



**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NUMBER 84 OF 2016**

BETWEEN

CATHERINE ZUDE-----PLAINTIFF

AND

HOSEYA NGONAMO-----1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED-----2nd defendant

CORAM: HON. JUSTICE M.C.C. MKANDAWIRE

Chibwana, for the Plaintiff

Defendants, Absent

Mrs Jere, Court Reporter

Itai, Court Interpreter

JUDGMENT

By a writ of summons issued on 22nd January 2016, the plaintiff sued the 1st defendant as driver and the 2nd defendant as insurer of motor vehicle registration number BP 676 Toyota Carina saloon respectively. The plaintiff claims that on or about the 29th of October 2015 at about 0710 hrs, Henry Mazomola whilst driving motor vehicle registration number KU1434 Mazda Bongo minibus from Walkers Investment Marshal road junction direction off Kamuzu Procession road with 12 passengers including the plaintiff on board, when approaching Lilongwe Technical College at four ways collided with motor vehicle registration number BP676 Toyota Carina saloon which was coming from the direction of Kamuzu Procession road heading towards Kalikuti hotel driven by the 1st defendant consequent to the collision the plaintiff suffered injuries. The plaintiff avers that the incident was caused by the 1st defendant's negligence. Particulars of negligence are as follows:

- (1) Misjudging distance.
- (2) Failing to notice the minibus.
- (3) Failing to hoot, stop and swerve so as to avoid the accident.

- (4) Driving recklessly and without due care.
- (5) Breach of legal duty owed to the plaintiff.
- (6) Driving negligently and carelessly without having regard to other road users particularly the plaintiff.

The plaintiff suffered damage and loss and the particulars of the damage and loss are:

- (i) Cuts on the face.
- (ii) Fracture of teeth (11 & 21).
- (iii) Soft tissue trauma.
- (iv) Hard tissue trauma.
- (v) Suturing on the upper lip.
- (vi) 12% permanent incapacity.

The plaintiff therefore claims for:

- (1) Damages for injuries, pain, suffering, deformity and loss of amenities of life.
- (2) MK3,000.00 for police report.
- (3) Costs of this action.

The defendants through M&M Global Law Consultants filed a defence on 5th February 2016. In a nutshell, the defendants generally denied the claims herein. The defendants however pleaded that its liability, if any, is limited to the indemnify the owner of the motor vehicle to the maximum liability contained in the contract of insurance.

When the matter herein came for hearing, on 2nd May 2017, the defendants were nowhere to be seen despite the fact that they were served with the notice of hearing. I therefore ordered that we proceed with the hearing in their absence as no reasons were given for their failure to attend court.

The only witness in this case is Catherine Zude the plaintiff. She informed the court that she was a passenger in the minibus that was driven by Mr Henry Mazolola on the 9th of October 2015 when an accident occurred at four ways approaching Lilongwe Technical College. The minibus collided with a motor vehicle registration number BP676 Toyota Carina saloon which was driven by the 1st defendant. According to the plaintiff, the 1st defendant was negligent in his driving by misjudging the distance, failing to notice the minibus, failing to hoot, failing to stop and failing to swerve so as to avoid the accident. The plaintiff tendered a medical report to show the extent of the injuries that she sustained. The report shows that she had cuts on the face from the forehead up to the upper lip, fracture of teeth 11 and 21, and deep cut on the uncle. It is also disclosed that her permanent incapacity is at 12%. The plaintiff was treated as an outpatient.

As I have already stated, the defendants only entered general denials. The evidence of the plaintiff has gone uncontroverted as the defendants did not turn up to explain what actually happened on this day. The court therefore had only the opportunity to hear the version of the

plaintiff. After listening to the plaintiff, I took her story to have been truthful as I had no reason to disbelieve her. She was a passenger in the minibus. The incident took place during broad day time so this had given her all the opportunity to see whatever was happening. Having looked at the evidence of the plaintiff, I find that the 1st defendant who owed a duty of care to the plaintiff did not drive the motor vehicle carefully. He did not display the competence that is expected of a reasonable driver. The 1st defendant was indeed negligent in his driving. The 1st defendant is found liable for negligent which led to the injuries that the plaintiff had suffered. The 2nd defendant is vicariously liable as an insurer.

I order that the Learned Registrar should assess the damages including the costs of obtaining the police report. Costs to the plaintiff.

DELIVERED THIS DAY OF MAY 2017 AT LILONGWE

M.C.C. MKANDAWIRE

JUDGE