

SWAZILAND HIGH COURT

TURBOREP DEMAS DELAVAL

Plaintiff

Vs

DUMISA MAMBA

Defendant

Civil Trial No. 1858/1999

Coram Sapiro, CJ

For Plaintiff Adv. P. Flynn

For Defendant Mr. Nzima

JUDGMENT

(12/02/2002)

In this case the plaintiff is claiming for damages arising out of a collision that took place in on the 16th June, 1999 outside Manzini. It took place on the main road from Manzini to Siteki.

The evidence is from the plaintiff that a car owned by the plaintiff and driven by a driver employed by it, was travelling from Manzini towards Siteki. At a point along the road after coming over a rise the plaintiff vehicle was confronted with a sight of a vehicle, which turned out to be the defendant's vehicle, standing on the far left of the road, in what was referred to as the slow lane. The indicator lights of the vehicle were

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flashing showing an intention to turn right. The driver of the Plaintiff's vehicle having regard to the circumstances thought it safe to proceed to overtake the vehicle in the fast lane and did so. While passing the vehicle, according to the driver of the Plaintiff's vehicle, the defendant's vehicle executed its intended right turn and entered directly into the line of travel for the Plaintiff's vehicle.

The Plaintiff's driver was able to swerve to the right but nevertheless the collision took place when the right hand front portion of the defendant vehicle came into contact along the whole side of the Plaintiff's vehicle. The Plaintiff's driver says that he had no alternative open to him to avoid this collision and that he thereafter preceded a short way onwards and turned the vehicle around and parked on a clearing on the opposite side of the road.

The defendant who was driving his own vehicle and claims that initially he was in the slow lane but indicating his intention to turn right he took up a position in the fast lane and was about to turn into an entrance on the righthand side of the road when the plaintiff vehicle drove at a high speed and collided with the defendant vehicle. It must be noted that in the first place the defendant's version is not in accord with the damage to the two vehicles.

As far as the point of impact is concerned, the independent evidence of a police officer that he found the defendant's vehicle standing transversely across the fast lane and in the middle of the road. When I say transversely it is indicated in the plan, which was introduced by way of evidence. This too is evidence consistent rather with the Plaintiff's version rather than the defendant's version.

It is true that there is little to choose by way of quality and the witnesses each adamantly maintaining the version given under oath and this case has to be decided as far as the merit is concerned on the balance of probabilities. The concrete evidence of the position of defendant's vehicle after the accident and the damage to the two cars makes Plaintiff's version by far the most probable. For this reason the defendant must be found to have been negligent in turning his vehicle into the line of traffic following from the rear. I have given considerable thought to whether the Plaintiff's driver was at fault so that an apportionment should be made in this matter. I have put this point

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several times to the defendant's counsel neither side was prepared to accede to the suggestion that apportionment may be apposite here. Nevertheless I bear in mind that the Plaintiff's driver came upon the scene, on his version, of a vehicle on the far left of the road indicating its intention to turn right. I think that this should have raised danger signals in his mind. How would a person, a reasonable man, even appreciate these danger signals have acted. He, after all, was driving in a different lane, and if it is true, as he says, that the collision was caused by the defendant's vehicle crossing lanes and in fact reversing into the fast right-hand lane then the fault on the part of the driver the Plaintiff's vehicle has not been shown. It would be inapposite to speculate on what, if any, fault lay on his part.

Damages were proved and the plaintiff is entitled to judgment in the sum of E18, 953.05, with costs. The plaintiff will be entitled to the normal taxed costs. Certification of the counsel's fees in terms of Rule 68 is made In addition thereto because of the manner in which the proceedings were prolonged unnecessarily by the defendant I think one day's cost, a refresher, should be paid on the attorney and client scale.

SAPIRE, CJ