

Kadawire v Ziligone and Another Civil Cause Number 1132 of 1995

Summary

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| Court: | High Court of Malawi |
| Registry: | Civil Division |
| Bench: | Honourable Justice J. Ndovie |
| Cause Number: | Civil Cause Number 1132 of 1995 |
| Date of Judgment: | June 30, 1997 |
| Bar: | Mr. Nkhama, for the Plaintiff Mr. Jamu, for the first and second Defendant |

The Plaintiff, Mrs V Kadewere, brought an action in the High Court claiming damages for personal injuries, pain and suffering, disfigurement, and loss of amenities arising from a road accident. The suit was brought against the First Defendant, G Ziligone, for negligent driving, and the Second Defendant, National Insurance Company Ltd, as the insurer liable by way of indemnity. The background facts reveal that on 5 February 1994, the Plaintiff was struck by a fast-moving car driven by the First Defendant as she was crossing Ndirande Ring Road. The driver did not stop or render assistance. As a result of the impact, the Plaintiff sustained serious injuries including a fractured leg, deep lacerations,

bruises, and a sprained hip, which left her with permanent disfigurement and a lasting disability.

At trial, the First Defendant did not dispute that an accident occurred or that he was driving on the road, but he denied his involvement in the accident or any liability. The Court, however, considered the evidence of the Plaintiff and two eyewitnesses, which established that the First Defendant's vehicle was the one involved and that its windscreen was shattered in the accident. The First Defendant's testimony was found to be inconsistent and unbelievable. The Court then had to decide whether the First Defendant was negligent and if the Plaintiff was entitled to damages. The action was allowed, and the Court found that the First Defendant had been negligent and had breached his duty of care to the Plaintiff by speeding and failing to drive with reasonable care given the existence of a bend, a stationary bus, and many people on the road. The Court concluded that there was a direct causal link between the Defendant's negligent driving and the Plaintiff's severe injuries. The Court ordered damages of K69,000 to be paid to the Plaintiff, noting that this sum was fair and reasonable compensation based on awards in similar cases. The Court further held that, as the First Defendant's insurer, the Second Defendant was liable to pay the damages by way of indemnity. The Court awarded the Plaintiff costs for the action.