



IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CASE NO. 1059 OF 2018

BETWEEN:-

VINCENT MATIYA CHIRWA..... CLAIMANT

-AND -

PRIME INSURANCE COMPANY.....1ST DEFENDANT

JAMES NYEZI.....2ND DEFENDANT

Coram:

Brian Sambo, Assistant Registrar

Mr. R. Mhone, of counsel for the Claimant

Mr. Chikwakwa, of counsel for the Defendant

Mr. Kumwenda, Law Clerk/Official Interpreter

ORDER ON ASSESSMENT OF DAMAGES

Judgment on liability was entered by the judge for the Claimant out of agreement by the parties on the 26th of January, 2021. Precisely, liability was entered for damages for repair costs of the motor vehicle registration number LA 2920

Toyota Hilux as well as damages for loss of use of the said motor vehicle/damages for inconvenience.

Both parties brought witnesses during assessment hearing. For the Claimant, it was Vincent Matiya Chirwa who testified to the effect that, when his motor vehicle got damages by another motor vehicle registration number CA 1772, Nissan Caravan, which was insured by the 1st Defendant, he lodged a claim for repairs of his motor vehicle. At the direction of the Defendant, he went to solicit quotations from the Defendant's own selected garages. The garage, after conducting its own assessment, put costs for the repairs in the range of K1, 600, 000 – MK1, 710,000.00. Without inspecting the motor vehicle, two different quotations were raised by the same garage, one purported to have been prepared by a different garage, but without those quotations, the Defendant, without giving any explanation to the Claimant, paid MK493, 000.00 being costs for the repairs yet the motor vehicle needed MK1,700,000.00 to be road worthy again, according to the quotations. He said the money paid by the Defendant did not make any sense considering the fact that he had already spent around MK7 Million on the same vehicle for repairs but to no avail.

During cross examination, he told the court that there was no agreement between the Claimant and the Defendant to the effect that MK493, 000.00 would be full and final amount for the cost of repairs.

The Defendant brought Mr. Anthony Kumsinda as its witness. He told the court that he was the Defendant's Claims Manager. He testified that the Defendant had already settled this claim and had paid the Claimant the sum of MK493, 000.00 in full and final settlement of the claim. He said the Defendant was bound by issues of policy limit with regard to property damage. He tendered a policy document between the Defendant and the insured. He said the motor vehicle registration number CA 1772 was insured under 3rd party in respect of property damage in the maximum sum of MK1, 000,000.00, and for loss of use of motor

vehicle in the sum of MK20, 000.00. He said the MK493, 000.00 that was paid to the Claimant was arrived at after a thorough assessment process by the Defendant. He said, in the alternative, the Claimant was only entitled to MK507, 000.00 as damages for repair costs remaining on the policy in respect of property damage and MK20, 000.00 in respect of loss of use of motor vehicle.

During cross examination he told the court that he did not file his assessment file because the original file was untraceable. He said it was true that he did not disclose the fact that quotations were facilitated by the Defendant, and that they were produced by an arranged garage. He said it was true that the quotations did not come from independent garages. He admitted that no external assessors' report was showed to the Claimant. He said the quotations that were brought by the Claimant were obtained from garages recommended by the Defendant. He said, it was true that by disregarding the quotations brought by the Claimant from its own selected garages, the Defendant had indeed showed lack of trust in its own recommended garages. He said the Defendant did not involve the Claimant regarding the adjustments it had made on the quotations. He said the adjustments were done by Mr. Lega.

In re-examinations, he told the court that Mr. Lega was still working with the Defendant but that he was moved to another department within the office of the Defendant.

From the facts above, there is only one issue for the court to determine; the appropriate quantum of damages claimed, *viz*; damages for cost of repairs, loss of use of the car/damages for inconvenience and special damages.

First of all, let me thank counsels; Mr. R. Mhone (Counsel for the Claimant) and Mr. Chikwakwa (Counsel for the Defendant) for the guidance given me on the law and the authorities cited in support of their respective submissions. Where appropriate, I will take into account these submissions in my order. I must also

thank the witnesses that came to testify during the assessment hearing. I believe such testimony would assist me determine the appropriate level of damages.

Damages are the remedy for a victim of a wrong, and the wrongful party has to compensate the victim, in as far as money can, to be put back in the same position that the victim would have been if not for the wrong- **Elida Bello v. Prime Insurance Company Limited**, Civil Cause No177 of 2012 (unreported).

In the present matter, the wrong committed was with respect to the damage caused by the insured of the Defendant.

I wish to state at once that this case could have been avoided by the Defendant from the time the Claimant had made a report to them about the damages. The Claimant had dully carried out the Defendant's instruction to obtain quotations from the Defendant's own selected garages. To his surprise, the Defendant refused to accept assessments and quotations prepared by its own garages. Instead of meeting the Claimant and explain to him how best they intended to repair his motor vehicle, they unilaterally made adjustments and paid the Claimant the sum of **MK493,000.00** which was falling short by MK1,186,000.00 in view of the quotation of **MK1,710,000.00** produced by its own selected garage. While claim adjustments in an insurance arrangement are allowed, the same should be reasonable. In this case, the adjustment made by the Defendant was utmost unfair and unreasonable regarding the cost of repairs involved. These damages are payable by the Defendant.

The Claimant also demands damages for loss of use of his motor vehicle. Obviously, the Claimant has been, unnecessarily denied use of his motor vehicle for a very long time. This is what the insurer should have avoided by simply yielding to the assessment made by its garages. These damages too are also payable by the Defendant.

The Defendant, through its witness had talked about issues of policy limit. He tendered a policy document which, clearly showed that the motor vehicle that had caused the damage was insured under third party insurance policy in respect of property damage in the maximum sum of MK1, 000,000.00, and for loss of use of the motor vehicle in the sum of MK20, 000.00. During assessment of damages, courts of law respect issues of policy limit. While the Defendant is, obviously the architect of its own fate, by delaying or refusing to settle this simple claim quickly, without necessarily waiting for the Claimant to seek legal redress, it would be out of the assessment principle and the insurance law to order the Defendant to pay above insurance policy limit. Should this be allowed, I doubt if any insurance company would ever survive. Moreover, I had the opportunity to inspect the parties' agreed order on liability that was entered on the 26th of January, 2021. Its first paragraph reads as follows;

"It is hereby ordered that judgment on liability be and is hereby entered for the Claimant with costs, subject to the 1st Defendant's Insurance Policy Limit" (the underlined is emphasized.

From the agreed order on liability, it is very clear that policy limit issues were already envisaged and taken care of by the parties themselves. Likewise, I would also not order the Defendant to pay beyond its insurance policy limit.

The Claimant further demands reimbursement of **MK3, 000.00** being special damages for the cost of the Police Abstract Report. There is evidence on the record that the amount of money mentioned was really paid by the Claimant. The Defendant has to reimburse this amount as well.

I know there are two Defendants in this matter. However, I would not order the 2nd Defendant to pay any excess amount as liability was agreed and entered only with respect of the 1st Defendant. It is up to the Claimant to decide what to do in order to recover the other part of his claims.

Considering all the above, I award the Claimant as follows;

- i. **MK507, 000.00** being repair damages remaining on the policy.
- ii. **MK20, 000.00** being damages for loss of use/inconvenience; according to the policy limit.
- iii. **MK3, 000.00** being special damages for the Police Report.

In total, the Defendant shall pay the Claimant the sum of **MK530, 000.00**. This whole amount is payable within 7 days from today.

Costs are for the Claimant, and shall be assessed separately if not agreed upon by the parties.

Made in chambers today Wednesday the 17th of November, 2021.

Brian Sambo
Assistant Registrar

