

**IN THE HIGH COURT OF SWAZILAND****PATRICK DLAMINI**

Plaintiff

And

**ALFRED MADONSELA**1<sup>st</sup> Defendant**CASH SECURITY SERVICES (PTY) LTD**2<sup>nd</sup> Defendant

Civil Case No. 1148/2004

Coram: S.B. MAPHALALA – J

For the Plaintiff: MR. T. MLANGENI

For the Defendant: MR. D. MADAU

**JUDGMENT**19<sup>th</sup> October 2007

[1] On the 4 March 2002, at about 1500hours a collision occurred at or near the robots close to Atlas Motors, Mbabane between two motor vehicles, one driven by the Plaintiff bearing registration number SD 351 RG and the other driven by the Defendant bearing registration number SD 892 IH. As a result of this collision the Plaintiffs motor vehicle sustained damages being the difference between the pre-accident value and post accident value of the motor vehicle, in the sum of E14, 621-00. The Plaintiff further seeks interest thereof at the rate of 9% per annum calculated from date of judgment to date of final payment and costs of suit.

[2] The Defendant in his plea advances his defence to the action and has averred in paragraph 8 thereof that the aforesaid collision was caused by the negligence of the

Plaintiff in that:

- (a) He drove the aforesaid motor vehicle without due care and attention and without regard to other road users;
- (b) He failed to exercise proper control or any control over the said motor vehicle;
- (c) He failed to exercise caution while approaching a robot controlled intersection in a busy highway;
- (d) He turned onto the side of oncoming vehicular traffic when he was not supposed to do so as the robot did not allow him to do so and thus disturbing traffic which had a right of way at the time; and
- (e) He failed to avoid the collision when he could have and should have done so in the circumstances.

[3] All in all, the Defendant denies liability in this case.

[4] In evidence before me the Plaintiff led evidence himself and also called the evidence of two other witnesses being PW2 1918 Petros Sibandze and PW3 Veli Lucky Mamba. On the other hand for the Defendant DW1 Alfred Mfana Madonsela gave evidence.

[5] PW1 Sandile Mabuza testified that on the day in which the accident occurred he was driving his motor vehicle towards the robots at the Atlas Motors and when he reached the robots it was showing red. He was driving to Manzini and he stopped his motor vehicle at the robots. There were two motor vehicles in front of him and the robot then turned green. He waited for the green arrow to show. As he was waiting for this to happen another motor vehicle knocked his motor vehicle on the right side. He heard the tyres of this motor vehicle screeching and then he heard a sound as the two vehicles collided with each other. He then came out of his motor vehicle and the driver of the other vehicle also came out of his motor vehicle. The other driver asked him why he was driving slowly. He did not reply him as he felt hot and that he was also bleeding as he was injured on his left

eye. At the time a number of people came to the scene and means were made to take him to hospital for treatment. He then checked his motor vehicle and thereafter switched it off. The police then came to the scene and they took a statement from him.

[6] He testified further that after the accident his motor vehicle was facing towards Mbabane town and the one driven by the Defendant was also facing the same direction. He testified that the driver of the other motor vehicle was driving at a high speed indicated by the screeching of the tyres.

[7] PW1 was cross-examined searchingly by *Mr. Madau* who appeared for the Defendant.

[8] The second witness for the Plaintiff was an officer in the Traffic Department here in Mbabane one 1918 Petros Sibandze. On the day of the accident he was called upon to attend a scene of the accident at the Hospital traffic lights. He attended the scene and drew a sketch plan of the accident and he opined that the motor vehicle coming from Manzini was traveling at a high speed. He testified that this was so because of drag of break-marks of about 2 to 3 metres showing that the motor vehicle from Manzini direction was traveling at a high speed.

[9] The last witness for the Plaintiff was PW3 Veli Lucky Mamba who was one of the motorist in that stretch of road coming from Manzini to Mbabane town. He testified that the Defendant's security van was traveling on the fast lane going to Mbabane town. He testified that this security van was traveling fast and when the other vehicle turned from Mbabane town the security van bumped on him. He then heard the sound of brakes and there was a loud crash. He saw Sandile (the Plaintiff) and he went to him because he

knew him on order to offer him assistance. Thereafter he gave the police a report of what he witnessed.

[10] The 1<sup>st</sup> Defendant Alfred Madonsela gave evidence stating his version of events leading to the accident. He testified that he was driving this cash security van from Bhunya to Mbabane town. He testified that the robots had turned green at the Hospital robots when he saw a motor vehicle coming slowly from Mbabane town towards the hospital. He thought that the motor vehicle was stopping for him. He drove fast towards town and they collided with each other. He thought that the other motor vehicle would stop. He testified that he was not traveling fast.

[11] DW1 was closely cross-examined by *Mr. Mlangeni* for the Plaintiff.

[12] In arguments before me it was contended for the Plaintiff that the defence case is based on thin ice as the Defendant's case has not been corroborated unlike the Plaintiffs case which was overwhelming. On the other hand *Mr. Madau* for the Defendant contended that the lack of corroboration in the Defendant's case is not fatal as the court ought to consider the credibility of the witnesses before it.

[13] It appears to me after weighing the two versions of the parties that *Mr. Mlangeni* for the Plaintiff is correct in his submissions that the evidence of the Plaintiff is overwhelming in the circumstances of this case. It is clear on the evidence adduced that the Defendant was traveling at an excessive speed in the circumstances and he miscalculated as he ignored the robots which had given way to the motor vehicle driven by the Plaintiff. All the witnesses for the Plaintiff gave pertinent testimonies to this effect. Clearly, the evidence of the Defendant cannot gainsay the sheer weight of the Plaintiffs

testimony.

[14] In the result, for the afore-going reasons I find in favour of the Plaintiff in that judgment is granted in terms of prayer 1, 2 and 3 of the Particulars of Claim.

**S.B. MAPHALALA**

**JUDGE**