



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
CIVIL DIVISION
PRINCIPAL REGISTRY

PERSONAL INJURY CASE NO 1588 OF 2010

BETWEEN

ANNIE MAKHAZA MAKWENDA..... CLAIMANT

AND

LASTON MALIKEBU.....FIRST DEFENDANT

AND

PRIME INSURANCE COMPANY LIMITEDSECOND DEFENDANT

Coram

Hon Mr Justice Jack N'riva Judge

Mr K Mapemba, legal representative for the claimant

Defendants not present

Mrs D Mtegha Court Clerk

JUDGMENT

The claimant commenced this action claiming damages arising out of injuries she suffered after the first defendant's car hit her on 5th January, 2010. On that day,

she was walking along James Street in Limbe. The first defendant, Laston Malikebu, knocked her in the process of reversing his motor vehicle, Toyota Conquest, KU 1485. She sued the defendant together with Prime Insurance Company Limited, the second defendant. He added the latter as the insurer of the vehicle.

The question is whether the claimant has proved the case of negligence against the defendants.

Since this is a case of negligence, the question is whether the claimant has proved that the first defendant owed her a duty of care. Secondly, the question is whether there was breach of the duty. Thirdly, whether the claimant suffered damages as a result of the breach of duty of care. I remind myself that the duty to prove the allegation lies with the claimant. The claimant's duty is to prove the allegation on a balance of probability.

In *Edward Salima v Southern Bottlers (Sobo)* [2007] MLR 89 (HC) Hon Mzikamanda J, as he then was, said negligence may be viewed from two angles. Firstly, it may be viewed as a mode of doing certain conduct in which case the mental element of the defendant is directed towards the consequences of the act. Secondly, negligence may be viewed as a tort, being conduct which causes damage. He said:

Negligence as a tort entails breach of a legal duty to take care, which breach results in damage to the plaintiff. Lord Atkin observed in *Donoghue (M'Alister) v Stevenson* [1932] AC 562, [1932] All ER Rep 1 HL that the duty of care arises by reasons of the relationship in which one person stands to another or authority. There is a duty to take reasonable care to avoid acts or omissions which one can reasonably foresee to be likely to injure [one's] neighbour in law. According to Saville J in *Minorities Finance Ltd v Arthur Young (a firm)* [1989] 2 All ER 105 it is not enough merely to establish that as between the alleged wrongdoer and the person who has suffered damage there is sufficient relationship of proximity or neighbourhood such that, in the reasonable contemplation of the former, carelessness on his part may be likely to cause damage to the latter.

The evidence of the claimant is that Mr Malikebu drove his motor vehicle so violently that it ended up hitting her as she was walking along the street. The claimant argues that the defendant did not keep a proper lookout.

It is worth pointing out that the police investigations placed the blame on the first defendant. The abstract report stated that the first defendant influenced the

accident by reversing negligently. The evidence of the claimant has not been challenged.

The first defendant as a driver owed a duty of care to road users and persons adjacent to the road he was using. One such a duty was for him to exercise diligence required of a driver. On reversing, he had to make sure that he could not cause injury to people or damage to property. By hitting the claimant and in absence of an explanation, the first defendant breached that duty towards the claimant.

Generally, a driver owes a duty of care to other road users to drive with reasonable care. In *Banda and others v Admarc and another* [1990] 13 MLR 59 (HC), the Court held that:

A driver of a motor vehicle owes a duty of care to other road users not to cause damage to persons, vehicles and property of anyone on or adjoining the road. He must use reasonable care which an ordinary skilful driver would have exercised under all the circumstances. A reasonably skilful driver has been defined as one who avoids excessive speed, keeps a good look-out, observes traffic signs and signals. 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 carriageway, he is only entitled to the exercise of reasonable care on the part of drivers of motor vehicles.


On the evidence before me, I find that the driver drove his car without due regard for others. He reversed his vehicle without regard to other persons on or close to the street. He acted without regard to other people who were within his proximity, whom he owed a duty of care. He did not act as one would expect of a skillful driver.

I, therefore, find that the evidence establishes that the first defendant was negligent in driving his motor vehicle. In the same vein, I find the second defendant liable for the negligence by virtue of being the insurer of the motor vehicle, under the authority of section 148 of the Road Traffic Act.

As to whether the claimant suffered injuries, the evidence is, again, not in dispute that the claimant suffered injuries as a result of the incident. Her evidence is that she fails to stand for a long time and also that she feels pain when she is moving. Therefore, the claimant is entitled to damages for the injuries she suffered. I also award the claimant costs of this case.

The claimant made, in 2013, skeletal arguments on the measure of damages. It seems to me that the exercise must be conducted taking into account comparable cases that have been made in recent times. Apart from that, the case before me yesterday was mainly on the issue of liability for damages. Apart from the skeletal arguments, there was not much evidence or assertions on the issue of damages. I, therefore, order that the assessment of damages should be before the Registrar.

MADE the 12th day of July, 2018



J N'RIVA
JUDGE