

IN THE HIGH COURT OF SWAZILAND

CIV. CASE No.495/85

In the matter between:

GETTY DLAMINI

Plaintiff

and

SWAZILAND ROYAL INSURANCE

Defendant

CORAM :

HANNAH, C.J.

FOR THE PLAINTIFF :

MR. SHILUBANE

FOR THE DEFENDANT :

MR. CURRIE

JUDGMENT

(19/5/89)

Hannah, C.J.

In this action the plaintiff sues for loss of support for herself and her seven children following the death of her husband, Jabulane Dlamini, in a road traffic accident on 31st August, 1983. Quantum has been agreed at E53,581 and the only-issue is that of liability.

Mr. Currie, for the defendant, accepts that the only questions which arise for determination are whether the plaintiff has established that the driver of the insured vehicle, Jeremiah Dlamini, was negligent and, if she has, whether the deceased was guilty of contributory negligence. The evidence on these two matters falls within a very narrow compass.

On 31st August, 1983 the deceased and Enoch Mndzebele were being driven home from work in a van and at a certain stage in their journey the van stopped and they both alighted in order

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to buy vegetables in a market at the side of the road. After purchasing vegetables it was their intention to buy some mealie meal from a shop on the other side of the road and they asked the van driver to drive to that shop and wait for them.

Mndzebele said that on leaving the market he saw a truck which had parked on the road behind them.

They walked in front of this truck and then ran across the road. He reached the other side safely but as he did so he heard a bang and then discovered that the deceased, who was behind him, had been struck by a vehicle. Mndzebele said that the road was straight at the point where they crossed and it was possible to see quite some distance both ways. He said that before crossing the road they had looked to see whether it was safe and the road was clear.

The driver of the vehicle which collided with the deceased was Jeremiah Dlamini, a corporal in the Prison Department who was driving a Government van. He was called by the defendant and his account of events was as follows. At about 6 p.m. on 31st August, 1983 he was driving along the Bhunya to Manzini road in the direction of Manzini. It was dark and he had his headlights on but they

were dipped because he was driving behind a lorry. The lorry driver indicated his intention to pull into his left side and pulled off the road. Dlamini continued past the lorry as it came to a halt and then, before he had completely passed it, someone ran out into his path from the front of the lorry. He was unable to swerve much to his left because of the lorry and was unable to avoid colliding with the running person. He said that the right front of his van struck the pedestrian.

Constable Mkhonta was one of the police officers who attended the scene of the accident and it was quite apparent from his evidence that apart from a sketch plan which he drew at the time he had little recollection of events. This is quite understandable as almost six years have now elapsed since the accident. The sketch plan gives the road width as 6.4 metres and

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puts the point of impact as 60 cms from the centre of the road on what I shall call the shop side as opposed to the market side. The constable explained that he determined the point of impact from broken glass and mud which he found in the road but he readily conceded in cross-examination that the debris was scattered over quite a wide area and his evidence of the point of impact must be regarded as an approximation. The most which can be said is that it was in the vicinity of the centre of the road.

From the foregoing summary of the evidence it may be seen that there is little dispute on the facts.

Mndzebele did not refer to the truck pulling in to the side of the road immediately before he and the deceased started to cross but there is no reason to doubt the evidence of Jeremiah Dlamini that that is what actually happened. Mndzebele has probably forgotten the precise interaction of one event with another and his evidence that the road was clear when they started to cross can only really be explained on the basis that Jeremiah Dlamini's van must have been obscured from sight by the lorry which was drawing into the side of the road. I do not consider that there is any ground for inferring that Dlamini must have been driving at an excessive speed, as Mr. Shilubane submitted in his final speech, and, as Mr. Currie pointed out, speed has not been pleaded as a particular of the alleged negligence.

I can also find no merit in Mr. Shilubane's submission that Dlamini must have been overtaking the lorry at a time when it was unsafe to do so. This also has not been pleaded and in any event the only evidence is that Dlamini was passing a lorry which had pulled off the road and in doing so he was driving quite normally.

In my judgment the evidence of Jeremiah Dlamini dovetails quite neatly with that of Mndzebele. The two pedestrians saw the lorry coming to a halt, did not see the van which was travelling behind the lorry, thought it was safe to

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cross and dashed across the road. The unfortunate deceased lagged slightly behind Mndzebele and ran straight into the path of Dlamini's van. There was no avoiding action which Dlamini could reasonably have taken. The fact that he did not see the leading pedestrian is not altogether surprising in view of the fact that it was dark and he was driving on dipped headlights and Mndzebele was running.

Of course one sympathises with the plight of the plaintiff who lost her husband in this accident but in order for compensation to be awarded she must establish that his death was as a result of the negligence of the insured driver. In my judgment the evidence shows no negligence on his part but, on the contrary, shows that it was the deceased who was negligent in the manner in which he crossed

the road. He failed to ascertain whether the road was clear before running out from the front of the lorry.

For the foregoing reasons the plaintiff's claim is dismissed and judgment is entered for the defendant with costs.

N.R. Hannah

CHIEF JUSTICE