

IN THE HIGH COURT OF SWAZILAND

CASE No S. 88/85

In the matter of:

THE QUEEN

VS

JOEL GUMEDZE

CORUM: J. A. HASSANALI

FDR THE CROWN: MR. M. MAMBA

FDR DEFENCE: IN PERSON

CHARGE: CULPABLE HOMICIDE

JUDGEMENT

(17/06/85)

HASSANALI, J

The Accused is charged with culpable homicide in that he unlawfully and negligently killed Abel Simelane by knocking him down with his vehicle No SD 677 IH. He pleaded not guilty and conducted his own defence.

Daniel Shabangu, a witness for the Crown said that on 4/8/84 at about 6p.m., he travelled with the accused in his vehicle from the Oshoek Border Post to Mbabane Town. As it was dark, the accused had his head lights on. While approaching Take Railway Station, a pedestrian emerged from the left side of the road and the vehicle knocked him down on the centre of the road. He noticed later that the windscreen had been shattered and that pieces of skull and brain of the deceased were found on the accused.

Sergeant Samuel Hlophe said that he visited the scene immediately after the accident, but did not notice any brake marks on the road. However, the right light, bonnet, mudguard and windscreen were badly

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damaged. He also noticed blood and pieces of brain and skull on the driver's seat.

George Tsela stated that he was the Examiner of Vehicles with 16 years of service and had undergone training in the United Kingdom. He examined the vehicle and found the following -

- a) solid parts damaged beyond recognition
- b) right corner fender damaged
- c) Heavily built screen pillar damaged
- d) Roof badly damaged

In his opinion the accused was driving at a speed beyond his driving control.

The Accused said that on the day in question he was driving from the Oshnek Border Post to Mbabane Town, On the way, while passing a stationary vehicle, a vehicle came from the opposite direction with its head lights on, followed by another vehicle. As he dimmed his lights, a person emerged in front of the vehicle. He applied his brakes and swerved his vehicle to the left but could not avoid colliding with him. He said that he was driving at a speed of 65 Km per hour.

It is common cause that on 4/8/84 at about 6p.m., vehicle No. 677 IH driven by the Accused along the Mbabane/Oshoek Public Road came into contact with and caused the death of the deceased. This main road admittedly carries a considerable volume of traffic and is habitually used by the pedestrians.

On the evening in question, the Accused was driving to Mbabane Town with one Daniel Shabangu as his passenger. As he approached the Take Railway Station, he saw a vehicle coming from the opposite direction with its head lights on. Though

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he dimmed his lights the other driver did not. At this stage he was supposedly travelling at a speed of 65 Km. per hour. As he passed a stationary vehicle parked on the edge of the road, he saw a person in front of him. He swerved his vehicle and applied his brakes but still could not avoid a collision with the pedestrian who at this time had almost reached the centre of the road. However as there is no evidence of any brake or skid marks, it is very unlikely that he applied his Brakes.

According to the Accused, he saw the pedestrian at a distance of about 40 feet, so had he kept a proper look out, he would have had sufficient time to apply his brakes and bring his vehicle to a standstill. Tsela, Examiner of vehicles was positive that the accused was traveling at an excessive speed. He came to this conclusion on the damage that was caused to the vehicle.

The Accused has also stated that he could not see the pedestrian because of the dazzling lights of the on coming vehicle. It appears that he drove on in spite of his vision being impaired.

Blackwell J in Brakpan Town Council Vs. Moore 1947 (3) S A L R 9 said -

"It is important that a motorist as soon as his vision is impaired must pull or slacken speed so as to be able to stop within the range of that vision. If a reasonable man should envisage the possibility of there being a Cyclist, or pedestrian, cattle or on unlighted car ahead of him, then he should not take unnecessary chances.

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In this case there was reason to anticipate danger: The road was one frequented by pedestrians and vehicles and the accused took an unjustifiable risk in driving along it at such a high speed.

Having regard to the evidence and bearing in mind that he was driving for some distance with dipped lights. I am of the opinion the Accused should have anticipated the possibility of some obstruction, including a pedestrian being in his path and the moment he was blinded by the other vehicle, he should have applied his brakes and reduced speed. Since he failed to do so, I hold that he acted negligently.

Consequently I find him guilty as charged.

J. A. HASSANALI

JUDGE