



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

CIVIL CAUSE NO 580 OF 2011

JEMUSOM MAGANGA PLAINTIFF

and

PRIME INSURANCE COMPANY LIMITED DEFENDANT

Coram: **Hon. Justice R. Mbvundula**
Kalua, Counsel for the Plaintiff
Mpaka, Counsel for the Defendant
Gondwe, Official Interpreter

JUDGMENT

The plaintiff sued the defendant in its capacity as the insurer of a motor vehicle referred to as Mazda Coaster registration number MHG 2968 to recover damages for injuries suffered by the plaintiff in a road accident involving the said motor vehicle in which he was travelling at the time of the accident. He alleged that the accident occurred because the vehicle was driven so negligently that it overturned on the extreme side of the road. Particulars of the alleged negligence are principally that the motor vehicle did not have properly maintained tyres and that the driver did not accord its passengers sufficient regard such that he failed to stop, slow down, swerve or in any other way to manage or control the vehicle so as to avoid the accident.

The plaintiff said that he boarded the vehicle at Limbe to travel to Mangochi on a business errand. Prior to the accident, he stated, the motor vehicle was travelling at a very high speed and in the process its left front tyre burst. The driver lost control whereby the vehicle left the road and overturned. This happened in broad daylight when the weather was also good and sunny, he said. The plaintiff stated that he lost consciousness and remained so for three weeks. He also suffered some physical injury and attended outpatient treatment after a period of hospitalisation.

The defence did not call any eye witness. Indeed during cross examination counsel for the defence confirmed with the plaintiff that the plaintiff was the only eye witness of the accident who was present in court.

The defendant's sole witness was Tamika Mhone, an employee of the defendant who confirmed the existence of a policy of insurance covering the motor which belonged to Mr J Muheya. Mhone stated that because the accident had not been reported to the defendant the defendant had no basis for confirming the allegations of the accident and on that basis the defendant denied liability as claimed by the plaintiff or at all. With respect, whether or not the accident was reported has nothing to do with the plaintiff or his claim. That is a matter between the defendant and its insured. It is also idle on the part of the defendant to raise that point since its attention to the accident has since been drawn by the suit taken out by the plaintiff against it.

As the only version of events before this court pertaining to the occurrence of the accident is that of the plaintiff, and the same being credible, I find the allegation of negligence established on a balance of probabilities and enter judgment for the plaintiff subject to the policy limit.

The defendant shall also bear the plaintiff's costs.

Pronounced in open court at Blantyre this 11th day of March 2019.


R Mbvandula
JUDGE