



REPUBLIC OF MALAWI
MALAWI JUDICIARY
IN THE HIGH COURT OF MALAWI
BLANTYRE PRINCIPAL REGISTRAR
CIVIL DIVISION
PERSONAL INJURY CAUSE NO. 929 OF 2015

BETWEEN

ROSE MOSE.....PLAINTIFF

-and-

PRIME INSURANCE COMPANY LTD.....DEFENDANT

Coram: Honourable Mr. Justice D. Madise
Mr. Nthewa Counsel for the Plaintiff
Counsel for the Defendant not present
Mr. M. Manda Official Court Interpreter

Madise, J

JUDGEMENT

1.0 Introduction

- 1.1 Through a writ of summons the plaintiff suing as a next friend commenced this action on 6th November, 2016 against the defendants claiming damages for injuries suffered by her daughter due to a road accident which occurred on 6th August 2015.
- 1.2 The 1st Defendant (unknown) was the driver of motor vehicle CK 129 Nissan Vanette Minibus which was insured by the 2nd defendant under certificate of insurance No. 130512227. The defendants disputed his claim in their defence. Unfortunately, on the day of trial the defendants did not show up and no reasons were given for their non-attendance.
- 1.3 The plaintiff filed an affidavit of service and I allowed trial to proceed. The plaintiff filed one witness statement and tendered in evidence a medical report and police report and further adopted their arguments. I now proceed to write my opinion on the merits.

2.0 The Facts

- 2.1 The plaintiff's claim is that on 6th August the said minibus was driven so negligently that upon arrival at Lunzu Secondary School it suddenly turned into the other lane to drop off passengers and in the process it collided with another minibus which was coming from the opposite direction. As a result, the minibus overturned and Margret the plaintiff's daughter got injured.
- 2.2 A police report which has been tendered and has not been challenged puts the blame on the 1st defendant. The plaintiff further exhibited a medical report which described the injuries Margret sustained. She suffered a bilateral fracture of the tibia and fibula on both legs and has difficulties in walking.

2.3 The plaintiff now claims the following;

- (1) Damages for pain and suffering and disfigurement.
- (2) Damages for loss of amenities of life.
- (3) Special damages for medical treatment and police report and medical report.

3.0 The issues

There are four issues for determination before me

- (a) Whether the 1st defendant owed the plaintiff's daughter a duty of care.
- (b) Whether there was breach of that duty due to negligence.
- (c) Whether the 1st defendant is liable in damages.
- (d) Whether the 2nd defendant is liable as an insurer of the alleged vehicle

4.0 The Law

3.1 The burden of proof in civil matter is fixed at the beginning of the trial by the state of pleadings, remaining unchanged throughout of trial. The duty is on the plaintiff to convince the court on a balance of probabilities that his story is more probable than not. He who alleges must prove. The defendant need not to prove anything unless he enters a counter claim.

4.2 What is Negligence?

4.2.1 Lord Alderson, gave perhaps the best description of the definition of negligence in Blyth vs. Birmingham Water Works Company (1856) Ex. 781 at 784.

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

4.2.2 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 care by the defendant's careless conduct and damage.
3. A casual connection between the defendant's careless conduct and damage
4. That the particular kind of damage to the particular claimant is not unforeseeable as to be too remote.

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

4.2.3 Looking at the evidence before me can it be said that the 1st defendant was negligent? Did he owe the plaintiff a duty of care?

Can it be said that the 1st defendant breached that duty of care? Lastly can it be concluded that as a result of that breach the Plaintiff's daughter suffered loss and damage? Lastly are damages payable in this matter?

5.0. The Finding

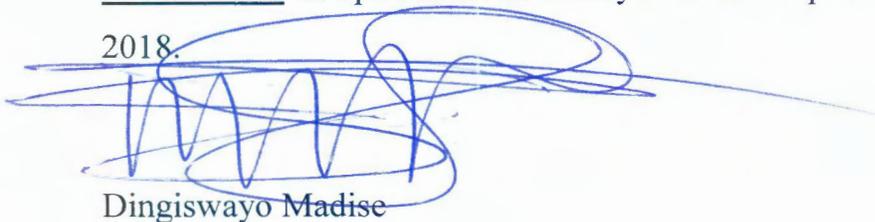
5.1 The facts of the case are not in dispute. The plaintiff's daughter got injured in a road accident which occurred 6th August, 2015. The accident was caused due to the negligent driving of the 1st defendant who owed the plaintiff's daughter a duty of care.

5.2 The law calls upon us to take reasonable care towards our neighbour. Who is our neighbour? He/she is anyone likely to be affected by our actions. In this matter before me, I have carefully examined the evidence presented by the plaintiff and the documents in aid thereof and I am convinced that the 1st defendant was negligent and is liable in damages for causing the accident which resulted in loss and damage.

5.3 The 2nd defendant is equally liable as an insurer of the vehicle in issue to the extent only of the insurance cover of the policy. I further award to the plaintiff the cost of treatment, police and medical reports. I further award the plaintiff the costs of this action. The plaintiff must take out summons for assessment of damages before the Honourable Registrar within 14 days.

I so order,

Pronounced in open court at Blantyre in the Republic on 19th February 2018.



Dingiswayo Madise

Judge