

IN THE HIGH COURT OF LESOTHO

In the appeal of :

THABISO MDA . Appellant

v

R E X Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Mr. Justice B.K. Molai
on the 20th day of July, 1983.

I have already dismissed this appeal and intimated that my reasons for the decision would be filed later. These now follow

The appellant was charged and convicted before the magistrate court of T Y with contravention of section 124(1) read with sub-section (4) of the Road Traffic and Transport Order No. 15 of 1970 in that on 10th July, 1981, he wrongfully and unlawfully drove a motor vehicle E.1312 recklessly or negligently along the Maseru/Teyateyaneng public road in the district of Berea and as a result collided with another motor vehicle D 0347. A sentence of M60 or 5 months imprisonment in default of payment of the fine was imposed by the trial magistrate

The appellant appealed against his conviction on a number of grounds which could, however, be summed up in that the conviction was against the weight of evidence.

The evidence heard by the trial court disclosed that on the early morning of 10th July, 1981, the appellant was travelling in his car E 1312 along the Maseru/Teyateyaneng public road. He was going in the direction towards east from Maseru to Teyateyaneng. P.W.1 Moholanyane Matlosa, was at the same time driving the van D.0347 along the same public road in the direction from Teyateyaneng to Maseru.

P.W.1 testified that as he drove on the road he was travelling at the speed of between 60 Km and 70 Km an hour and on his correct side of the road, namely, the left side. After taking a curve next to Teyateyaneng bridge he noticed appellant's car which had just crossed the bridge about 80 yards ahead of him. The car was clearly running at a high speed and on the wrong side of the road i.e. on its right side. When he realised that P.W.1 moved his van to the extreme left and pulled it to a complete halt on the gravel portion of the road. He then noticed appellant's car first going to its left side and out of the tar mark of the road before returning to its right side and back into the road. It then came straight to where he had parked his van and plunged into the right portion of the van's bonnet. The two vehicles were damaged beyond repairs.

Appellant's version was that after crossing Teyateyaneng bridge, he was travelling in his correct side of the road at the speed of between 80 km and 90 km an hour when P.W.1's van appeared at a curve. As it appeared the van was cutting the curve. In an attempt to avoid a head-on collision, appellant swerved his car first to the extreme left and then to the right. In the process, and notwithstanding his attempt to avoid the accident, appellant's car skidded and collided with

P.W.1's van. The point of impact was more on P.W.1's lane but still in the middle of the road. It was not on P.W.1's extreme left side of the road as indicated on the sketch plan - Exh B.

P.W.1's evidence was corroborated by that of P.W.3, Phomolo Mosia, one of the passengers in the van. He testified that as they approached Teyateyaneng bridge, he too could notice appellant's car running in a zigzag on the road ahead of them. P.W.1 then stopped the van on the left side of road. Appellant's car, however, came and hit it where it had stopped.

P.W.5, Lepane Lethunya, was one of the passengers in appellant's car. He estimated the speed at which the appellant's car was travelling on the road at 100 km an hour. Shortly after they had crossed Teyateyaneng bridge, he could feel that appellant's car was not running normally. It suddenly careered out of the back into the road before colliding with P.W.1's van which was going in the opposite direction.

According to P.W.5, when it was hit, the van was still moving and had not stopped on the side of the road. This was, however, denied not only by P.W.1 and P.W.3 but also P.W.2, Kobo Mubane, who, at the time of the accident, was herding animals in the vicinity and actually saw that P.W.1's van had already stopped on the side of the road when it was hit by appellant's car which had left its correct side of the road.

P.W.4, Mr Onopo, was the traffic police officer who attended the scene of accident soon after the collision. He found the two vehicles which were involved in the accident still virtually stuck to each other on the left side of the

road as one drove in the direction towards Maseru.

The drivers and other occupants of the vehicles had already been taken to the hospital and were not available to show him the point of impact. Nevertheless, he could notice many pieces of broken glasses at the spot where the two vehicles were standing on the side of the road and he concluded that that was the point of impact.

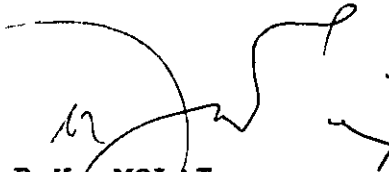
The witness proceeded to examine and pace out the scene of accident. He subsequently compiled the motor accident report - Exh B - according to the sketch place of which the road curve referred to above was running from South-east to North-west or vice versa.

It seems to me, therefore, that if when it appeared at the curve, it was cutting it, P.W.1's van could not, as suggested by appellant, have been travelling on the latter's lane of the road. Appellant's suggestion that the reason why he suddenly swerved his car to the extreme left was because P.W.1's van was cutting the curve was clearly unconvincing.

The trial magistrate considered the evidence as a whole and accepted as the truth the prosecution's story. In as much as it differed with that of the crown witnesses, Appellant's version was rejected as false. In my view the evidence was simply overwhelming against the Appellant and I could find nothing unreasonable in the conclusion reached by the trial magistrate.

From the evidence accepted by the trial court, an irresistable inference to be drawn is that the appellant was, at the material time, driving his vehicle in an excessive speed and on his wrong side of the road. That the appellant was not allowed to do - See sections 92(1) and 95 of the Road Traffic and Transport Order No. 15 of 1970 - and to that extent he was negligent. The result was that the appellant was unable to control his vehicle which collided with that of the complainant (P.W.1).

In the premises, I came to the conclusion that Appellant's contention that the conviction was against the weight of evidence could not be sustained and the appeal was accordingly dismissed.



B.K. MOLAI
JUDGE

20th July, 1983.

For Appellant : Mr. Khaue
For Crown : Miss Surtie