

BERNARD L. MWAMUKA  
versus  
MOSES MACHESO

HIGH COURT OF ZIMBABWE  
DUBE J  
HARARE, 1 & 13 November 2012

*Mrs H.S. Tsara*, for the plaintiff  
Defendant in person

### **CIVIL TRIAL**

DUBE J: This is a claim for delictual damages arising out of a road traffic accident that occurred on 3 February 2012. The facts of this case are largely common cause. The defendant's vehicle a Nissan 1800 collided with plaintiff's Opel Corsa at the intersection of Vincent Avenue and Blackway Drive, Belvedere, Harare. The plaintiff's vehicle sustained damages totalling US3 324.00. The defendant paid an admission of guilt fine. The defendant's insurer paid a total of USD 1 200.00 based on their limit of liability, towards the repairs to the vehicle. A balance of USD2 142.00 is still outstanding and remains unpaid. On 16 August 2011 the plaintiff issued summons claiming the balance he incurred in effecting repairs to his motor vehicle.

The plaintiff claims that the defendant drove his vehicle negligently resulting in a collision with the plaintiff's vehicle. That the collision was as a result of the defendant's driving without due care and attention.

The defendant admits that he drove his vehicle negligently resulting in the collision between the two cars. The defendant nonetheless refutes that the plaintiff's vehicle sustained damages to the magnitude claimed by the plaintiff. He claims that some of the damages claimed existed on the car prior to the accident and that the defendant is not liable for those damages. He maintained that the plaintiff opted for an unreasonably and exorbitantly priced quotation. That the sum of USD3 324.00 originally claimed is unreasonable and unacceptable as all the damages were not sustained as a result of the accident he had with the plaintiff. He claims that the plaintiff's quotations are overstated and that the damages incurred only amount to USD580.00. The defendant insisted that he is not obligated to the plaintiff as the

money paid out by his insurer exceeds the sum total of the actual damages incurred. The defendant challenges the damages to the suspension or control arm of the vehicle. The defendant further contended that the plaintiff's quotations are not reasonably priced.

The issues referred to trial are as follows:-

- i. Whether or not all damages on plaintiff's motor vehicle were caused by the accident.
- ii. How much expenses were incurred by the plaintiff in effecting repairs to the damaged vehicle.
- iii. Whether or not the defendant is liable to pay for the balance not covered by his insurer in respect of expenses incurred by the plaintiff in effecting repairs to his motor vehicle.

The plaintiff testified as follows. He was driving along Blackway Drive. When he passed the Vincent Avenue and Blackway Drive junction, a truck driving along Vincent Avenue drove into him. It hit his vehicle on its right hand side between the front door and the carrier case of his pickup truck. He lost control of the vehicle and the vehicle veered off the road and struck a parapet covering a drain. The vehicle landed on the right hand side of the road. It stopped about 10 metres from the point of impact. His vehicle sustained damages on the right hand side of the vehicle, on the door, front lower arm, door locking pillar and front wheel rim. The plaintiff submitted to defendant's insurers quotations from Eastlea Panel Beaters and Swiss Motors to support his claim. He was unable to drive the vehicle back to his workplace because the vehicle had been extensively damaged. He left the vehicle at number 65 Blackway Avenue. He later made arrangements to have the vehicle towed to his workplace. The defendant's insurer later paid him \$1 200.00 and indicated that the defendant would pay the balance. The Swiss Motors quotation is more comprehensive as it includes damages to the suspension of the vehicle. The plaintiff explained that although Swiss Motors was expensive, his main focus was to have a quality job done. The Eastlea Panel Beaters quotation did not include the suspension because the garage did not assess the extent of the damages to the suspension. Swiss motors repaired the vehicle and the witness paid \$3 324.00 for the repairs. The applicant produced a tax invoice to prove payment for the repairs to Swiss Motors. He understands that the defendant's insurer send assessors to inspect the vehicle after the accident. He chose Swiss Motors to do the repairs because they are a reputable garage.

The plaintiff insisted under cross-examination that the invoices he submitted were from Swiss Motors and that it was genuine. He maintained that the damage to the wheel and suspension was caused when he swerved to the right and hit a drainage parapet. He denied that he ended up on the right side of the road because he was looking for parking place.

The plaintiff gave his evidence well. He maintained his story under cross-examination. He gave a clear and satisfactory account of the accident.

The defendant testified in his own case. He testified as follows. He was driving along Vincent road towards Blakeway drive. He collided with the plaintiff's vehicle which was along Blakeway drive. He admitted to the police that he had driven his vehicle negligently and paid an admission of guilt fine. He denied that the reason why the plaintiff landed on the right side of the road is because he had hit a parapet. His explanation is that the plaintiff ended up there because he parked his vehicle there after the accident. He disputes that the plaintiff paid \$3 324.00 to Swiss Motors as there was no tax invoice. He contended that the plaintiff's vehicle sustained minor damages and that the control arm was not damaged as a result of the accident. He challenged the prices quoted on the Swiss Motors quotation. He indicated that he had verified those prices with Swiss Motors who did not confirm them. He indicated that he would call a witness from Swiss motors to show that the vehicle was not repaired at Swiss motors. He suspected some corruption as his insurer had paid out the claim on the basis of two quotations instead of three. The insurance company's dealings were also queried because the defendant alleged that it paid without seeing proof of the tax invoice for the repairs. He challenged that the vehicle was towed from the scene of the accident. The defendant's story developed as the trial proceeded. The defendant produced his own quotations.

The next witness to be called is Denford Watch. He towed the vehicle from 65 Blackway drive to the plaintiff's workplace. He towed the vehicle from the rear. Before towing the vehicle, he established that the right rear wheel was damaged. He saw damages on the pillar where the trailer and door are joined. He did not check to see if the control arm was damaged but the vehicle could move. He testified that it is possible to tow a vehicle if the control arm is damaged. The witness did not dispute that the control arm, which comprises the suspension, was damaged. His evidence serves to confirm that the vehicle was towed.

The defendant insisted on an inspection in loco. The court visited the scene of accident and observed among other things, the point of impact, the drainage parapet and the

point where the plaintiff's vehicle landed after the accident. The inspection in loco confirmed the existence of a drainage parapet as stated by the plaintiff.

It is common cause that the defendant caused the accident that occurred at the intersection of Blackway Road and Vincent Avenue. What is in issue is whether all the damages observed on the vehicle and as claimed by the plaintiff resulted from this accident and secondly whether the claim is reasonable.

The Swiss Motors quotation covers damages on the right hand side of the vehicle, on the door, front lower arm, door locking pillar and front wheel rim. Only the damage on the suspension is being challenged. The quotation from Eastlea Panel Beaters does not cover damages to the suspension because the garage did not examine the suspension. It is for this reasons that the charges for the repairs are lower than those on the Swiss Motors quotation.

The damages sustained by the vehicle on the suspension are consistent with the vehicle having hit the parapet. There is no reason why the plaintiff would proceed and park the vehicle on the right side of the road after the accident when he had been travelling on the left. The plaintiff's explanation that he swerved to the right as a result of the force of the impact and hit the parapet is more plausible. The damages sustained to the suspension are also consistent with his narration. The fact that the vehicle had to be towed away and could not be driven after the accident is consistent with damage to the control arm. The damages on the Swiss Motors quotation are consistent with the plaintiff's version. It is quite obvious that the insurer's assessors also observed the damage to the control arm otherwise it would not have paid out part of the claim. There was no evidence to suggest that the plaintiff claimed any other damages except those sustained during the accident. The invoices submitted reveal that the plaintiff paid US \$3324, 00 for the repairs at Swiss Motors. The plaintiff explained that the extra USD210.00 charged by the garage and reflected on the Swiss Motors quotation was for cleaning the vehicle which he requested the garage to carry out and that he paid that amount separately. This amount is not being claimed.

The defendant relied on two main quotations from Showmash Spray Painters and Kunaka Panel Beaters. The rest were just bits and pieces of papers and were not quotations in the real sense of the word. The Showmash Spray Painters quotation outlines in very little detail the parts that were damaged and does not reflect the charges for labour and the repairs that were required be carried out. These two quotations did not include the suspension. They were not very helpful. The defendant also produced a number of quotations for the Magwheels. He tried to use these to show that the figure of USD 160.00 for the Magwheels

quoted by Swiss Motors was unreasonable. The defendant's quotations do not reflect that the wheels quoted are for this type of car, an Opel Astra. Another set of quotations produced by defendant is for a control arm which is the suspension. The defendant's quotations for this item range from \$150 to \$180 and are from motor spares traders. The quality of the part quoted is not known. The car dealers involved did not assess and examine the damaged vehicle and it is not known if this part is an original or genuine part. These dealers are not reputable car dealers.

The plaintiff's quotations are more comprehensive. The defendant's quotations are not based on any assessments of the damaged vehicle. The garages who gave the quotations did not view the damaged vehicle in order to assess the damages. The defendant's quotations are scanty and are not comprehensive and do not detail the full extent of the damages sustained by the vehicle. It is unsafe to rely on these quotations. The plaintiff's version of events is more consistent with the damages found on the vehicle. It is more plausible.

The court accepts the plaintiff's quotations. Swiss Motors are a reputable car dealer. The insurance company sent its own assessors to assess the vehicle. The defendant's insurers verified and accepted the plaintiff's cost of the repairs and relied on these to pay out part of the claim. The defendant's own insurer is an expert in the area of assessment of damages. The insurance company did not take issue with the plaintiff's quotation and paid plaintiff on the basis of that quotation. The court is satisfied that the damages claimed were sustained as a result of the accident and further that the damages are reasonable. The plaintiff has proved his case on a balance of probabilities. The defendant is liable for the damages not paid by his insurer.

In the result it is ordered as follows,

Judgment is entered in favour of the plaintiff as follows,

The defendant shall pay the sum of USD2142.00 together with interest at the prescribed rate of 5% from date of summons to the date of final payment.

Costs follow the event.

*Tsara and Associates*, plaintiff's legal practitioners  
Defendant in person