



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 804 OF 2016

BETWEEN

CHRISTOPHER MATEYU..... CLAIMANT

-and-

TERRASTONE CONSTRUCTION LIMITED..... DEFENDANT

CORAM: THE HON. JUSTICE D.T.K. MADISE
Mr. Khondiwa Counsel for the Claimant
Mr. Mahithwa Counsel for the Defendant
Mr. M. Manda Official Interpreter

Madise, J

JUDGMENT

1.0 Introduction

1.1 On 3 November 2016 the Plaintiff in this matter took out a writ of summons against the Defendant Terrastone Construction Limited claiming damages for personal injury sustained at work. The Plaintiff claims the Defendant was negligent. The Defendant has disputed the claim.

1.2 Particulars of negligence

- a) Failing to properly maintain the dumper as a result of which it developed a fault.
- b) Allowing or permitting the Plaintiff to drive a faulty dumper.
- c) Instructing the Plaintiff to drive a dumper without proper training and licence.
- d) Failing to provide a safe working environment as stipulated in the Occupation Safety, Health and Welfare Act.

1.3 The Plaintiff claims as a result of the accident, he sustained injuries as particularized in the statement of claim and has since suffered loss and damage. The Defendant has denied the claims on the basis that the Plaintiff drove the dumper without permission and was accordingly paid compensation for his injuries which were assessed by the Workers Compensation Commissioner.

2.0 The Facts

2.1 The Plaintiff told the Court that on 15 September 2016 he was authorized by Mr. George to drive the dumper to the other side of the premises. As he was driving the dumper it reversed and fell into a ditch causing injuries to the Claimant. The Claimant exhibited his medical report which was issued at Queen Elizabeth Central Hospital.

2.2 The Defence summoned Mr. Solomon Ngulube the Site Agent at the project. He recalled the events which happened on 12 September 2016 where the Plaintiff operated the dumper without permission. He then called for a meeting on 14 September to warn all employees from operating machinery without permission.

2.3 The following day while working he heard a bang and when he rushed to the scene he found the Claimant underneath a dumper which was upside down. When confronted the Claimant admitted operating the equipment without authorization. There is tendered in evidence a letter (SN 3) which the Claimant wrote apologizing for what he did. The witness stated that the dumper was damaged beyond repair.

2.4 William Ngulube the Site Clerk at the construction site stated that on 12 September 2016 he had seen the claimant operating the dumper and he verbally warned the Claimant not to use the dumper again. The witness was surprised to hear that the Claimant was involved in an accident on 15 September 2016 involving the same dumper.

2.5 The last witness was Chifundo Josam, the official driver of the dumper. He stated that the Claimant had been warned before to stop using the dumper. On 15 September 2016 the Claimant operated the dumper without informing the driver and he made an accident with it.

3.0 The Issues

There are four issues for determination.

- a) Whether the Defendant owed the Claimant a duty of care.
- b) Whether there was breach of that duty.
- c) Whether the Claimant suffered loss and damage due to that breach.

d) Whether the Defendant is liable in damages.

4.0 The Law

4.1 It is settled law in civil matters that the Claimant has duty to prove his case on a balance of probabilities. He who makes an allegation must prove. Where the probabilities are evenly balanced on the scales of justice it means the Claimant has failed to prove his case.

4.2 Negligence

Lord Alderson, boldly stated in Blyth vs. Birmingham Water Works Company (1856) Ex. 781 at 784 as follows.

Negligence is the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do or doing something which a prudent and reasonable man would not do.

4.3 Negligence as a tort has four requirements namely:

1. The existence in law of a duty of care which the law attaches liability to carelessness.
2. Breach of the duty of care by the defendant.
3. A casual connection between the defendant's careless conduct and the damage.
4. That the particular kind of damage to the particular claimant is not so unforeseeable as to be too remote.

Once this is established the next question is to consider whether the defendant is liable in damages and for how much.

4.4 Looking at the evidence before us, can it be said that the Defendant in this matter was negligent? Did he owe the Plaintiffs a duty of care? Can it be said that the Defendant breached that duty of care? Lastly can it be said that as a result of that breach the Plaintiffs suffered loss or damage? Lastly if the answers are in the affirmative, are damages payable in this matter?

5.0 The Finding

5.1 The facts of the case are very clear. An accident occurred on 15 September 2016 involving the Claimant. He was operating a dumper while at a construction site. There is no dispute that the Claimant got injured as a result of this accident. The question before me is whether the Defendant can be blamed for this accident.


5.2 Did the Defendant authorize the Claimant to drive the dumper? Was the Claimant trained on how to operate the machine? The Claimant told the court that he was instructed to drive the dumper by Mr. George. The Defendant has disputed this.

5.3 Unfortunately Mr. George was not called to substantiate the Claimant's story. All the witnesses that were called by the defence have stated that the Claimant was not authorized to operate the machine. That 3 days before the accident, he had been warned against operating the dumper. The defence has tendered in evidence a letter the Claimant wrote apologizing for operating the dumper without authorization. The question before me is which story is now probable?

5.4 In my considered view and looking at the evidence presented before me I find that the Claimant has failed to convince me on a balance of probabilities that he was instructed by Mr. George to operate the machine. The Claimant in my view brought these injuries upon himself due to his adventures. In these premises I find that he has failed in his duty to prove this case. I therefore dismiss the summons with costs.

I so order.

Pronounced in Open Court thisday of January 2018 at Blantyre.



Dingiswayo Madise

JUDGE

19/02/18