

IN THE HIGH COURT OF SWAZILAND

JUDGMENT

HELD AT MBABANE

Case No. 990/21

In the matter between:

NCAMISO LINDSAY MTHUPHA

PLAINTIFF

AND

SINCEPHETELO MOTOR VEHICLE

ACCIDENT FUND

DEFENDANT

Neutral Citation: Ncamiso Lindsay Mthuba vs Sincephetelo
Motor vehicle Accident Fund (990/21) [2023]
SZHC 237(24th August 2023)

Coram : J.S Magagula
Date Delivered : 09/08/23
Delivered : .24/08/23

Summary: *Civil law; claim in respect of a motor vehicle accident; section 11 (5) of the Motor Vehicle's Accidents Act, 1991 (As amended) interpreted.*

[1] By summons sued out of this court on the 11th March 2021 the Plaintiff seeks against the Defendant, an order for;

1.1 Payment of the sum of E1500 000-00

1.2 Interest thereon at the rate of 9% per annum calculated from the date of issue of summons to date of final judgement.

1.3 Costs of suit.

[2] The facts of the case are not in dispute. On the 23rd June 2018 a motor vehicle driven by one Zweli Lukhele, knocked an electric pole and overturned twice. The plaintiff was one of the passengers in the motor vehicle at the time and he was not a paying passenger. He was not therefore being conveyed for reward.

[3] Members of the Royal Eswatini Police Service attended to the scene of accident. They prepared a report of the accident in which they conclude that the driver of the motor vehicle, Zweli Lukhele, was negligent in driving the motor vehicle and contributed to the accident.

[4] The plaintiff has accordingly filed a compensation claim with the Defendant in the sum stated. In turn the Defendant offered the Plaintiff the sum of E44 414.70 (Forty - Four Thousand Four Hundred and Fourteen Emalangeni and Seventy Cents).

- [5] In offering this amount the Defendant maintains that in terms of Section 11 (5) of the Sincephetelo Motor Vehicle Accidents Act, 1991 (as amended), the Plaintiff's claim is limited to an amount of E50-000-00. Defendant is therefore offering this amount less the money already spent in rehabilitating the Plaintiff. The Plaintiff claims that his claim does not fall under the category of claims limited to E50 000-00 and that the defendant is wrongly interpreting the relevant provisions of the Act.
- [6] Limitations of liability of the Defendant for compensation in respect of motor vehicle accidents are governed by Section 11 of the Act. Section 11 (1) places the overall limit for liability of the Defendants in respect of any claim resulting from a motor vehicle accident at E1Million. This is the maximum sum that any claimant can get. Plaintiff's claim of E1.5 Million falls outside this bracket and the Defendant has no authority to pay the compensation claimed.
- [7] Section 11 (4) and (5) deal with claims of persons who were injured or died whilst being conveyed as passengers in the motor vehicle which caused or is responsible for the accident. This is where the claimant was a passenger in the motor vehicle that was negligently driven and caused the accident.
- [8] Subsection (4) deals with compensation for people injured who are passengers in the vehicle responsible for the accident and being conveyed for;

a) Reward.

b) In the cause of the business of the owner or driver of that motor vehicle;

c) In the cause of employment of the owner or driver of that motor vehicle.

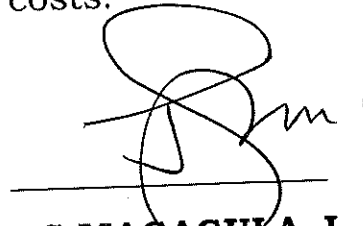
Liability of the Defendant in respect of these categories is limited to E100 000-00 for each claimant. The Plaintiff does not fall in any of the above categories and cannot therefore claim compensation under any of them.

- [9] Subsection (5) deals with claims by persons who are passengers in the motor vehicle responsible for the accident, but who do not fall under any of the categories stipulated in subsection (4). The limitation of liability of the Defendant in respect of such claimants is E50,000-00 for each claimant. I have already found that the Plaintiff does not fall under any of the categories listed in subsection (4). The Plaintiff therefore falls in the category stated in subsection (5) and can only be awarded compensation under that subsection.
- [10] The Plaintiff was offered compensation in terms of section 11 (5) of the Act. The offer finds support under the Act and it is therefore correct. For the foregoing reasons it is a finding of this court that Plaintiff's claim must fail and the following order is therefore issued:

10.1 To the extent that it exceeds the amount of
E50 000-00, Plaintiff's claim is dismissed.

10.2 Defendat's liability is limited to the amount
tendered in its letter of offer.

10.3 No order for costs.

A handwritten signature in black ink, appearing to be 'J.S. Magagula J', written over a horizontal line.

J.S MAGAGULA J
JUDGE OF THE HIGH COURT

For the Plaintiff : **M. Dlamini**

For the Defendant : **L. Howe**