



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 1935 OF 2010

BETWEEN:

STANLEY MBEWE.....PLAINTIFF

AND

NICO GENERAL INSURANCE COMPANY

LIMITED.....DEFENDANT

CORAM: THE HON. JUSTICE MR. S.A. KALEMBERA

Mr Kambale, of Counsel for the Plaintiff

Mr Kauka, of Counsel for the Defendant

Nyirenda, Official Interpreter

JUDGMENT

Kalembera J

INTRODUCTION

The Plaintiff commenced this action against the Defendant by a writ of summons and statement of claim dated 7th September 2010 claiming for damages for personal injuries and costs. This claim arises from injuries suffered by the Plaintiff as a result of a road accident which occurred on the 22nd day of June 2010 involving motor vehicle registration number CZ 2452 Toyota Coaster driven by Mr



C. Njolomole which collided with Plaintiff as he was cycling along the said road. The accident was allegedly caused by the negligent driving and/or management of the said vehicle by the Defendant's insured.

PLEADINGS

The Plaintiff's statement of claim alleges as follows:

1. The Defendant is an insurance company and in the course of its business, it insured motor vehicle registration number CZ 2452 Toyota Coaster. The Defendant is sued pursuant to section section 148 of the Road Traffic Act.
2. On 22nd day of June 2010 at or near Viphya Avenue Junction along Limbe/Thyolo Road, motor vehicle registration number CZ 2452 Toyota Coaster insured by the Defendant and being driven by one Njolomole collided with the Plaintiff as he was cycling along the said road.
3. The said accident was caused by the negligent driving and/or management of the said vehicle by the Defendant's insured.

Particulars of negligence

- a. Driving at an excessive speed in the circumstances.
 - b. Failure to have sufficient regard to other road users.
 - c. Emerging onto the main road without first ascertaining or ensuring that it was safe to do so.
 - d. Failure to slow down, stop or swerve the vehicle in such a way as to avoid colliding with the Plaintiff.
 - e. *Res ipsa loquitor*
4. By reason of the said negligence the Plaintiff sustained personal injuries and has been put to loss and expense.

Particulars of Injuries

The plaintiff sustained a supracondyle of the distal humerus. He was treated by open reduction and internal fixation. He can no longer lift heavy objects, he has stiff elbow up to 45°. He can do what he used before and his permanent incapacity was put at 25%.

