiffs were passengers in this vehicle. The 2nd plaintiff was actually seated in front where the driver the 1st defendant was. The motor

vehicle was travelling from the Nanjiri side coming to the city of Lilongwe. The evidence shows that when they reached at the 6 miles close to the round about the lorry was being driven at very fast speed. The 2nd plaintiff said he saw the 1st defendant appear like sleeping and he actually asked him if he was paying attention on what was on the road. The 1st defendant assured him that he was fine. It is in evidence that when they reached a place called Gwata Village, the 1st defendant was too fast and he failed to control the vehicle. Instead of branching to a diversion that had been put there due to the road construction, the 1st defendant proceeded on the road that was under construction. He ended up hitting a hip of gravel and that ended up in this terrible accident. A police report and a medical report was tendered in court which showed that the 1st defendant drove the car at very high speed. The medical report showed the extend of the injuries sustained by the 1st plaintiff. These are P EX No 1(a) and 1(b). Some of the damaged things for the 2nd plaintiff were shown in court. The 2nd plaintiff also tendered documents for the cost of replacement of his equipment and these are P EX 2(a) -2(d).

Having looked at the evidence on record which is unchallenged, I have come to the following conclusion:

1. That the 1st defendant on the material day drove the motor vehicle Fuso Mitsubishi Registration Number 3919 which vehicle belonged to the 2nd defendant and which vehicle was uninsured.
2. That the 1st defendant drove the vehicle at very high and alarming speed without paying attention to any road signs.
3. That the 1st defendant ended up missing the branch to the diversion whereby he proceeded to the road that was under construction where he was not supposed to drive on that day.
4. That as a result of this, the 1st defendant ended up hitting a hip of stones hence this accident.

When I put all these factors together, I found that the 1st defendant drove the motor vehicle negligently and he is responsible for causing this accident. The 2nd defendant who is the owner of the motor vehicle is vicariously liable for the negligence of his employee. It is also pathetic for him because he did not even insure the motor vehicle. The plaintiffs have therefore proved their case on a balance of probabilities and I award costs to the plaintiffs.

I further order that the Assistant Registrar should assess the damages herein.

DELIVERED THIS DAY OF JANUARY 2018 AT LILONGWE

M.C.C. MKANDAWIRE

JUDGE