



IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL CAUSE NO: 920 OF 2014

BETWEEN:

STEPHANO LEMOS.....CLAIMANT

AND

CLEMENT ZIMPITA.....1<sup>st</sup> DEFENDANT

PRIME INSURANCE COMPANY LIMITED.....2<sup>nd</sup> DEFENDANT

CORUM : JUSTICE RUTH M. CHINANGWA

Chikopa	Counsel for Claimants
Chikwakwa	Counsel for Respondents
Nyirenda	Court Clerk

**JUDGEMENT**

The plaintiff claims damages for pain and suffering; damages for loss of amenities of life, damages for disfigurement, special damages (cost of medical report and police report) and costs of the action. It was alleged that the 1<sup>st</sup> defendant was at all material times the driver of motor vehicle registration number RU4304 which was under certificate of insurance number 10708931 issued by the 2<sup>nd</sup> defendant. In addition, it was argued that on or about 8<sup>th</sup> December 2013, the plaintiff was cycling along Lilongwe/Dedza road when the 1<sup>st</sup> defendant lost control of the vehicle and swerved to the extreme offside dirt verge of the other lane where he hit the plaintiff who was cycling from the opposite direction. The claimant argues that the 1<sup>st</sup> defendant's negligence caused the accident and by reason of his negligence the plaintiff suffered injury, loss and damages.

In defence a defence filed in September 2014, the defendants denied that the accident was caused by the negligence of the 1<sup>st</sup> defendant and denied liability for the damages claimed. Six years later, the defendants amended their defence stating that they were not the insurers of the motor vehicle in question at the time of the accident. During trial it was stated in evidence that the motor vehicle was insured from 1/07/2012 to 30/03/2013 and 24/03/2014 to 31/12/2014. On the 8<sup>th</sup> December 2014, when the vehicle was involved in an accident the vehicle was uninsured by the 2<sup>nd</sup> defendants. The claimants did not produce any evidence to the contrary regarding the insurance of the vehicle at the material time of the accident.

Insurance claims are premised largely on the agreement that the parties entered into. There being no contractual agreement, there can be no claim against the 2<sup>nd</sup> defendants. The claim against the 2<sup>nd</sup> defendant is thus dismissed. However, costs are awarded to the claimant and are to be assessed by the Assistant Registrar, as the 2<sup>nd</sup> defendants withheld vital information which would have caused the claimant not to go after the 2<sup>nd</sup> defendant if they had timely disclosed the fact that they had not insured the 1<sup>st</sup> defendant vehicle. Any aggrieved party has the right to appeal to the Supreme Court within 30 days from date of pronouncement.

**Pronounced this 11<sup>th</sup> January 2020 at LILONGWE**



**R.M CHIANNGWA**

**JUDGE**