IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 725 OF 2005

BETWEEN:

LEVIOUS DAUDA MATAKA……..……....PLAINTIFF

- and –

CHIBUKU PRODUCTS LIMITED……..DEFENDANT

CORAM: CHIMASULA PHIRI J

Miss Phiri of counsel for the plaintiff

Chisanga of counsel for the defendant

Mr Rhodani – official interpreter

Mrs Gondwe – court reporter.

JUDGMENT

Chimasula Phiri J,

The plaintiff's claim is for damages for negligence and costs of this action. The plaintiff purchased a bottle of Chibuku opaque beer popularly known as Scud at Limbe Market Tavern. It is alleged that while consuming the beer from the scud bottle the plaintiff found that there was a foreign substance believed to be a condom. Allegedly, the plaintiff suffered nervous shock, experienced nausea and high blood pressure. The defendant disputes the plaintiff's claim.

Specifically the defendant denies that there was negligence on its part. The defendant denies that the plaintiff suffered any loss or damage.

PLEADINGS

The Statement of Claim filed by the plaintiff reads as follows:-

1. *The defendant carry business within the jurisdiction of Malawi and in the course of their business, they manufacture and sell Chibuku products in the knowledge and with the intention that the same should be consumed without any intermediate or previous examination thereof and with the knowledge that the absence of reasonable care in such manufacture would or might result in damage or injury to persons consuming the same.*

2. *On or about the 27th July, 2004 the plaintiff purchased a well sealed bottle of Chibuku products at Limbe Market Chibuku tavern and while consuming its contents he found a deleterious substance (condom) and as a result sustained injuries, and has suffered loss and damage.*

Particulars of injuries

a) *Nervous shock.*
b) *Experienced nausea, and*
c) *High Blood Pressure.*

3. *The injuries, loss and damage were caused to the plaintiff by the negligence and/or breach of duty of the defendants, their servants or agents.*

Particulars of negligence

a) *Manufacturing and selling the Chibuku product when they knew or ought to have known that the same or part thereof contained extraneous or deleterious*

substance, the consumption of which would cause damage or injury to the consumer.

b) *Failing to take any adequate or necessary precautions in the manufacture of the Chibuku product so as to prevent any injuries or deleterious substances being in them.*

c) *Permitting the Chibuku product to contain injurious or deleterious substances.*

d) *Failing to take any or adequate measures whether by way of examination, inspection, test or otherwise to ensure that the Chibuku product manufactured or sold by them did not contain any injurious or deleterious substances.*

e) *The plaintiff will further rely on the doctrine of* ***res ipsa loquitur.***

The defendant served defence on the plaintiff which reads as follows:-

1. *The defendant refers to paragraph 1 of the Statement of Claim and pleads that:-*

a) *It is a manufacturer of Chibuku products but denies that it sells its products with the knowledge or with the intention that the same be consumed without any or any prior examination alleged or at all.*

b) *The defendant does not prohibit any consumer from examining its products prior to consumption.*

c) *The defendant takes reasonable care in the manufacture of its Chibuku products.*

d) *Its Chibuku products leave the factory ready and safe for consumption.*

2. *The defendant denies paragraph 2 and 3 of the Statement of Claim and puts the plaintiff to strict proof thereof.*

3. *The defendant refers to paragraph 2 of the Statement of Claim and denies that the plaintiff consumed the Chibuku product as alleged or at all and puts the plaintiff to strict proof thereof.*

4. *The defendant will contend that if the plaintiff consumed the Chibuku product as alleged which is denied, the defendant denies that the said Chibuku product was manufactured by itself and puts the plaintiff to strict proof thereof.*

5. *The defendant will contend that if the Chibuku product consumed by the plaintiff was manufactured by the defendant, which is denied, the said Chibuku product did not contain any or any injurious and deleterious substance as alleged or at all.*

6. *The defendant will further contend that at the time the plaintiff allegedly consumed the said Chibuku product, which is denied, the defendant's control over the product had ceased.*

7. *The defendant denies that the plaintiff consumed any extraneous or deleterious substance from the Chibuku product as alleged and puts the plaintiff to strict proof thereof.*

8. *The defendant will contend that if the Chibuku product consumed by the plaintiff was manufactured by itself, which is denied, it took all reasonable care in the manufacturing and packaging of the Chibuku product to prevent it from containing any extraneous and deleterious substances.*

9. *The defendant will further contend that if the Chibuku product contained any extraneous and deleterious substances, which is denied, the said substances were not injurious or deleterious as alleged or at all and puts the plaintiff to strict proof thereof.*

10 *The defendant denies the alleged loss and damage as particularised in paragraph 2 of the Statement of Claim.*

11 *The defendant denies the alleged or any negligence as stated in paragraph 3 of the Statement of Claim or at all and puts the plaintiff to strict proof thereof.*

12 *Save as hereinbefore expressly admitted, the defendant denies each and every allegation of fact contained in the Statement of Claim as if the same were herein set out and traversed seriatim and specifically traversed.*

BURDEN AND STANDARD OF PROOF

Burden of Proof

The burden of proof rests upon the party (the plaintiff or the defendant), who substantially asserts the affirmative of the issue. It is fixed at the beginning of trial by the state of the pleadings, and it is settled as a question of law remaining unchanged throughout the trial exactly where the pleadings place it, and never shifts in any circumstances whatever. See Joseph Constantine Steamship Line vs Imperial Smelting Corporation Limited [1942] A.C. 154,174.

Standard of Proof

The standard required in civil cases is generally expressed as proof on a balance of probabilities. "If the evidence is such that the tribunal can say: We think it more probable than not, the burden is discharged, but if the probabilities are equal it is not." Denning J in Miller vs Minister of Pensions [1947] ALL E.R. 372; 373, 374.

THE ISSUES

1. Whether or not the defendant owed the plaintiff a reasonable duty to take care in manufacturing a product that was safe for human consumption?

2. Whether or not the defendant breached that duty to take care?

3. Whether or not the plaintiff suffered loss or damage as a result of the defendant's breach of its duty to take care in manufacturing its product?

4. Whether or not the plaintiff is entitled to damages for negligence?

5. Costs of the proceedings.

THE EVIDENCE

In support of the plaintiff's case, the plaintiff himself gave evidence and in his evidence in chief he testified that on 27th July 2004 he bought a well sealed bottle of Chibuku product at Limbe Market tavern and while consuming it, he felt a certain substance touching his lips. He failed to see what was inside because the bottle was opaque. He informed Mrs Kawuye, one of the sales ladies at the said Tavern who told him that the substance was bran. He was uncomfortable with the bran and suggested that the drink should be poured in the basin. The drink was poured into the basin and they saw a deleterious substance (a condom with a black substance in it). Upon seeing the substance, he experienced nausea, vomited and had also nervous shock.

Mrs Kawuye suggested that the basin together with the drink should be taken to the office to avoid causing a disgraceful event because of that event. She wanted to protect the business as she was afraid customers will shun the place. PW1 was advised by Mrs Kawuye to take the drink with the substance to Chibuku Products Limited Head Office.

On 28th July 2004, PW1 went to the head office where he met Mr Malewa. He showed Mr Malewa the drink and the substance and was told that together they should have factory tour and see the packing process of the product. One strange thing PW1 noticed was that the bottles were

closed manually and not by use of machine. He asked Mr Malewa why it was like that to which he responded that at that particular time the machines had a fault but the mechanic would fix them. They went back to his office where PW1 told Mr Malewa to give him the substances so they should be tested at the hospital. Mr Malewa refused and said that the substances would rather be tested at the defendant's office and once done he would bring the results to PW1. Six days passed without hearing anything from them until PW1 decided to go to the defendant's office.

It was the evidence of PW1 that upon reaching there he was told that they have thrown away the substance because they did not find any dangerous substance in them. PW1 was surprised with this conduct. He asked Mr Malewa why he bothered bringing the substances to the office when he could have thrown them away at the Tavern. Mr Malewa apologized on behalf of the defendant but PW1 did not take the apologies.

PW1 was referred to the Operations Manager, Mr Macheka who eventually referred him to Mr Padambo who asked him if he ever went to the hospital. He told Mr Padambo that he was told not to go to the hospital. He took PW1 to Dr Kidy's hospital, the company's doctor where PW1 was tested and was told to get the results the following day. When he went to get the results, he was surprised to find a letter from its lawyers which is marked Exhibit "P 1".indicating that the defendant were denying liability and ready to defend any action the plaintiff may contemplate.

PW1 was later given the results of beer tests conducted by Mr Richard Malewa indicating that the beer had a foreign matter. The results are marked Exhibit "P 2". He was also given another letter marked Exhibit "P 3" from Dr F. O. Kidy addressed to Mr Padambo to which the medical examination report was attached to. It indicated that he appeared completely normal. Even though such medical tests were carried out, PW1 was feeling some abnormalities in his body until he went to Queen Elizabeth Central Hospital and was diagnosed for high blood pressure. The medical report from Queen Elizabeth Central Hospital is marked Exhibit "P 4". Whenever he thinks of the substance, he experiences a nausea, which causes gastroenteritis and high blood pressure.

In cross-examination, PW1 testified that on 27th July 2004 at around 15:15 hours he was in the company of three people and he bought two bottles of Chibuku Scud beer from Mrs Kawuye who opened one bottle for him. The other bottle was where Mrs Kawuye was sitting and after consuming, the first one Mrs Kawuye opened the second bottle. When she gave him the second bottle, he did not see anything, as there was nothing floating on top of the beer. When the beer was almost half level, he felt an object touching his lips. However, he did not swallow anything.

PW1 contended that Mrs Kawuye was around the place while attending to other customers. He emphasised that when he informed her of the substance she insisted that it was just bran. One of the sales ladies, Mrs Nabanda's servant brought the basin in which the beer was poured and a condom with some black stuff was found which was surrounded by bran.

PW1 further testified that Mrs Kawuye decided that they should go behind the office and she took the basin and its contents to the office. At the same time, PW1 rushed to the wire fence where he vomited. He felt some abdominal pain due to vomiting. He later joined here where she advised him to take the beer and the substance to the defendant's company.

Further more, PW1 stated in cross examination that he did not go to the hospital because the defendant's servant informed him that he should wait so that the company should test the substances first and once the substances were found to be poisonous, they would take him to the hospital. He showed them his house but they did not go to see him. He went to Queen Elizabeth Central Hospital on 27th August 2004 where he was told to buy medicine at a pharmacy. They advised him that if the pain persisted, he should go to the hospital, which he did on 20th June 2005 as he was not feeling well. The problem arose in relation to the same incident, which happened on 27th July 2004. He was examined as per Exhibit "P4" to confirm the case that he suffered injury due to the incident of the beer he had on 27thJuly 2004 because since he was born he has never suffered from high blood pressure.

Apart from going to Queen Elizabeth Central Hospital PW1 testified that the defendant sent him to Dr F. O. Kidy where he was examined as per Exhibit "P3". He stated that even though Exhibit "P3" indicated that he appeared normal, at the time of examination he was not feeling well.

PW1 also gave evidence in cross-examination that he was shown the process of packing the products by Mr Malewa and there was a way in which the condom could find its way into the bottle. This was so because there was a certain place where the bottles were supposed to be closed by machines. Surprisingly, it was a person who was closing the bottle manually and when he requested for the justification of the same, he was told that the machines had broken down they were waiting for a specialist to repair them.

In re-examination, PW1 emphasised the point that at the time of pouring the beer into the basin, Mrs Kawuye was there and she suggested that they should go to the office to discuss the issue. He further testified that Dr F. O. Kidy examined him on 2nd August 2004 a week after the incident. After the examination, he did not go to the same hospital because he did not have money to pay the doctor and that is why he went to Queen Elizabeth Central Hospital.

PW1 also maintained his stand that the process of packing the product was not normal as the same was done manually instead of use of machine.

The defendant's witness number 1 was Mrs Kawuye of Post Office 5331, Limbe. She gave evidence that she a business lady. She sells Chibuku beer at Limbe Tavern. She started selling Chibuku beer as a business in the 1970s. She started from Zomba then came to Blantyre at Zingwangwa market. In the year 2002, she started selling Chibuku beer commonly known as Chibuku Scud. On 27th July 2004 at Limbe Tavern, one of her regular customers Mr Mataka called for two Scud bottles of Chibuku beer from her. She delivered the two bottles and opened one bottle for him. He drained it whilst she was there. Then she opened the other one him and left him to drink. She went to the office. Soon as she arrived at the office a friend of hers, Mai Solomoni, came rushing and told that her customer Mr Mataka had found a condom in the beer that she had sold him. She rushed back and found that the contents of the had been poured in a basin. She just lifted the basin and told Mr Mataka to follow him to the office. At the office, she found that indeed there was a condom in the basin. The condom was, however, intact. The contents of the knot had not spilled into the beer. Mr Mataka was feeling disgusted and he was just spitting around. He did not vomit. She advised him to take the scud bottle and the condom

to Chibuku Products. He came the following day and took the Scud bottle and the condom to Chibuku Products. After that, she never heard about this incident though Mr Mataka has continued drinking beers from Limbe Tavern and she still sells Chibuku to him.

In cross-examination, DW1 testified that she has been selling Chibuku beer for approximately 30 years. PW1 was her regular customer at Limbe Tavern and on 27th July 2004, she sold him 2 Scud bottles of Chibuku beer which she bought from the defendant. At that time the bottles were sealed and she said that she does not know where the condom came from nor was she the one who put it although she is the one opened the bottle for PW1. She however, advised PW1 to take the contents of the bottle to the defendant because she does not brew Chibuku but the defendant.

The defendant's witness number 2 was Dr Farook Osman Kidy of P. O. 5670, Limbe. He is a General Medical Practitioner and he owns Dr F. O. Kidy's surgery. He is the author of Exhibit "P3"

DW 2 testified what circumstances lead him to write Exhibit P3. It was on 2nd August 2004 when he was asked by the Human Resources Manager of the defendant company to examine PW1. He asked PW1 about his problem to which PW1 mentioned that on 27th July, 2004 during daytime, he was drinking Chibuku beer and after drinking half a packet, a condom which contained some "black stuff" was discovered in the beer. However, the open end of the condom was tied up in the form of a small balloon, with the results the stuff had not dispersed into the beer but was still within the condom when the same was discovered. He subsequently brought this matter to the attention of company authorities.

After having consumed half a packet of this beer, PW1 said he did not experience any abnormal health complaints. DW2 inquired into various possible signs, which could have developed in such cases but PW1 continuously denied having suffered any adverse symptoms.

DW 2 testified that he carried out a general examination. Looking at PW1, he appeared completely normal, he looked well, did not have any indications of alterations in his behaviour, speech, memory, intelligence etc. His blood pressure was 150/80 mm Hg (normal) his

superficial and deep reflexes were normal. The eyes and ENT examination was normal. The examination of his abdomen did not reveal any abnormality. The heart, chest, lungs etc were all normal, he was able to walk, sit, stand and conduct himself normally. He then proceeded to carry out various laboratory tests such complete blood analysis (HAEMATOLOGY), LIVER FUNCTION TESTS, KIDNEY FUNCTION TESTS and complete URINE ANALYSIS. He checked all the above reports and found all the results normal. There was no indication of any abnormal effects in his blood or urine.

In cross-examination, DW 2 testified that he a company doctor for the defendant and has been rendering services to them for a period of two years.

When asked on what causes a person to vomit, he stated that it depends on the cause of vomiting. It was also DW 2's testimony that although the incident took place on 27th July 2004 and PW1 was examined on 2nd August, 2004, a week later, he would not tell if the results were going to be same if PW1 was examined on the same day, 27th July 2004. His opinion was based only on laboratory test that was carried out on 2nd August 2004.

DW 2 gave evidence that signs and symptoms of high blood pressure are physical fatigue i.e. easily getting tired in the evening, irritation, headache, walking uncomfortably, continuous severe headache, dizziness, palpitations and swellings in the feet.

In re-examination, DW 2 stated that he kept enquiring PW1 as to whether he had certain symptoms after drinking Chibuku beer in which he found the condom. PW1 stated that he did not have any symptoms. This marked the end of the defendant's case.

APPLICABLE LAW

The essential elements of actionable negligence are as follows:

(a) There must be a duty to take care owed to the plaintiff by the defendant.

(b) There must be a breach of that duty, and

(c) There must be damage suffered by the complainant resulting from the breach of duty. **J. Tennet and Sons Limited vs Mawindo** 10 MLR 366; **Beston Mikeyasi vs Aaron, Ching'amba, surfacing Enterprises and National Insurance Company Limited,** Civil Cause number 2726 of 1999.

At common law, a manufacturer owes a duty of care in respect of its products. In **Donoghue vs Stevenson** [1932] A.C. 562 at page 599 Lord Atkin laid down the principle saying:-

"*A manufacturer of products, which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination and with the knowledge that the absence of reasonable care in the preparations or putting up of the products will result in injury to the customer's life or property, owes a duty to the customer to take that reasonable care"*.

The duty owed is that of reasonable care and the burden of proving negligence is on the plaintiff. However, the plaintiff will generally discharge his burden of proof by showing that the product was defective and that, on a balance of probabilities, the defect arose in the course of manufacturing by the defendant.

The greater the risk the precautions that must be taken to obviate it – **Read vs J Lyons & Company (1947) AC 156.**

Even if the defendant gives evidence that the quality control system of his factory complies with approved practice, there is still the possibility that one of his servants was careless and prevented that system operating correctly, in which case he remains liable **Grant vs Australian Knitting Mills Limited** [1936] A.C. 85, 101

There must, however, be sufficient evidence that the defect existed when the product left the manufacturer's hands and that it was not caused later **Winfield and Jolowicz** on Tort, 14th edition, page 261.

The defendant's negligence was established where the plaintiff had established that nothing had happened to the chisel after it left the defendant's factory – **Mason vs Williams Limited** (1955) 1 WLR 549.

In a suit based on negligence it is essential that the plaintiff's evidence should show that the most likely cause of the damage was the defendant's negligence and not the negligence of any other person – **Elias vs Attorney General** 7 MLR 9, **Donoghue vs Stevenson** (1932) AC 562.

Action for negligence will not lie where damages is not proved – **Paul Gatrell Agencies Limited vs Yasini** (1993) 16 (1) MLR 416 (HC). If they bring action for damages, plaintiffs must prove their damage. It is not enough to write particulars – **Yanu Yanu Co. vs Mbewe** 11 MLR 410.

For damages to be recovered at tort on the basis of negligence, the plaintiff should still prove that negligence caused damage – **Juma vs Mandala Motors Limited** (1993) 16 (1) MLR 139 (HC), **ESCOM vs Malawi Ry Ltd** 12 MLR 268.

For the doctrine of **res ipsa loquitur** to apply the plaintiff has to prove 3 elements:

(a) The thing causing the damage was under the control and management of the defendant.

(b) The occurrence could not have happened without negligence; and

(c) There is no evidence to show how the occurrence happened. **Phekani vs Automotive Products Limited** (1993) 16 (1) MLR 427 (HC).

(d) Liability for negligence can arise from injury occasioned to the plaintiff from what he sees or realises on his own – **Hambrook vs Stokes Brothers** (1925) 1KB 141.

In **Behrens and Behrens vs Betrain Mills Limited** [1957] 2 Q.B. 1, 27-28 Devlin J. held that on the authorities damages could be awarded for shock only to the limited extent that the shock results in physical or mental harm. "When the word 'shock' is used in the authorities it is not in the sense of a mental reaction but in a medical sense as the equivalent of nervous shock.

From the foregoing pleadings the defendant admitted that it manufacturers Chibuku product, which leaves its factory ready and safe for consumption. It also admitted that it takes reasonable care in manufacturing the same. It is therefore under a legal duty to the ultimate purchaser or consumer to take reasonable care that the article is free from defect likely to cause injury to health – **Donoghue – Stevenson** (supra).

The evidence of PW1 and DW1 is that at the time DW 1 opened the bottle of Chibuku beer in issue, the bottle was well sealed. This clearly shows that no one tampered with the bottle when it left the factory. It was when PW 1 started drinking the beer, he felt a substance touching his lips and when the beer was poured into the basin, a deleterious substance (a condom with some black substances in it) was discovered. DW 1 gave evidence that since she does not manufacture the beer, she advised PW 1 to take the beer with the substances to the defendant.

The defendant, through its servant, Mr Malewa together with PW 1 had a factory tour. PW1 testifies that during the tour, he noticed that the packing process was not proper as the closing of bottles was done manually and not by use of machines. Upon inquiring from Mr Malewa, he was told that the machines had a fault and the mechanic will fix them. The defendant did not bring any evidence to dispute this finding. This shows that they agreed that they had such a problem. Furthermore, even if the defendant gave evidence that the quality control system in the factory complies with approved practice, there is still a possibility that one of its servants was careless and prevented the quality control system from operating – by dropping the condom into the beer when manually sealing the tops. This was the greatest risk taken by the defendant and it can be argued that the deleterious substance found its way into the bottle at this point in time

since no one tampered with bottle until DW 1 opened it. In the case of **Read vs J. Lyons & Company** *(supra)*, it was held that the greater the risk the greater the precautions that must be taken to obviate it. As a manufacturer who takes reasonable care in manufacturing the Chibuku beer, the defendant was supposed to avoid being found in such kind of circumstances. Once the machine has broken down, they are under a duty to fix it there and then. They failed to take any adequate or necessary precautions in the manufacture of the beer so as to prevent the deleterious substances being found in it. They also permitted the deleterious substance to be found in the beer. Furthermore, they failed to take adequate measures to fix the machine in order to ensure that is product did not contain any injurious or deleterious substance. The defendant was in breach of its duty to take care – **Tennet & Sons Limited vs Mawindo** *(supra)* **Beston Mikeyesi vs Aron W. Ching'amba etc** *(supra)* **Donoghue vs Stevenson** (supra).

As already noted from the evidence of PW1 and DW 1, the deleterious substance found its way at the factory since it has been established that nothing has happened to the bottle nor anybody tampered with the beer after it left the defendant's factory until it reached the distributor and the consumer. In this case the defendant remains liable – **Winfield & Jolowitz on Tort 14th Edition page 264, Mason vs William Limited** (supra). The defendant agrees in their defence that Scud bottles cannot be tampered with by somebody else in the process of distribution before consumption. It follows therefore that the condom was present in the beer by the act of the manufacture itself. It was present when the beer left the manufacturer's hands, and not otherwise.

PW 1 testified that upon seeing the deleterious substance he suffered nervous shock and he also vomited. PW 2 testified to the same effect that he saw PW 1 vomiting and that when he saw the substance, he was disgusted and very disappointed. If PW 2 was disgusted with what he saw, what more with PW 1 who actually drunk the beer which had the deleterious substance in it? This clearly shows that PW 1 was injured with the defect as a result of the defendant's breach of duty to take care - **Tennet & Sons Limited vs Mawindo** *(supra)* **Beston Mikeyesi vs Aron W. Ching'amba ET A** *(supra).* There is no need that the plaintiff should have drunk the condom in order to show injury as is being submitted by the defendant. Liability for negligence can arise

from injury occasioned to the plaintiff from what he sees or realises on his own – **Hambrook vs Stokes Brothers** (1925) 1KB 141.

In the present case the plaintiff himself saw the deleterious substance in the beer he was drinking. This was disgusting considering what a condom is associated with, and so the shock and high blood pressure the plaintiff developed in consequence of the same, was an injury to the plaintiff. Even in **Donoghue – Stevenson** (supra).the plaintiff had not consumed the decomposed snail itself.

DW 2 testified that after carrying out a general examination on PW 1 on 2nd august 2004, PW 1 appeared to be completely normal as per Exhibit P3. It is argued herein that the examination was carried out a week later whereas the incident took place on 27th July 2004. If the same was carried out the same day the results could have been totally different.

Furthermore, despite being examined by DW 2, PW 1 was not feeling well. He went to Queen Elizabeth Central Hospital for an examination. It was PW 1'S evidence as per Exhibit P4 that he had a raised blood pressure and was looking worried and anxious. This developed due to the incident of drinking Chibuku beer, which had a deleterious substance.

In light of the above, the court holds the view that negligence was established, as there was duty to take care owed to PW 1 by the defendant and the defendant breached that duty. It has also been established from the evidence that the cause of the damage was the defendant's negligence - **Elias vs Attorney General** (supra) and .**Paul Gatrell Agencies Limited vs Yasini** (supra).

Therefore the plaintiff is entitled to damages for negligence since he proved that negligence on the part of the defendant caused injury. The two must co-exist i.e. negligence and damage – **Juma vs Mandala** (supra), **ESCOM vs Malawi Railways Ltd** (supra).

As a matter of conclusion, the present case is on all fours with the case of **Donoghue – Stevenson** (supra) which is the basis of the manufacturer's common law liability in tort to the ultimate consumer.

DAMAGES

Since I do not have sufficient detail to make a proper award of damages, I order that the Registrar should assess damages.

COSTS

Costs are in the discretion of the court. Normally costs follow the even. In the present case the plaintiff has successfully pursued his claim. It is only fair to award him costs of these proceedings, to be taxed, if not agreed upon.

PRONOUNCED in open court at Blantyre this 14th day of February, 2006.

Chimasula Phiri

JUDGE