Darlington Juma v Fyson Magalasi & Britam Insurance Company Limited

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Justice M.A. Tembo
Cause Number:	Personal Injury Cause No. 645 of 2021
Date of Judgment:	May 16, 2023
Bar:	Darlington Juma v Fyson Magalasi & Britam Insurance Company Limited, S. Khan for the Claimant P. Sayenda and Kasinja for the Defendants

Head Notes

Civil Procedure – Preliminary Issues – Order 16 Rule 6(1) Courts (High Court) (Civil Procedure) Rules – Court may hear arguments on preliminary issues of fact or law.

Law Of Torts – Negligence – Liability – Road Traffic Accident – Previous finding of negligence against defendants in related case is conclusive.

Law Of Evidence Issue Estoppel – Res judicata – Previous judgment on negligence in related case binds defendants – Defendants estopped from re-litigating liability.

Summary

The Claimant applied to the High Court, Principal Registry, for judgment under Order 16 Rule 6(1) of the Courts (High Court) (Civil Procedure) Rules, contending that the issue of the Defendants' liability for negligence had already been determined in a separate, concluded case brought by his passenger arising from the same motor vehicle accident. The Claimant, a cyclist, and his passenger were injured when the 1st Defendant, insured by the 2nd Defendant, negligently caused a collision. The passenger successfully sued the Defendants in the Senior Resident Magistrate's Court, where the 1st Defendant was found negligent, and the judgment sum was subsequently paid. The Defendants opposed the application, arguing that the cases were different and that the Claimant's and passenger's contributions to the collision might differ, also suggesting that the matters were to be consolidated.

The principal legal question before the Court was whether the Defendants were estopped from re-litigating the issue of negligence, given the prior judgment in the passenger's case.

The application was granted, and judgment was entered for the Claimant. The Court held that the issue of the Defendants' liability for negligence had been conclusively settled in the earlier proceedings before a court of competent jurisdiction. The Court found that it would be superfluous to proceed with a full trial on liability, as the Defendants had a full and fair opportunity to contest the negligence in the first action and were bound by its outcome. The fact that the present matter and the passenger's case were distinct was deemed inconsequential, as the core issue of the 1st Defendant's negligence causing the collision had been established without any finding of contributory negligence. The Court ordered that damages and costs be assessed by the Registrar if not agreed.

Legislation Construed

Courts (High Court) (Civil Procedure) Rules (Order 16 Rules 6 (1) & (2))

Ruling/Judgment

1. This order contains the reasons for the decision of this Court entering judgment for the claimant in this matter pursuant Order 16 Rule 6 (1) of the Courts (High Court) (Civil Procedure) Rules on account of the establishment of issue estoppel by the claimant against the defendants in relation to whom another claimant obtained judgment in a separate civil proceeding arising out the same accident in which the claimant herein got injured.

2. The claimant in this matter was a cyclist who was riding a bicycle whilst carrying a passenger on the bicycle. Whilst so riding the bicycle, the 1st defendant allegedly negligently drove his motor vehicle, that is insured by the 2nd defendant, and ended up cutting in front of the claimant herein and caused a collision in which the claimant herein and his passenger got injured. The passenger on the bicycle commenced a claim for personal injuries before the Senior Resident Magistrate sitting at Midima Court. The claimant commenced the present matter before this Court. The present matter was partly heard and was set down for the hearing of the defendants' case. In the meantime, the case of the passenger against the defendants was tried and concluded and the Resident Magistrate Court found that the 1st defendant negligently caused the collision and injury to the passenger of the claimant herein. In the circumstances, the claimant herein applied under Order 16 Rule 6 of the Courts (High Court) (Civil Procedure) Rules for judgment. That said Order 16 Rule 6 of the Courts (High Court) (Civil Procedure) Rules provides that:

(1) The Court may hear arguments by the parties in a proceeding on preliminary issues of fact or law between the parties where it appears likely that, if the issues are resolved, the proceeding or part of the proceeding will be resolved without a trial, or the costs of the proceeding or the issues in dispute are likely to be substantially reduced.

(2) Where the parties have agreed on the facts but there remains a question of law in dispute, the Court may hear arguments from the parties about a question of law.

3. The most apt provision in the present matter is Order 16 Rule 6 (1) of the Courts (High Court) (Civil Procedure) Rules. The claimant's contention in that regard was that, by a judgment dated 10th January, 2023 rendered by the Senior Resident Magistrate after a full trial, the defendants were found liable for negligence in relation to the claim for personal injuries to his passenger herein. He noted that the defendants herein also represented the defendants in the case that his passenger had against the defendants herein before the Senior Resident Magistrate. The claimant also indicated that the defendants have since paid the judgment sum in relation to his passenger's case.

4. In the circumstances, the claimant contended that liability against the defendants having been established in relation to the accident in which his passenger and himself got injured it is superfluous to carry on with the trial herein. The claimant relied on the case of Mcllkenny v Chief Constable of the West Midlands [1980] 2 ALL ER 227 in which the court ruled that re-litigation of an issue which has previously been finally decided by a court of competent jurisdiction is an abuse of the court process and in

which the court went on to say by illustration as follows at 237 -238:

A previous decision in a civil case against a man operate as an estoppel preventing him from challenging it in subsequent proceedings unless he can show that it was obtained by fraud or collusion, or he can adduce fresh evidence (which he could not have obtained by reasonable diligence before) to show conclusively that the previous decision was wrong. To illustrate my view of the present law, I would take this example. Suppose there is a road accident in which a lorry driver run down a group of people on a pavement waiting for a bus. One of the injured persons, sues the lorry driver for negligence and succeeds. Suppose now that another of the injured persons sues the lorry driver for damages also. Has he to prove the negligence all over again? Can the lorry driver (against whom the previous decision went) dispute his liability to the other injured persons? It seems to me that the lorry driver has had a full and fair opportunity of contesting the issue of negligence in the first action; he should be estopped from disputing it in the second action. He was a party to the first action and should be bound by the results of it. Not only the lorry driver but also his employer should be estopped from disputing the issue of negligence in a second action, on the ground that the employer was in privity with the lorry driver.

5. The defendants contended wrongly that the relevant prov1s1on to this application is Order 16 Rule 6 (2) of the Courts (High Court) (Civil Procedure) Rules. That provision is not apt as it relates to applications in which the facts are agreed between the parties. On the contrary, the relevant provision on this application is Order 16 Rule 6 (1) of the Courts (High Court) (Civil Procedure) Rules according to which this Court may hear arguments by the parties in a proceeding on preliminary issues of fact or law between the parties where it appears likely that, if the issues are resolved, the proceeding or

part of the proceeding will be resolved without a trial, or the costs of the proceeding or the issues in dispute are likely to be substantially reduced.

6. The defendants unsuccessfully sought to argue that the current matter and the matter of the claimant's passenger are two different matters and that the contribution of the claimant and his passenger to the collision are different and fmther that the claimant herein should have consolidated this matter and his passenger's matter. The claimant disagreed.

7. This Court agrees with the claimant that the issues raised by the defendants cannot stand in the way of a clear finding after a full trial that the 1st defendant was negligent in causing the collision herein. The fact that the present matter and the passenger's case are different is inconsequential. What is vital is that the claimant and his passenger got injured in a collision caused negligently by the 1st defendant who is insured by the 2nd defendant. Before the Senior Resident Magistrate, a court of competent jurisdiction on personal injury matters, the defendants never alleged and never proved that the collision was in any way contributed to by the claimant herein who rode the motor vehicle. The defendants were found liable for negligence without any contribution by anyone else. On the issue of consolidation of the two matters of the claimant herein and that of his passenger, both the claimant herein and the defendants would have asked for the consolidation if they deemed fit but none did and this cannot be held against the claimant herein on this application. 8. In conclusion, this Court finds that the issue concerning the liability of the defendants for negligence in the collision herein was settled in the earlier matter involving the claimant's passenger and the defendants before a court of competent jurisdiction. As such, the defendants cannot re-litigate the same matter. This finding of this Court is not equal to

the alleged rubber stamping of the lower court decision by this Court as alleged by the defendants in their opposition to this application. It is a matter of law that the defendants are estopped from re-litigating a matter that was duly litigated by them and in which it was earlier resolved that the defendants were negligent and they honoured the results of that earlier litigation. On this point, this Court refers to persuasive reasoning in the illustration in the case of Mcllkenny v Chief Constable of the West Midlands [1980] 2 ALL ER 227.

9. The claimant's application is accordingly granted and judgment is entered for the claimant with costs. The damages and costs shall be assessed by the Registrar, if not agreed within 14 days.

Made in chambers at Blantyre this 16th May 2023.