

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 1315 OF 1994

BETWEEN:

R B PINHEIRO.....PLAINTIFF

- and -

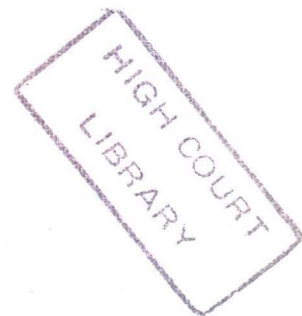
MRS MVULA.....1ST DEFENDANT

- and -

C K MVULA.....2ND DEFENDANT

CORAM: TAMBALA, J.

T Chirwa, Counsel for the Plaintiff
M Msiska, Counsel for the Defendants
Kamanga, Official Interpreter
Machado (Mrs), Recording Officer



JUDGMENT

Mr Pinheiro, the plaintiff, brought this action against Mrs Mvula claiming compensation for damages caused to his motor vehicle as a result of negligent driving by Mrs Mvula, who is the 1st defendant in this case. The 1st defendant denies the allegation of negligence. She claims that the accident, which occurred on the 19th March 1994, was caused by the negligent driving of the plaintiff.

The evidence of the plaintiff was that during the evening of 19th March 1994, he drove his vehicle, a Ford Laser, registration number CK 52, going to Nantipwiri Mission. He was driving at 45 kilometres per hour and reached a place near Chigumula bus stage where he saw a line of motor vehicles coming from the opposite direction. He slowed down to a speed of 30 kmh and moved further to his left so that his tyres on the left were moving on the dirt. He crossed two minibuses travelling in the opposite direction when his vehicle collided with the 1st defendant's vehicle. There were two minibuses in front of the 1st defendant and during the time of the collision the 1st defendant was attempting to pass the minibus which was in front of her. It was the evidence of the plaintiff that the accident happened because the vehicle which the 1st defendant was driving crossed his path as the vehicle attempted to overtake a minibus which was in front of it. The drive shaft and chassis of the plaintiff's vehicle were damaged. The driver's door was also damaged and it could not open. The plaintiff came out using the passenger's door.

The evidence shows that the 1st defendant was, during the material time, driving a motor vehicle registration number MZ 1042. It was revealed that she was a learner driver, but she did not display 'L Plates' on the vehicle; she also carried four passengers, but she was not accompanied by a competent driver.

The evidence of the 1st defendant was that on the 19th March 1994, she drove the said motor vehicle from Makwasa in Thyolo going back to her house at Kanjedza in Limbe. At about 5:30 pm, she reached a place near Chigumula bus stop where she noticed that there was a minibus which was in the process of leaving the bus stop; there was at the same time another minibus in front of her which stopped to allow the other minibus to leave the bus stop. She stopped behind the minibus which was in front of her. The minibus which had stopped started to move after the minibus which was at the bus stop had moved away. She suddenly noticed that the plaintiff's vehicle came to where she had stopped and hit her vehicle. She said that during the collision her vehicle was on the extreme lefthand side of the road.

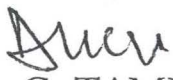
The 1st defendant's evidence suggests clearly that the plaintiff's vehicle crossed the path of the 1st defendant when it hit her vehicle. The vehicle also sustained some damage; the right front wheel and the right rear view mirror were smashed.

I have carefully considered the evidence adduced on behalf of both parties in the light of the burden which is required to be borne by the plaintiff in civil litigation. Let me say at the outset that the plaintiff impressed me as a truthful witness. I found his evidence credible and I believed it. Consequently, I find that the accident which resulted in the damage to the vehicle of the plaintiff occurred at a place near Chigumula bus stop and it happened as the 1st defendant was attempting to pass a minibus which had stopped in front of her vehicle. I am of the view that in the process of passing the minibus, the vehicle which was being driven by the 1st defendant crossed the path of the plaintiff and caused a collision with his vehicle. I find that the 1st defendant failed to check carefully to see if there was traffic coming from the opposite direction before she started to overtake the minibus. My findings are fortified by the 1st defendant's admission that she did not see the plaintiff's vehicle before the impact. It seems to me that the 1st defendant drove, during the material time, without exercising reasonable care and attention. It is probable that she was incapable of exercising reasonable care and attention, while driving, because she was a learner driver who, unfortunately, was driving without being accompanied by an experienced driver. I am satisfied that the plaintiff has succeeded in proving, on the balance of probabilities, that the 1st defendant was guilty of negligence during the time of the accident and that the accident occurred due to her negligent driving. The plaintiff's action based in negligence is successful. There is, however, no evidence to support any action against the 2nd defendant. The plaintiff's action against the 2nd defendant is dismissed with costs.

I now turn to the question of damages. The drive shaft, chassis and a front door of the plaintiff's vehicle were damaged. I would award K30,000.00 compensation for the damages which the vehicle sustained. The plaintiff

claimed K445.00 in respect of towing charges. No evidence was led to prove that item. This amount would represent special damages and the law requires that such damages must not only be pleaded but must also be proved by some credible evidence. There was no such evidence in the instant case. I decline to award that sum. I consequently enter judgment in favour of the plaintiff in the sum of K30,000.00. The 1st defendant shall pay costs for resisting the action against her.

PRONOUNCED in open Court this 1st day of June, 1999, at Blantyre.


D G TAMBALA
JUDGE

