

IN THE HIGH COURT OF LESOTHO

In the appeal of:

JULIUS RATSIU

APPELLANT

V

R E X

RESPONDENT

J U D G M E N T

Delivered by the Hon. Mr. Justice M.P.
Mofokeng on the 21st day of June, 1983

The appellant was charged with contravening sec. 124(1) of the Road Traffic and Transport Order of 1970. He pleaded not guilty but was found guilty by a magistrate of 3rd class jurisdiction. (The matter was subsequently reviewed by a Resident Magistrate). The appellant was sentenced to pay a fine of M60.00 or in default of payment undergo imprisonment for a period of six(6) months.

The allegation against him is that he drove recklessly or negligently as a result of which his motor vehicle collided with a tractor.

The appellant's defence at the trial Court was that the accident occurred as a result of a tyre burst of one of his wheels as he was about to overtake the said tractor.

He is corroborated by his passenger:

" I warned accused to beware of the tractor ahead of us. I felt that our van was shaking."

and

" Q: I put it to you that when he tried to overtake the tractor he got a tyre burst?"

A: I don't know but I noticed that when we got close to the tractor the car shook.

Q: Which means you don't deny accused's allegation as stated above?

A: I don't know.

Q: Could it be possible that the car shook because of a tyre burst?

A: Yes."

But despite this evidence the learned magistrate found as a "fact" that the appellant was not even "sure" whether the tyre burst occurred before the accident or not.

The crucial question for determination was: Was the appellant reckless or negligent as alleged? The Crown witness who was the appellant's passenger answers that question:

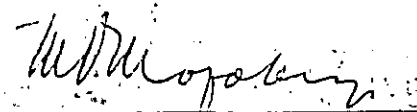
"Q: I take it from where you were seated you could be able to observe certain things - Did accused do all he could to avoid the collision?

A. Yes."

This version of the appellant was never contradicted by the Crown's evidence. At the close of the Crown's case there was no prima facie case against the appellant. For the Prosecutor to put it to the appellant that he was travelling at high speed meant absolutely nothing. Speed is measured in miles or kilometres/^{or} by electronic devices. proved to have been regularly serviced and must be operated by trained personnel specially trained.

I fully support Crown Counsel, Adv. Kabatsi,
by not supporting this appeal.

The appeal is upheld and the appellant refunded
his deposit.



J. U. D. G. E
21st June, 1983

For the Appellant : Adv. Sooknanan

For the Respondent : Adv. Kabatsi