

IN THE HIGH COURT OF SWAZILAND

CIVIL CASE NO:657/95

In the matter between:

BOY ROY JOHNSTON	PLAINTIFF
AND THE MOTOR VEHICLE FUND	DEFENDANT
CORAM	: MATSEBULA J
FOR THE PLAINTIFF	: MR. M. MAVUSO
FOR THE DEFENDANT	: MR H. CURRIE

JUDGMENT

17/09/99

By summons issued on the 6th April 1995 Plaintiff sued Defendant for the following relief:

- (a) Payment of the sum of E5 200.00 for loss of earnings to date;
- (b) Payment of the sum of E109.35 for medical expenses incurred to date;
- (c) Payment of the sum of E15 000.00 for future medical expenses;
- (d) Payment of the sum of E157 000.00 for future loss of earnings;
- (e) Interest on each of amount stated from (a) to (d) at the rate of 9% per annum tempore morae;
- (f) Payment of the sum of E25 000.00 for general damages;
- (g) Costs of suit;
- (h) Further and/or alternative relief.

On the 13th September 1995 Defendant gave notice of intention to defend and requested for further particulars that were duly furnished. Defendant filed its plea. For the purpose

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of this judgment, I do not propose to deal with the pleadings by the parties in any greater details and will confine myself to the evidence that was subsequently given at the hearing of the matter by the respective counsel, and the submissions. For the last mentioned, the Court would like to thank both counsel for their invaluable assistance.

It is necessary also to mention the minutes of the pre-trial conference held by the respective counsel on the 21st July 1995. For the purpose of this judgment those minutes will be treated as forming part of my judgment.

In matters such as the present one, the onus rests on the Plaintiff to prove its case on a balance of probabilities. The Plaintiff gave evidence and according to him this case was a hit and run of a motorist. He does, however, say the driver of the motor vehicle which hit him alighted from his motor vehicle and examined the Plaintiff to see whether he was still alive or not and also sought certain documents for the purposes of identifying the Plaintiff. Mr. Madau who was the driver of the insured motor vehicle contradicts this evidence. Infact, the evidence of the Plaintiff is so unlikely as to be incredible. In one breath he says after he had been hit by the motor vehicle he became unconscious and only gained consciousness when he was in hospital. What he says about the search and what the people who searched him would have said must be some hearsay or conjecture on his part. The Plaintiff also contradicts the evidence of the police officer that stated that the accident occurred on the left-hand side of the road judging by some broken pieces of the indicator glasses. This is of course denied by Mr. Madau the driver of the insured motor vehicle. Mr. Madau states that his motor vehicle has bulldozers which protect the hand lamps and indicator lamps and that his motor vehicle never

suffered damage on these parts.

Mr. Mavuso for the Plaintiff urged this Court to accept the evidence of the police officer so far as to where the point of impact was. Unfortunately, this diametrically contradicts the evidence of the Plaintiff who stated that the accident was on the right-hand side of the road as one proceeds towards Manzini. Mr. Mavuso said the Court should accept that the Plaintiff having been traumatized by the impact could have made an understandable mistake.

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Mr. Currie on the other hand submitted that even if there were pieces of yellow glasses the possibility that these could have come from other previous motor vehicle accidents cannot be ruled out. The onus being on the Plaintiff, I find that he failed to discharge the onus resting on him. He had gone so far as to contradict the very police officer's evidence on whose evidence Mr. Mavuso has asked the Court to rely on in favour of the Plaintiff.

In the result, I dismiss the Plaintiff's claim with costs.

J. M. MATSEBULA

JUDGE

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