

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NUMBER 144 OF 2015**



BETWEEN

CHUMA DZINTHENG-----PLAINTIFF

AND

WASI YAMU-----1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED---2ND DEFENDANT

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

Silungwe, for the Plaintiff

Wawanya, for the Defendants

Mrs Jere, Court Reporter

Mr Itai, Court Interpreter

JUDGMENT

Introduction

On the 17th day of January 2014 in the morning hours the plaintiff, Chuma Dzinthenga was cycling around the Nanjiri Bridge along the Lilongwe/Dedza M1 road. The 1st defendat Wasi Yamuwas driving a motor vehicle registration number MH 2855 going on the same direction. The motor vehicle was involved in a road accident whereby the plaintiff sustained very serious injuries.

Summary of pleadings

The plaintiff alleged that the 1st defendant negligently drove the car that he hit the plaintiff on the left off-side of the road. Particulars of the negligence are over-speeding, failure to keep on his nearside of the road, failure to keep a proper look-out and failure to manage and /or control the vehicle so as to avoid the accident. As a result of the accident, the plaintiff suffered serious injuries and special damages.

I note that although the 1st defendant testified, he did not however file a defence to the present action. It is the 2nd defendant Prime Insurance Company Limited that filed a defence. Instead the 2nd defendant alleges that occurrence of the accident herein was solely as a result of the negligence of the plaintiff. Particulars of the negligence were failing to have due regard to other road users to avoid getting hit, failing to keep proper look-out and failing to stop or slow down or control his bicycle as to avoid the accident.

My task therefore is to decide whether the accident was caused by the negligence of either the plaintiff or the 1st defendant or indeed whether they each contributed to the same and in what proportion.

Survey of evidence

The plaintiff side presented evidence from two witnesses. The plaintiff who was Pw no 1 told the court that as he was pushing his bicycle on the far left dirty verge of the road on the Lilongwe Dedza road at around Nanjiri bridge, without any warning by way of hooting or otherwise, the motor vehicle driven by the 1st defendant hit him from behind. The witness tendered a police report together with a medical report. The medical report has all the details of his injuries. The evidence of Ali Kanjeza Pw no2 was very brief. He did not give any details as to what had happened before and during the accident since he was not physically present at the scene of the accident. He however confirmed that the plaintiff was severely injured and that he can no longer perform the usual chores that he used to do as a strong man before the accident herein.

The 1st defendant explained that he was indeed the driver of the motor vehicle that hit the plaintiff. He has been driving for 15 years. It was his evidence that upon reaching Nanjiri bridge, he came across a cyclist who is the plaintiff. The plaintiff was cycling at the middle of the road going towards the same direction of Dedza from Lilongwe side. He hooted for three times and upon the third hooting, the plaintiff turned and looked behind and in the course of doing that, the plaintiff swerved further into the road. He applied brakes but it was late to avoid the impact. He said that he could not swerve to the other side as there were vehicles coming from the opposite direction. The 2nd defence witness was Winnie Polela. She was a passenger in the vehicle driven by the 1st defendant. Her evidence was word by word like that of the 1st defendant and it is not necessary to repeat it.

Analysis of the evidence

The plaintiff informed the court that he was hit at the dirty verge of the road on the left side of the road as he was pushing his bicycle. The police report which he tendered in evidence however disclosed that he was hit as he was cycling and due to the impact, he swerved to the off side dirty verge of the road where he fell down. The fact of the matter is that this police report does confirm the plaintiff's story that the point of impact should indeed have been on the left side of the road. Even the damage to the car driven by the 1st defendant is consistent with the story told by the plaintiff.