



REPUBLIC OF MALAWI
MALAWI JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

CIVIL DIVISION

PERSONAL INJURY CAUSE NO 572 OF 2016

BETWEEN

PATRICK BAMUSI..... 1ST PLAINTIFF

CHARLES SABUNI..... 2ND PLAINTIFF

-AND-

KENNETH KAMWANA..... 1ST DEFENDANT

PRIME INSURANCE COMPANY..... 2ND DEFENDANT

CORAM: HONORABLE JUSTICE D.T.K. MADISE

Mr. Kadyampakeni, Counsel for the Plaintiff

Mr. Chisale, Counsel for the Defendants

Mr. M. Manda, Official Interpreter

Madise J,

JUDGMENT

The Registrar of High Court
Civil Registry
22 MAY 2018
P.O. Box 30244
Chichiri, Blantyre 3

HIGH COURT
LIBRARY

1.0. Introduction

1.1 The Plaintiffs in this matter commenced this action by way of a writ of summons against the Defendants seeking damages for injuries sustained through a road accident. The vehicle involved in the accident was driven by the 1st Defendant and insured by the 2nd Defendant. The Defendants have disputed the claim and they have called on the Plaintiffs to prove their case. The Plaintiffs filed a statement of claim which has particularized the nature of the negligence, the damage and injuries suffered and the damages sought. In their defence the Defendants have challenged all this.

2.0 The Facts

2.1 According to the two witness statements filed by the Plaintiffs, the accident occurred on 17 March, 2016. On this particular day, the Plaintiffs were cycling from the direction of Chichiri round about towards B and C along the Makata road. The 2nd Plaintiff was a pillion passenger while the 1st Plaintiff was the cyclist.

2.2 The 1st Defendant was driving a Mazda Bongo minibus Reg No. KK 6184 from the direction of Chichiri round about heading towards B and C. At or near the Blantyre water Board junction, the 1st Defendant negligently drove the said Mazda Bongo minibus which hit the bicycle the Plaintiffs were on. The Plaintiffs got injured in the process.

2.3 The Plaintiffs have tendered in evidence medical and police reports. The police reports for the two Plaintiffs have apportioned blame on the 1st Defendant. The police reports concluded that the accident was caused by the 1st Defendant who was overtaking on the nearside. He was charged with the offence of inconsiderate driving contrary to section 127 of the Road Traffic Act.

The medical reports which have been tendered have particularized the injuries the Plaintiffs suffered.

1st Plaintiff - sustained painful limbs and toes of right foot

2nd Plaintiff - sustained bruises on the left elbow and knee.

2.4 In defence, the 2nd Defendant denied being the insurer of the vehicle in issue. They further denied that the 1st Defendant was negligent at the material time. Unfortunately they have not led evidence to rebut the statements which have been filed by the Plaintiffs in aid of their case. The Defendants closed their case without calling any witnesses to challenge on a balance of probabilities the evidence presented by the Plaintiffs.

3.0. The Issues

There are five main issues for determination before me.

1. Whether the 1st Defendant owed the Plaintiffs a duty of care.
2. Whether there was a breach of that duty.
3. Whether that breach was due to negligence.
4. Whether the 1st Defendant is liable in damages.
5. Whether the 2nd Defendant is liable as an insurer of the motor vehicle in issue.

4.0 The Law

4.1 The burden and standard of proof in civil matters is set at the beginning of the trial by the state of pleadings and remaining uncharged through the duration of the trial. Joseph Constantine Steamship Line vs. Imperial Smelting

Corporation Limited {1942} AC 154, 174. The burden of proof lies on the party who alleges that certain facts exist. He who alleges the existence of certain facts must be the first to prove his case as an affirmative is less difficult to prove than a negative.

4.2 Negligence

The definition of negligent was best summarized by **Banda, J** as he then was in Banda vs. Admarc and Another Civil Cause No 273 of 1987.

"A driver of a motor vehicle owes a duty of care to other road users not to cause damage to persons, vehicle and property or to any one on a reasonable care which an ordinary skillful driver would have exercised under all circumstances. A reasonable and skillful driver has been defined as one who avoids excessive speed, keeps a good workout and observes traffic signs and lights....."

See also Donoghue vs. Stevenson {1932} AC 562.

5.0 The Finding


5.1 There is no dispute at all that an accident occurred on 17 March, 2016 involving a minibus driven by the 1st Defendant. There is no dispute that the said minibus hit the Plaintiffs who were on a bicycle. There is no dispute that the said vehicle was insured by the 2nd Defendant under policy of Insurance Number 130729705 which was valid from 16/03/16 to 30/09/16.

5.2 The 2nd Defendant denied being the insurer of the vehicle in their statement of defence. Unfortunately they have not led any evidence to satisfy me, on a balance of probabilities that they are not the insurers. The Plaintiffs have tendered their medical reports which have particularized the injuries they sustained.

5.3 Having gone through the evidence, the documents that have been tendered and the skeleton arguments in support of the Plaintiffs' case I come to the informed conclusion that the Plaintiffs have made out their case on a scale of probabilities. They must succeed in this matter with costs. I therefore award them all the reliefs sought in the summons.

I so order.

Pronounced in Open Court at Blantyre in Malawi on ²¹.....May, 2018



Dingiswayo Madise
JUDGE