

CIV/T/427/86

CIV/T/551/86

IN THE HIGH COURT OF LESOTHO

In the Matter of :

MOOKHO MASILO ..... Plaintiff

and

LESOTHO NATIONAL INSURANCE COMPANY  
(PTY) Ltd..... 1st Defendant  
T. PAKALITHA ..... 2nd Defendant

LYDIA MOTAUNG ..... Plaintiff

and

LESOTHO NATIONAL INSURANCE COMPANY  
(PTY) Ltd..... Defendant

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai  
on the 28th day of February, 1990.

The parties have agreed on the consolidation of the two actions in which Plaintiffs sue defendants for damages.

The declarations to the summons have alleged that the Plaintiffs' husbands died in a collision between two vehicles viz. A1511 and D1026 driven by T. Pakalitha and Tebello Mofolo (now deceased), respectively. The drivers' negligent driving of the two vehicles which were, at the material time, insured by the Lesotho National Insurance Company, was the cause of the fatal accidents. As a result of the accidents the Plaintiffs suffered damages for

2/ which the .....

which the defendants were, in law, liable. Consequently the Plaintiffs sued the defendants for damages in the amounts claimed in the summons.

The defendants intimated their intentions to defend the actions. In their pleas to the declarations to the summons the defendants in CIV/T/427/86 denied that T. Pakalitha was, at the material time, driving vehicle A 1511. The accident could not, therefore, have occurred as a result of his negligent driving.

Likewise the defendant company in CIV/T/551/86 pleaded that the accident was not the result of the negligent driving of the driver of vehicle D 1026. In addition the defendant company raised a special plea of prescription in that the MV1 13 Claim Form was received at its offices more than two (2) years after the death of the deceased, and the summons was served or received on 6th August, 1986, "more than two years and 60 days after the date of the occurrence, as required by Section 16 of the Lesotho Motor Vehicle Insurance Order."

The defendants, therefore, denied that they were liable in damages to the Plaintiffs in the amounts claimed in the summonses or at all.

It is not really disputed that on 5th June, 1984 a collision occurred between vehicles D.1026 and A 1511 next to the village of Khubetsoana along the main North 1 public road here in Maseru.

What is disputed is the exact date in June 1984. According to the pleadings in CIV/T/427/86 the collision occurred on 5th June, 1984. This is, however, contrary to the declaration to the summons in CIV/T/551/86 according to which the collision occurred on 6th June, 1984.

Malefetsane Moeketsi testified as P.W.3 and told the court that on the day of the collision he and the driver of vehicle D1026 were returning from Ladybrand in the Republic of South Africa. According to his passport, he had crossed the boarder post on 5th June, 1984. He could not, however, produce the passport to support him in that regard.

T. Pakalitha, the second defendant in CIV/T/427/86 also testified as P.W.1 and told the court that on the day in question he he was travelling in vehicle A1511 which was involved in the collision. Although he no longer remembered the exact month in 1984, P.W.1 was positive that it was on the 6th of the month. The evidence of P.W.1 was, in a way, corroborated by that of Tper Mohale, the Traffic police officer who testified as P.W.2 and told the court that it was at about 6 p.m. on 6th June 1984 when he received a report following which he proceeded to the scene of accident at Khubetsoana where he found the two vehicles, D1026 and A1511 involved in a road accident.

I am inclined to accept P.W.2's evidence which is, in a way corroborated by that of P.W.1 that the accident occurred on 6th and not 5th June, 1984.

Be that as it may, it is common cause that Vehicle D1026 was at the material time, driven by Tebello Mofolo, the husband of the plaintiff in CIV/T/427/86. Although in her pleadings to the summons

4/ the plaintiff .....

the plaintiff in CIV/T/427/86 alleged that vehicle A1511 was driven by the second defendant, T. Pakalitha, that was inconsistent with the pleadings in CIV/T/551/86 and the evidence of the second defendant according to whom the vehicle was driven by Andries Motaung, the husband of the Plaintiff in the latter case (CIV/T/551/86).

It is significant that no evidence was adduced in support of the allegation of the Plaintiff in CIV/427/86 that the second defendant was, at the material time, the driver of vehicle A1511 nor was she present when the accident occurred. As it has already been stated the second defendant testified on oath and told the court that he was a passenger in vehicle A 1511 at the time of the accident in which the driver, Andries Motaung, was killed. In the absence of any evidence supporting the allegation of Plaintiff in CIV/T/427/86 that the second defendant was, at the time of the accident, the driver of vehicle A1511, I have no alternative but to find that the truth is in the undisputed evidence of the second defendant that the vehicle was driven by Andries Motaung and not himself.

Assuming the correctness of my finding that Andries Motaung and not the second defendant was, at the time of the accident, the driver of vehicle A1511, it stands to reason that the accident could not have been caused by the negligent driving of the second defendant, it necessarily follows that the claim of the plaintiff in CIV/T/427/86 cannot succeed.

Even if I were wrong and it is held that the second defendant was the driver of vehicle A1511 which was admittedly insured with the first defendant, it seems to me that in terms of the provisions of S.16 of the Motor Vehicle Insurance Order 1972 only the first and not the second defendant ought to have been sued in this proceedings. On that ground the claim against the second defendant in CIV/T/427/86 could not stand.

5/As it has been .....

As it has been stated, in his evidence P.W.3, Malefetsane Moeketsi, told the court that he was a passenger in vehicle D1026 which was being driven by the late Tebello Mofolo. When they were next to the village of Khubetsoana travelling in the direction from Maseru to T.Y. along the main North 1 public road he noticed a vehicle which was going in the opposite direction overtaking a coaster. In so doing that vehicle came into vehicle D1026's correct lane of the road. He was blinded by the headlights of that other vehicle and the next thing he found himself at Queen Elizabeth II hospital. He was positive that the accident had occurred on the left lane of the road as one travelled in the direction from Maseru to T.Y.

The evidence of T. Pakalitha who testified as P.W.1 was, however, slightly different. According to him he and Andries Motaung were, on the evening of the day in question, coming to Maseru from T.Y. He was a passenger in vehicle A1511 which was being driven by the late Motaung. As they passed next to the village of Khubetsoana along the main North 1 public road there was a number of vehicles going in the opposite direction. He then noticed one of those vehicles overtaking several vehicles. On his advice, Andries Motaung swerved outside the tarred surface and stopped on the left gravel portion of the road as one travelled in the direction towards Maseru. The vehicle which had been overtaking other vehicles going in the opposite direction came and collided with vehicle A1511 which was stationary on the gravel portion of the road. He and Motaung sustained injuries and had to be assisted out of their vehicle to Queen Elizabeth II hospital where he learned that the latter had passed away. As the other vehicle had collided with vehicle A1511 which was stationary on its correct side of the road P.W.1 contended, therefore, that the accident was the result of the negligent driving of that other vehicle.

6/ In his .....

In his testimony P.W.2, Tper Mohale, told the court that he was attached to the Traffic section of the Police force and stationed here in Maseru. As it has already been pointed out earlier, he testified that at about 6.p.m. on 6th June, 1984 he received a report following which he proceeded to a spot next to the village of Khubetsoana along the main North 1 public road where he found vehicles D 1026 and A 1511 involved in a collision. The drivers thereof had already been rushed to the hospital for medical attention.

He examined the scene of accident and took measurements. Both vehicles were badly damaged on their right front portions. vehicle D 1026 was in the middle of the road whilst vehicle A 1511 was off the road on the left side as one travelled in the direction from T.Y. to Maseru. In the course of his examination of the scene of accident P.W.2 noticed pieces of broken glasses, some oil and soil from the mudguards about 3 paces from the white centre line on the left lane of the road as one travelled in the direction from T.Y. to Maseru, thus indicating where the point of impact was. At the time of examination he wrote down notes and made a sketch plan on the basis of which he prepared motor vehicle accident report as per Exh A(Form LMP 29),

P.W.2 then proceeded to the hospital where he found Andries Motaung badly injured and unable to speak. The driver of vehicle D 1926 had already passed away. On the following day he met P.W.1 who took him to the scene of accident and confirmed the point of impact as described above.

It is significant that according to P.W.2 the point of impact was on the tarred surface of the road. He denied, therefore, P.W.1's story that the collision had occurred on the left gravel portion of the road as one travelled in the direction from T.Y. to Maseru. He likewise denied P.W.3's version that the collision had occurred on the

7/left lane .....

left lane of the road as one travelled in the direction from Maseru to T.Y.

Regard been had to the fact that broken peices of glass, some oil and soil from mudguards were found 3 paces from the white centre line on the left lane of the road as one travelled in the direction from T.Y. to Maseru, it seems to me reasonable to accept as the truth the evidence of P.W.2 that the point of impact is as he has described it. That being so, I find that P.W.1 and P.W.3 were not being honest with the court when they, respectively, testified that the collision had occurred on the left gravel port of the road as one travelled in the direction from T.Y. to Maseru and on the left lane of the road as one travelled in the direction from Maseru to T.Y.

Assuming the ~~correctness~~ of my finding that the collision occurred on the tarred surface of the left lane as one travelled in the direction from T.Y. to Maseru it is obvious that vehicle D. 1026 which was admittedly travelling in the direction from Maseru to T.Y. must have careered from its correct side of the road into the lane of vehicle A 1511. The driver of vehicle D 1026 ought to have kept to his correct side of the road and avoided crossing into the right side lane of the road particularly so as it is clear that vehicle A 1511 was at the time, approaching from the opposite direction. Failure to do so, rendered the driver of vehicle D 1026 negligent in his driving. He was, therefore, the cause of the fatal accidents.

As it has already been pointed out earlier, the defendant in CIV/T/551/86 raised the special plea of prescription. I have however, found on the evidence that the accident occurred on 6th June, 1984. In terms of the provisions of Motor Vehicle Insurance Order, 1972 section 13(2)(a), Plaintiff had two years i.e. until

8/ 6th June, .....

6th June, 1986 to lodge her claim for compensation against the defendant company. The relevant subsection reads:

"(2) (a). The right to claim compensation under subsection (1) from a registered company shall become prescribed upon the expiration of a period of two years as from the date upon which that claim arose:

Provided that prescription shall be suspended during the period of sixty days referred to in subsection (2) of section fourteen."

Section 14 of the Motor Vehicle Insurance Order, 1972

reads:

"14(1) A claim for compensation under section 13 shall be set out on the form prescribed by regulation in such manner as may be so prescribed and shall be accompanied by such medical report or reports as may be so prescribed, be sent by registered post or delivered by hand to the registered company at its registered office or local branch office, and the registered company shall, in the case of delivery by hand, at the time of delivery acknowledge receipt in writing.

(2) No such claim shall be enforceable by legal proceedings commenced by summons served on the registered company before the expiration of a period of sixty days from the date of which the claim was sent or delivered as the case may be, to the registered company as provided in subsection (1)."

It is common cause that on 3rd June, 1986 i.e. three (3) (3) days before the expiration of the period of two years referred to under S.13 (2) (a) of the Motor Vehicle Insurance Order, 1972 Plaintiff complied with the provisions of section 14(1) of the Order. In terms of the proviso to S.13 (2) (a) of the above mentioned order

9/ 1972 the .....



running of the prescription period was, therefore, suspended for sixty days during which Plaintiff could not, in accordance with the provisions of S.14(2) of the Motor Vehicle Insurance Order, 1972, commence, by a summons served on the defendant company, legal proceedings to enforce her claim for compensation.

In view of the fact that Plaintiff complied with the provisions of S.14(1) of the Motor Vehicle Insurance Order 1972 on 3rd June, 1986 and the running of the two years period referred to under S.13 (2)(a) of the Order was, therefore, suspended for sixty days, it must be accepted that when on 3rd August, 1986 the sixty days period of suspension expired the prescription time resumed running for the remaining three (3) days i.e. until 6th August, 1986. That being so, it must be accepted that when, on 6th August, 1988, Plaintiff admittedly issued and served summons on the the defendant company to enforce her claim for compensation, she was still within the prescription time i.e. the two years period referred to under S. 13(2)(a) of the Motor Vehicle Insurance Order, 1972 had not expired. The defendant company could not, therefore, be heard to say, in its special plea, that when she instituted legal proceedings, on 6th August, 1986, to enforce the claim for compensation, Plaintiff's right to do so had prescribed.

As regards the quantum of damages, it is worth noting that in an attempt to curtail the duration of this trial the parties have, on 8th April, 1987, held a pre-trial conference in which it was agreed, inter alia, that this court should, at this stage, determine only the question of negligence and not the quantum of damages. I have decided that the accident was caused by Tebello Mofolo's negligent driving of vehicle D 1026. That, in my view, should be sufficient to dispose of this matter.

10/ In the circumstances

In the circumstances, I find that the fatal accidents occurred as a result of the negligent driving of the driver of vehicle D 1026 and not the driver of vehicle A 1511.

B. K. MOLAI

JUDGE.

28th February, 1990.

For Plaintiff : Mr. Monaphathi  
For Defendant : Mr. Molyneaux.