



IN THE HIGH COURT OF SWAZILAND
JUDGMENT

Case No. 1745/2011

MAURICE GUMEDE

PLAINTIFF

And

THE ARMY COMMANDER

1ST DEFENDANT

MBUSO ABRAHAM SHLONGONYANE

2ND DEFENDANT

THE ATTORNEY GENERAL

3RD DEFENDANT

Neutral citation: *Maurice Gumede v The Army Commander and The Attorney
General (1745/2011)*

Coram: S. A. NKOSI J.

Heard: 26/01/16, 27/01/16, 10/02/16, 07/04/16, 28/04/16, 05/07/16

Delivered: 10/02/17

HECTARS

JUDGMENT

- [1] In this matter the Plaintiff has come to court to seek the delictual remedy of damages. The Plaintiff's claim against the defendant is for a sum of money as damages arising out of a motor vehicle accident for costs of repairs of the motor vehicle incurred by the Plaintiff after the accident. This is an action based on delictual liability of *restitutio in intergrum*.
- [2] The facts of the matter are rather curious, not only because of the manner in which incident occurred, but by the fact that the Plaintiff claims that he was driving on the Manzini/Mbabane Highway, having entered the Highway from Nkoseluhlazana Street in Manzini. The accident complained of by Plaintiff occurred on the busy stretch of the Highway (i.e. from Riverstone to Nazarene) just before the busy Nazarene/Fairview junction. It is common to all parties that this is one of the busiest intersections on the MR3 Highway and is fraught with motor vehicle accidents of the nature of accidents that we are dealing with in *casu*.
- [3] It transpires from the evidence that the Plaintiff was driving his motor vehicle in the direction of Mbabane. He maintains that when he had crossed the robots (traffic lights) at the Riverstone Shopping Centre he then proceeded towards the traffic lights at the infamous Nazarene junction, which is a major junction leading into Manzini and the built-up areas of South and Northern Manzini i.e. Fairview on the one hand and Zakhele/Ngwane Park on the other hand.
- [4] He maintains that as he was heading towards the robots at the Nazarene junction, whilst travelling towards said junction, a red motor vehicle being a red Toyota Sprinter ZDM 102 GP was hit by the 1st Defendant's truck being

driven by the 2nd Defendant. It transpires from the evidence that this was a big military carrier registered as S 544 Token No. M2000. Having collided with said military vehicle the red Toyota Sprinter (3rd party vehicle), the Plaintiff alleges, crossed over the highway barrier line and hit his vehicle which at the particular moment was travelling on the left hand lane of the roadway leading up to the Nazarene junction from Manzini city centre.

- [5] Further evidence given by the Plaintiff is that upon the collision of his vehicle with that of the 3rd party, he stopped his vehicle, exited and went to the assistance of the driver and passengers of the 3rd party vehicle. Upon reaching the vehicle he assisted the occupants of the 3rd party vehicle some of whom were injured as a result of the collision between the 1st Defendant's vehicle, his vehicle and theirs. At that point it became evident to him that the driver and occupants of the 3rd party vehicle lamented the fact that the 2nd Defendant's motor vehicle being an army truck had deliberately hit their vehicle in such a way that it had crossed over the Highway barrier and impacted on Plaintiff's motor vehicle.
- [6] The Plaintiff's evidence is that he then saw the 1st Defendant's vehicle which had been parked just before a prominent filling station towards the entrance to Manzini City called Tinkers which is situated just before the Total Filling Station. It was then that he awaited the traffic police who had inevitably been alerted about the accident.
- [7] Further evidence from the Plaintiff is that when the traffic officers came the scene of the accident, the driver of the 3rd party vehicle repeated his assertion that he was driving towards the Nazarene junction from Ka-Khoza towards

Manzini when an altercation took place as between himself and the 2nd Defendant who was at that time driving the truck which belongs to the 1st Defendant. Thus altercation, it is alleged, was the result of bad driving between the 2nd Defendant and the driver of the 3rd party vehicle. Prior to reaching the Nazarene traffic lights from the Ka-Khoza direction. That this altercation led to the accident is in no doubt as will be seen later from the evidence of the 2nd Defendant.

[8] The Plaintiff's evidence is that as a result of this collision he suffered damages as alleged in paragraph 10 of the particulars of claim which appears at page 5 of the Book of Pleadings. The Plaintiff's claim is also supported by the attached quotations for repairs to his vehicle at pages 10-11 of the Books of Pleadings.

[9] The Plaintiff further claims that his evidence is also corroborated by the evidence of the police investigator Constable Ncedo Ndlangamandla conclusions are to be found in the Police Report at page 8 of the Book of Pleadings and page 2 of the Bundle of Discovered Documents. From the investigation report, the evidence shows that the driver of motor vehicle S 544 was the cause of the accident in that he drove from the left lane to the right lane without satisfying himself if it was clear for him to do so. The driver repeated changing lanes from the right to the left and finally came back to the right for the second time knocking motor vehicle ZDM 102 GP that was driven off the fast lane, failed to avoid an accident as a responsible driver would have done and he was charged with reckless driving. A sketch plan was also presented as evidence of the scene of accident.

- [10] It is unfortunate that the investigating officer is no longer employed by the police force. It proved difficult to obtain his attendance. However, both counsel accepted that the police report was that which was compiled by the investigating officer and used in the subsequent criminal trial. The Plaintiff did hand in the police report and referred to the report in his evidence. The defence did not challenge the inclusion of the report as part of the Plaintiff's evidence nor was there any objection to the Court taking judicial notice of the report.
- [11] In order for the Court to ascertain the resultant facts emanating from the report it sought the docket from the police. Given that the 2nd Defendant has been charged with the offence of reckless driving the Court also sought the record of proceedings in order to have a complete picture of what had occurred after the accident.
- [12] When the statements of the various witnesses are examined it becomes clear that the reason the police determined at paragraph 3 of the report that:

“Investigation revealed that the driver of motor vehicle S 544 was the cause of the accident in that he drove from the left lane to the right lane without satisfying himself if it was clear for him to do so. The driver repeated changing the lane again from the right to the left and finally came back to the right for the second time knocking motor vehicle ZDM 102 GP that was driven on the passing lane, failed to avoid an accident as a reasonable driver would have done and he was charged for reckless driving. He appeared before the Manzini Magistrate Court on the 28th July

2010 where he was remanded out of custody until the 11th August 2010.”

was due partly to statements of witness which appear in the police docket.

[13] As regards the Court record from the Magistrate’s Court, this was not presented as it could not be traced. However, given the evidence as regards the criminal charge (against 2nd Defendant) of negligent driving the facts pertaining thereto are pretty straight forward. The end result is that it is common cause that the 2nd Defendant pleaded guilty to the charge and was accordingly punished for the transgression.

[14] Given the above evidence the 2nd Defendant was called by the defence and he gave his own testimony on what occurred.

[15] The 2nd Defendant alleges that he was driving the army truck from the direction of the Ka-Khoza towards the intersection at the Nazarene. When he approached the traffic lights he was on the right hand lane (fast lane) heading into Manzini City. He recalls that on his left side a blue motor vehicle as they waited for the traffic lights to turn green in order to proceed. On his right hand side was a compulsory lane diverting traffic towards Zakhele. On this compulsory lane was a red Toyota Corolla Sprinter (the 3rd party motor vehicle.) The 2nd Defendant states that when the traffic lights turned green the 3rd party vehicle suddenly drove from the compulsory lane onto his lane. At this point he states that he drove onto the left lane.

[16] At this stage of his evidence the 2nd Defendant became uncertain and confused as to how the events played out leading to the collision between his vehicle and the 3rd party vehicle. What is apparent is that upon inquiry by myself he could not explain how his vehicle had impacted on the 3rd party

vehicle with the truck's tail gate so hard as to launch it across the highway barrier and collide with the Plaintiff's car. During questioning the 2nd Defendant admitted that he was on the slow lane (left lane) but had crossed over onto the right (fast) lane when he collided with the 3rd party motor vehicle hitting it with the tail gate of the army truck.

[17] What is clear cut from the 2nd Defendant's evidence is that he was driving at a fast speed. He admits that when he collided with the 3rd party motor vehicle he had somewhat accelerated his vehicle. The speed limit on that stretch of roadway, it is common cause is 40 km per hour. The nature of the impact on the 3rd party motor vehicle was unmistakably very forceful so as to launch the 3rd party motor vehicle across the barrier line past the right hand lane and impact on Plaintiff's motor vehicle.

[18] From the evidence this Court has found it is impossible to believe the story presented by the 2nd Defendant and finds that the 2nd Defendant (thus vicariously the 1st Defendant) was wholly to blame for the accident and as a result the Plaintiff has proven his case. Judgement is accordingly granted against the defendants as follows:

- 1. Payment of the sum of E120,592-20**
- 2. Interest thereon calculated at the rate of 9% from date of issue of summons to final payment.**
- 3. Costs of suit.**
- 4. Further and/or alternative relief.**

S.A NKOSI J

JUDGE OF THE HIGH COURT

FOR THE PLAINTIFF : M.S DLAMINI LEGAL

FOR THE DEFENDANT : THE ATTORNEY GENERAL