

HIGH COURT
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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRAR

CIVIL DIVISION

PERSONAL INJURY CAUSE NO. 926 OF 2015

BETWEEN

BIZIWIKI MLELEMBWA..... PLAINTIFF

-and-

PRIME INSURANCE COMPANY LIMITED..... DEFENDANT

CORAM: THE HON. JUSTICE D.T.K. MADISE
Mr. R. Nthewa Counsel for the Plaintiff
Defendant/Absent
Mr. M. Manda Official Interpreter

Madise, J

JUDGMENT

1.0 Introduction

1.1 The Plaintiff in this matter commenced these proceedings by way of a writ of summons against the Defendant seeking damages for injuries suffered during a road accident involving motor vehicle with registration number CK 129 Nissan Vanette min bus which was driven by Alfred Aaron on 6 August 2015. The said vehicle was insured by the Defendant under certificate of insurance number 130499074.

1.2 The Plaintiff claims the driver of the said vehicle was negligent. The Defendant disputed the claim in their statement of defence. Unfortunately the Defendant and their lawyer did not attend trial to adopt their statement of defence and arguments. The Plaintiff produced a notice of hearing which was served on the Defendant and they acknowledged service. Since there was proof of service, I allowed the Plaintiff to present his case. I now proceed to give judgments on the merits.

2.0 The Facts

2.1 According to the Plaintiff, it was on 6 August 2015 at about 15:30 hours when the motor vehicle with registration number CK 129 Nissan Vanette mini bus was negligently driven, managed and controlled by the driver to the extent that upon arrival at Lunzu Secondary School junction, it suddenly turned to the other lane to drop off passengers.

2.2 In the process it collided head on with another motor vehicle a Toyota Hiace min bus which was coming from the direction of Lunzu Trading Center. The passengers in the within min bus including the Plaintiff got injured when the said min bus overturned and caught fire after colliding with a Toyota Hiace min bus with registration number NB 2335. The said Nissan vanette vehicle was insured by the Defendant.

2.3 The Plaintiff stated he was then rushed to Queen Elizabeth Central Hospital for treatment after suffering multiple lacerations on the head, face and scalp, right eye perforation, a fracture on the right tibia. Plateau and bruises on the right knee and right wrist. He stated that doctors calculated his degree of incapacitation at 35%.

2.4 The Plaintiff tendered his medical report **BM 2** which has particularized his injuries. The Plaintiff further tendered a police report **BM 1** which put blame on the driver of the Nissan Vanette min bus.

2.5 The Plaintiff described the particulars of negligence in the following terms.

- a) Driving at an excessive speed.
- b) Negligently turning to the other lane without due care and attention.
- c) Failing to stop, steer, control, swerve or manage his motor vehicle so as to avoid the accident.
- d) Driving his motor vehicle without reasonable concern for the safety of the passengers.

2.6 As earlier stated the Defendant has not defended this action.

3.0 The Issues

3.1 There is one issue for determination before me. Whether the Defendant is liable in damages for being an insurer of the said motor vehicle which was involved in the accident due to the negligent driving of its driver.

4.0 The Law

4.1 The burden and standard of proof

4.1.1 In civil matters, the Plaintiff has a duty to prove his case to the satisfaction of the court on a balance of probabilities. Unless the Defendant files a counter

claim the onus remains on the party alleging that certain facts exist. The court must find the Plaintiff's case to be more probable than not for him to succeed. Once the probabilities are evenly balanced the Plaintiff has failed to prove his case. This is settled law in this Republic.

4.2 Negligence

4.2.1 The best definition of negligence was articulated by Lord Atkin in Donoghue vs. Stevenson (1939) AC 562:

"You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbor. Who then is my neighbor? The answer seems to be persons who are so closely and directly affected by my acts that I ought to reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question."

4.2.2 Negligent acts are those a reasonable person would not do in the circumstances or acts which a reasonable person would have done in the circumstances. The law therefore attaches liability to any breach of those duties of care.

4.2.3 Section 148 Road Traffic Act makes provisions for any injured party to proceed directly against an insurer of a motor vehicle for damages caused.

5.0 The Finding

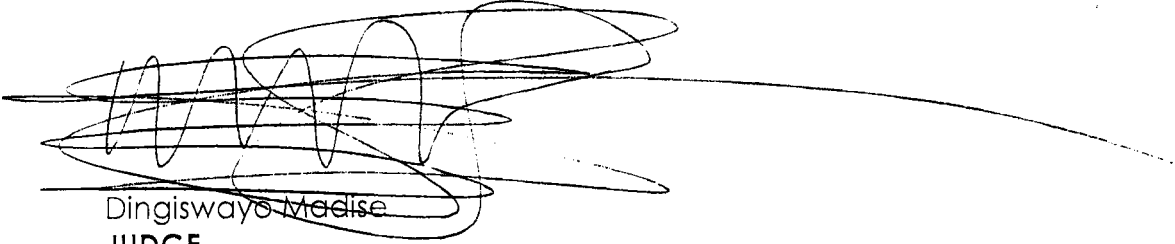
5.1 There is no dispute that the Plaintiff was involved in a serious road accident on 6 August 2015. The accident was caused by the negligent driving of Alfred Aaron. The said vehicle was insured by the Defendant. As a result of the accident the Plaintiff suffered pain, injuries and loss.

5.2 I have gone through the evidence, the documents that have been tendered and the argument in support of the case and I come to the reasoned conclusion that the driver of the motor vehicle CK 129 is liable in damages for causing the accident. I further find that the Defendant herein is equally liable in damages for being the insurer of the vehicle which must not exceed the maximum under the policy of insurance that was issued. The Plaintiff must, on a balance of probabilities carry the day in this court.

5.3 I therefore award all the reliefs sought by the Plaintiff in the statement of claim plus costs of this action.

I so order

Pronounced in Open Court at Blantyre in the Republic on 20 March 2018.



Dingiswayo Madise
JUDGE