



IN THE HIGH COURT OF SWAZILAND

CIV. CASE NO:624/93

In the matter between:-

CARGO CARRIERS (SWAZILAND) (PTY) LIMITED Plaintiff

and

ANDREW E. BROWN t/a BROWN'S GARAGE Defendant

CORAM : DUNN A.C.J.

FOR PLAINTIFF : MR. FLYNN

FOR DEFENDANT : MR. FINE

JUDGEMENT

14TH JULY 1995

The plaintiff in this action seeks judgement against the defendant for payment of the sum of E18 928.00 together with interest and costs.

The plaintiff's claim arises from a collision between a truck belonging to the plaintiff and a light delivery motor vehicle belonging to the defendant. It is

the plaintiff that the collision was caused by the negligence of the driver of the defendant's vehicle, who was acting within the course and scope of his employment with the defendant. The parties are agreed on the quantum of damages claimed and the case is before the court for determination of the issue of liability.

The plaintiff company is involved in the transport business. It is engaged, on a fairly large scale, in the transportation of sugar cane to the two sugar mills, Mhlume and Simunye, in eastern Swaziland. The sugar cane is transported in trucks which pull up to two trailers at a time. On the 23rd July 1991 one such truck, loaded with sugar can, was travelling along the Maphiveni/Mhlume main road in the direction of Mhlume. The truck was being driven by Andreas Dlamini. Dlamini told the court that he was travelling at a speed of 60 kph, that being the maximum speed at which the plaintiff's trucks were to be driven. It is not in issue that all the plaintiff's trucks are fitted with a tachograph from which details of the speed travelled by each truck are gathered and monitored on a daily basis. It was Dlamini's evidence that he had to cross a bridge some distance from the entrance to Tambankulu Estates. According to Dlamini the road descends fairly gently to the bridge and then rises fairly steeply. Dlamini told the court that when he approached the bridge he noticed another of the plaintiff's trucks approaching from the opposite direction. The truck was empty and was moving very slowly to enable Dlamini to cross the bridge. Dlamini explained that the bridge was not wide enough to enable two of the plaintiff's trucks, travelling in different directions, to

cross at the same time. The plaintiff had according to Dlamini, given instructions to all drivers that empty trucks should always yield to loaded trucks when approaching a bridge. David Ndabeni who was the driver of the approaching truck confirmed having slowed down in order to enable Dlamini to cross the bridge, in accordance with the directive issued by the plaintiff.

Dlamini continued to state that as he climbed the incline and as he was about to complete passing the other truck, a light delivery van suddenly appeared from behind that truck and came onto his lane. The light delivery vehicle swerved to its right as though it was in the process of negotiating a "U" turn in Dlamini's lane. Dlamini told the court that he attempted to apply his brakes but could not avoid colliding with the light delivery vehicle along its left hand side. Dlamini told the court that he could not swerve to either side to avoid the collision because of the embankments along that section of the road. Dlamini's truck pushed the light delivery vehicle across the road to the embankment on the right where the truck overturned, with its two trailers lying across the road. It is common cause that the collision occurred at some time between 12.30 and 12.40 p.m. The weather was clear and the tarred road surface was dry.

The driver of the other truck Ndabeni told the court that he started reducing his speed at a point about 200 m from the bridge which he saw Dlamini approaching. Ndabeni had been aware of a light delivery van that had been following him at a distance. He told the court that he allowed Dlamini's truck to cross the bridge and that when the two trucks had almost passed each other

delivery vehicle started to overtake his (Ndabeni) vehicle. Ndabeni confirmed Dlamini's evidence that once the light delivery vehicle entered Dlamini's, lane it swerved to the right as though it was negotiating a 'U' turn. It was at that stage that according to Ndabeni, the collision occurred.

Both Dlamini and Ndabeni denied under cross examination that Ndabeni's truck had come to a sudden halt in order to enable Dlamini's vehicle to cross the bridge. Ndabeni maintained under cross-examination that the light delivery vehicle had been travelling at a high speed. He replied that he had first seen the vehicle when it was about 200 m behind him.

Peter Hughes, a Branch Manager of the plaintiff gave evidence of the tachographs that are fitted to the plaintiff's trucks and in particular the one which was fitted to Dlamini's truck on the day of the collision. It was his unchallenged evidence that the highest speed recorded by Dlamini's truck at about the time of the accident never exceeded 70 kph. Hughes also took photographs at the scene of the collision. The photographs which were handed in as part of the evidence show the position in which the plaintiff's truck and the light delivery vehicle ended up. The embankment on either side of the road is shown in the photographs. Some of the photographs, exhibits A3, A4 and A5 in particular show vehicle skid marks on the road surface. Good and clear as the photographs may be, very little, if anything, appears to have been done to link, in an acceptable manner, the skid marks to the vehicles in the photographs. A distinction can be drawn from skid marks made by a vehicle such as the

light delivery vehicle and those made by a truck with double wheels such as that of the plaintiff. The photographs, however, show some skid marks which Mr. Hughes could not explain. They do not appear to have been caused by a truck but cannot be said to have been caused by the defendant's vehicle. I am reluctant, in the circumstances, to accept the conclusions drawn by Hughes from the photographs of the skid marks.

The defendant's driver, Simon Mashaba, who for some unexplained reason is described as Michael Sifundza in the particulars of claim told the court that he first saw Ndabeni's truck which was travelling in the same direction as he (Mashaba) was, when it was about 120 m ahead of him. He told the court that he was travelling at a speed of about 60 kph which was the speed which Ndabeni told the court he (Ndabeni) was travelling at. Mashaba then says he caught up with the truck and whilst behind it, he saw another truck loaded with sugar cane travelling in the opposite direction. The truck ahead of him, which was empty, suddenly applied its brakes and came to a halt. Mashaba estimated that the distance between his vehicle and the truck at that stage was about the width of the court room (about 12 paces). He applied his brakes and realised he would not be able to avoid hitting into the back of the truck. He swerved sharply to the right and his vehicle skidded over some potholes into the lane of the oncoming truck. Mashaba stated that he was knocked unconscious in the ensuing collision.

Mashaba was asked, under cross-examination, as to when he had applied his brakes. He replied that he had done

so when he saw the brake lights of the truck ahead of him. He explained that he realised at that stage that he would go under the back of the truck if he did not apply his brakes.

Luke Mkhonta gave evidence on behalf of the defendant. The point which was sought to be confirmed by Mkhonta's evidence was that the empty truck ahead of Mashaba had suddenly stopped in the roadway.

There can be no doubt whatsoever as to the truth of the evidence of the two truck drivers Dlamini and Ndabeni. The two trucks were not travelling at an excessive speed as contended by the defendant. The empty truck had two trailers and could not have been brought to a sudden stop. It is quite clear that all Ndabeni did was to gradually reduce his speed to enable Dlamini's truck to cross the bridge.

The position with Mashaba is that he must have been travelling at an excessive speed and ended up in a position in which he was unable to bring his vehicle under control, when he saw the brake lights of the truck which was in the process of reducing its speed. It seems to be quite clear that Mashaba had no intention of overtaking as he approached the empty truck. The swerve to the right was only made in an attempt to avoid hitting into the back of the truck. That situation was brought about by Mashaba's conduct in driving at a speed and keeping such a distance behind the empty truck that he was not able to bring his vehicle under control. It was Mashaba's evidence that he first saw the empty truck when it was 120 m away. Mashaba stated that he was travelling at 60 kph, which is the speed at which Ndabeni states he was travelling. Mashaba stated that he

caught up with the truck. This could only have happened because Mashaba was travelling at a speed in excess of 60 kph. The approximately twelve paces which he kept behind truck at the time he states he saw the truck's brake lights was clearly inadequate. This forms part of the negligence alleged by the plaintiff under paragraph 6 of the particulars of claim.

Every driver is under a duty to travel at a safe distance from a vehicle ahead of him. The following driver is under a duty to regulate his speed and the distance from the vehicle ahead of him so as to be able to avoid colliding with it should the vehicle ahead make a sudden stop. See Cooper and Bamford, **South African Motor Law** p 468 and the authorities there cited. Mashaba cannot in the circumstances of this case, claim that he was faced with a sudden emergency. The truck ahead did not stop, the brake lights came on in the process of it reducing its speed. Had Mashaba been keeping a proper look out and keeping at reasonable distance he would not have been forced to swerve to the right.

I find in favour of the plaintiff that the collision was caused by the sole negligence of the defendant's driver, Simon Mashaba.



B. DUNN

ACTING CHIEF JUSTICE