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IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO.93/92

In the matter between:

MLONDI MPUNGOSE

Plaintiff

and

JOHN McBRIDE

Defendant

C O R A M                   : DUNN J.  
FOR THE PLAINTIFF       : MR C. NTIWANE  
FOR THE DEFENDANT       : MR H. CURRIE

JUDGMENT

11th June 1993

A collision occurred along Gilfillan street in the evening of the 29th June 1991 between the plaintiff's motor vehicle driven by Njabulo Zwane and a vehicle driven by the defendant. The costs of the reasonable and necessary repairs to the plaintiff's motor vehicle amounted to E9,846.78 and those to the defendant's motor vehicle amounted to E906.00. The plaintiff alleges that the collision was due to the negligence of the defendant and has particularised such negligence as follows -

1. the defendant made a u-turn on the road in the face of on-coming traffic and/or
2. changed direction and entered his wrong lane when it was not safe to do so and/or
3. failed to apply his brakes timeously or at all and/or
4. failed to avoid the accident when by the exercise of reasonable care he could and should have and/or

5. failed to keep a proper look-out and/or
6. drove his motor vehicle without due and attention and without regard for other road users.

The plaintiff claims payment of the costs of the repairs to his motor vehicles with interest and costs.

The defendant denies liability and has filed a counter-claim for payment of the costs of repair of his motor vehicle alleging that Njabulo Zwane was negligent in one or more of the following respects -

- (a) he failed to keep a proper look-out
- (b) he drove at an excessive speed in the circumstances
- (c) he failed to apply his brakes timeously or at all.

When the matter was called before me I was only asked to deal with the question of liability. The onus rests on a party in a civil case, to prove his claim on a balance of probabilities. The parties in this case bear that onus with regard to their respective claims.

Zwane's version of how the collision occurred is that he was travelling along Gilfillan Street from the town centre, towards Sandla township. He was travelling at a speed of between 60 and 70 kph. He came over a blind rise and saw a motor vehicle which was travelling in the opposite direction. According to Zwane the other vehicle was approximately 20m away when he first saw it. When the

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vehicle was 5 to 7 m ahead of him it suddenly swerved onto his lane in the process of making a u-turn. Zwane told the court that he applied his brakes but could not avoid the collision.

The defendant's version is that he entered Gilfillan street from the north along Muir Street and turned left towards the town centre. He travelled a short distance from the Muir street intersection and decided to make a u-turn as it would have been quicker to get to his destination, the Mall, by re-entering Muir street and travelling via Sifundzani Primary School. He told the court that he slowed down and pulled over to his left. He switched on his indicator showing his intention to turn to the right; satisfied himself that there was no traffic approaching from either direction and proceeded to make a u-turn. As he was about to complete the u-turn, he heard the screeching of tyres and a motor vehicle hit into the middle of the left side of the light delivery vehicle he was driving. He told the court that there was a blind rise approximately 100 m, ahead of him, from the point where he pulled over to the left. He maintained that he did not see any vehicle lights in the direction of the blind rise at the time he started to make the u-turn.

A police officer who attended the scene of the collision gave evidence on behalf of the defendant. The point of impact which is not in dispute is shown as being close to the left edge of the road as one faces Sandla township. The police officer confirmed that there was a blind rise in the direction of the town centre. He did not, however, measure the distance between the blind rise and the point of impact. The officer prepared a sketch plan which he handed into court as part of his evidence. The sketch plan reflects skid marks, caused by the plaintiff's vehicle, extending a distance of 22 paces from the point of impact towards the direction of the town centre.

Zwane had serious difficulty in reconciling his evidence that the defendant's motor vehicle suddenly swerved onto his lane, with the evidence of the length of the skid marks caused by his (Zwane) vehicle. The length of the skid marks suggests that Zwane saw the defendant's motor vehicle at a greater distance than the 5 to 7 m he testified to. This tends to cast some doubt on the truth of his evidence that he was travelling at between 60 and 70 kph.

A driver who intends executing a u-turn is under a duty to exercise the greatest care when doing so. He should ensure that he proceeds to execute such a turn without endangering either approaching or following traffic. See **Cooper and Bamford SOUTH AFRICAN MOTOR LAW 532 and 545**. The defendant has given evidence of how he made the u-turn. This evidence has not been seriously challenged or shaken in any material respect and I can find no reason for rejecting it. According to this evidence the road was clear of traffic following the defendant. There was no approaching traffic for at least 100 m ahead of the plaintiff. Much play was made on behalf of the plaintiff of an alleged admission by the defendant to the plaintiff, at the scene, that the collision had been caused by the defendant's negligence. The alleged admission does not, however, form part of the pleadings and arose for the first time when the defendant was cross-examined. The defendant denied making any such admission.

The defendant has not been proved to have been negligent and to have caused the collision as particularised in the summons.

Turning to the counter-claim, the defendant has not led any evidence on which the court can make a finding on the negligence as particularised. The court was asked to

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conclude that the plaintiff was travelling at an excessive speed. No formal evidence was, however, led in that regard. The question of the distance from the blind rise to the point of impact; the force of the impact and the length of the skid marks should have been properly canvassed as the basis for the ascertainment of the speed at which the plaintiff's vehicle was travelling. These are matters on which a court should be slow to draw conclusions without careful and preferably expert evidence. See Appendix F in SOUTH AFRICAN MOTOR LAW supra with regard to the calculation of vehicle stopping distances.

The defendant has in my view equally failed to establish negligence, as particularised, on the part of the plaintiff.

In my view this matter would have been better left at the point where the crown abandoned the prosecution of the defendant (as the accused) on a charge of negligent driving in the Magistrate's court. (The record of the proceedings in the Magistrate's court in that case was exhibited in these proceedings).

I was not addressed on the question of costs. I accordingly make no order as to costs.

  
B. DUNN  
JUDGE