

1400. Mofaleng S

CIV/T/205/82

IN THE HIGH COURT OF LESOTHO

In the matter of :

LESOTHO NATIONAL BUS CORPORATION                      Plaintiff

v

LESOTHO POULTRY CO-OP SOCIETY                      Defendant

R U L I N G

Delivered by the Hon. Chief Justice, Mr. Justice  
T.S. Cotran on the 3rd day of May, 1983

-----

This is an application for an amendment to the declaration, made after the parties have held a pre-trial conference in terms of Rule 36 of the High Court Rules, and in fact after the case was ordered to be set down for a two day hearing. The application for an amendment was opposed on the general grounds that the nature of the requested amendments were items that the plaintiff was perfectly aware of at the date of the launching of the action.

The action is for the recovery of damages to one of the plaintiff's vehicles that was involved in an accident with one of the defendant's vehicle's.

The accident took place in June 1981 and the action was lodged in May 1982, almost a year later. In the declaration the plaintiff's claimed the cost of repairs of the vehicle after having sent it to a firm of panel beaters for inspection and an estimate for repairs. The estimate, which was given in August 1981, well before the summons was issued, was approximately M23,500. The plaintiff claimed that

/amount,

amount, interest at 6%, and costs.

The proposed amendment effects the original declaration in two ways :

1. apart from the payment of damages for cost of repairs a claim for loss of profits amounting to some M11,300, or alternatively the market value of the vehicle, viz, M35,000;
2. interest at 12% instead of 6%.

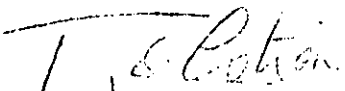
I need not deal with the question of interest as this is in the Court's discretion any way.

The Court's immediate reaction to main amendment in this last minute application is that in April 1983, almost two years after the accident, 18 months after the estimate, and one year after the summons, the plaintiffs should have been able to decide whether to have the vehicle repaired or to consider it a write off much earlier on in the pleadings.

Nevertheless I do not feel justified in refusing the amendment, although if the plaintiff is successful in full or in part, the trial Judge will have to take the delay into consideration both as to quantum of damages claimed, costs, and interest.

Amendment is allowed. But I award no costs to the applicant as I normally would have when an application is resisted. The costs of this application will be reserved and determined by the trial Judge who might think it proper that it ought to be refused.

I do however grant leave to defendant to file further pleadings on this issue or seek further particulars, and another pre-trial conference be held (or dispensed with by the parties) before the matter is set down for hearing again.

  
CHIEF JUSTICE  
3rd May 1983

For Plaintiff: Mr. Masoabi

For Defendant: Mr. Radebe