

IN THE HIGH COURT OF LESOTHO

In the matter of :

MAHLALELE MONYAMANE

Plaintiff

vs

THE MINISTRY OF WORKS
THE ATTORNEY-GENERAL

1st Defendant
2nd Defendant

REASONS FOR JUDGMENT

Filed by the Hon. Mr. Justice M.L. Lehohla on
the 6th day of July, 1995

On 17th March, 1995 this Court entered judgment in favour of the plaintiff in the sum of M12 000-00 only; plus costs.

The following are the reasons for that judgment:

On 26th October, 1987 the plaintiff sued out of the office of the Registrar a summons against the defendants in terms whereof she claimed :

1. Payment of the sum of M12 000-00 being compensation in terms of Section 6(a) of the Workmen's Compensation Act No.12 of 1977;
2. Payment of the sum of M1 640-00 constituting funeral expenses in terms of Section 6(c) of the Workmen's Compensation Act No.12 of 1977;
3. Payment of the sum of M2 549-38 being additional compensation in terms of Section

27(1) of the said Act;

4. Alternatively, payment of the sum of M14 549-38 constituting compensation for loss of support under Common Law claimed by the plaintiff on her own behalf and on behalf of her four minor children with the deceased Ts'abalira S. Monyamane amounting to M1 640-00;
5. Costs of suit;
6. Further and/or alternative relief.

The summons was served on the Attorney-General's office on 11th February, 1988. The action was opposed.

The cause of action arose from the death of the deceased Ts'abalira Monyamane who died on 4th April, 1987 while under the employment of the defendants and during the course of his duty as a driver of a vehicle which, because of some mechanical defect known beforehand by the defendants through their agents who were the deceased's seniors and co-workers, went out of control, left the road and capsized with the result that the deceased sustained injuries to which he subsequently succumbed.

The unchallenged evidence of PW1 Mahlalele Monyamane was to the effect that the deceased was her husband. In terms of the marriage certificate "Exhibit A" theirs was a civil marriage entered into on 2nd December, 1979.

PW1 and the deceased had four minor children whose birth certificates were adopted collectively in this proceeding as "Exhibit B".

She indicated that the deceased died on 4th April 1987; further that as she is not working nobody finds her and her children in food and clothing. She used to look after the children while the deceased was at work at Roads Improvement Unit (RIU). The deceased had been working there since 1984 i.e. for three years.

PW1 didn't receive any pension or gratuity accrued if at all on her husband's death. Thus she has had no means of support since her husband's death. The deceased used to earn M300-00 per month as at the time of his death. When he died the deceased was actually on duty.

PW2 Lebohang Phooko testified that he was working at RIU Leribe in April 1987. This is the Unit station for which the deceased worked.

The deceased and he had gone to T.Y. to convey the Unit supervisor one Matseke whose home is in that area. The deceased was actually driving the motor vehicle bearing the Registration letter and numbers Y6769 on the day in question i.e. 4-4-87.

On the way back from TY to Hlotse Leribe, and while the vehicle was cruising at about 80 Km per hour and heading for a steady curve at St Monica's the deceased's vehicle came across two coasters moving in opposite direction to his. The coaster behind peeped into the deceased's side trying to overtake the first coaster. In an attempt to avoid a collision the deceased

ran his vehicle outside the road by swerving to his left and applying brakes gently. The coaster which had peeped into the deceased's side swerved back to its lane. But the deceased's vehicle which at the time was moving at moderate speed swerved from side to side. It overturned outside the road on left hand side.

Both occupants i.e. the deceased and PW2 sustained injuries and the deceased died on arrival at the Hlotse Government Hospital.

Although Mr. Putsoane for the defendants sought to question the propriety of the deceased conveying his supervisor to the latter's home after hours paragraph 7 of the plaintiff's declaration which alleges that the deceased was required to convey his supervisor to the latter's home is not denied.

Indeed PW2 testified in his evidence in chief that the deceased had intimated to him that the vehicle he was driving was faulty and its fault had been in existence for some time but had not been repaired.

The defence strongly contended that the accident wouldn't have occurred if the deceased hadn't been negligent by over-speeding. The Court had heard that at speeds above 60 Km per hour this vehicle tended to swerve out of control.

The evidence of PW3 HARRIS LINDIE MAQUTU was most

beneficial in clearing a number of doubts as to the roadworthiness of this vehicle and the standard of care maintained by Senior personnel at this particular Unit. Indeed he enjoyed the support of DW1 SIMON MPHUTHING that maintenance of proper standards of safety in vehicles were ignored by the Senior Personnel with the result that negligence simply thrived at great peril to junior members of staff whose business was just to say ditto to the selfish orders from above.

The evidence further shows that there was scant attention paid to provisions in the job card which if adhered to would go a long way towards reducing much of the sloppiness with which mechanics went about performing their duties.

For instance at page 24 of my notes is reflected the following :

"CC: By its design the job card form shows that you should fill the card when the vehicle comes in.....? You can fill it but the way we used to do it I would look at the time and go ahead with the job.

(The witness was shown the job card again)

By design of this job card you were to fill in everything you did at the time you did it because you have provision for work required (to be done) which means you fill that before working on the vehicle, also there is provision for work done which I put to you that you fill after doing work together with time and date.....? You can do it when you like but the way we did it we filled it afterwards.

I put it to you that your practice was being negligent for this form has slots showing what is to be done at relevant times.....? I would not say anything for that was the way we used to do it.

Meaning who by "we" in view of the fact that Maqutu showed he didn't.....? We were many for we would go as

far as Khubetsoana without having filled the job card before"

The above extract of evidence clearly shows that RIU was not consistent in the upkeep of standards designed to improve performance in the maintenance of vehicles assigned to its pool. DW1 consistently showed that despite the existence of procedures properly laid down for purposes of maintaining high standards of performing their duties mechanics used to do things their own way which was not in accordance with that laid down.

If DW1 was somewhat cagey and not forthright about the unsatisfactory state of affairs obtaining at RIU Leribe DW2 MOEKETSI MATSEPE was very frank and prepared to withhold nothing from the judicial gaze of the unwholesome practice that existed at RIU.

DW2 said he was employed as counterpart to an expatriate who was employed as Civil Supervisor responsible for road construction.

He is presently working as Civil Engineer in the Roads department - a promotion he earned on leaving RIU in September 1990. DW2 had joined Roads Department in 1980 and got attached to RIU in 1985.

On the day of the accident in 1987 he had occasion to instruct the deceased to convey him home to T.Y. The deceased was DW2's personal driver.

DW2 said he didn't know what the condition of the Ford Pick Up Y6769 was when he authorised the trip to T.Y. He knew the deceased to be a good driver. He usually felt safe in a vehicle driven by the deceased. He described the deceased as always cautious when driving. He further explained that the deceased was above middle aged and had family and children and referred to these as things the deceased would not just part with through carelessness.

He reiterated that the deceased was always open to him and struck him as a man who looked forward to the future with undoubtful optimism.

He stated that because of the way the deceased was conscientious of his duties and open to him the deceased would have informed him if there was any problem with the Pick Up. Thereupon this vehicle would have been taken by the deceased himself to the Workshop for purposes of putting right the fault that there might be.

PW3 who is a diesel mechanic told the Court that a week or two before the deceased's death he had occasion to be given a lift by the deceased from one place to the maintenance department of Roads. When they were about to reach the gate of the yard to that place the deceased reduced speed by gently applying brakes. But the vehicle went out of control taking a wrong direction instead of the one intended.

He said the vehicle was moving at very slow speed estimated by him to be around 50 Km per hour. He ascribed the manner in which the vehicle behaved to a fault in it. He asked the deceased to immediately take that vehicle to the Workshop and not to continue using it. He is certain that the deceased complied with this advice to take this vehicle for repairs. PW3 did not personally attend to this vehicle. Nor did he see it being repaired. He had however diagnosed the defect to have to do with worn out rack and pinion. His diagnosis was not physical though. He merely relied on his experience to make this diagnosis. He even made a requisition for the supply of the rack and pinion.

Suffice it to say even on the day of the accident the order for this essential requisition had not been supplied.

PW3 testified that before the deceased died he saw him after a few days of his advice to him driving this vehicle and asked him why he was using it yet PW3 had asked that the storeman should supply rack and pinion for its repairs first.

PW3 said when he asked the deceased why he was continuing to use that vehicle the latter diffidently told him that he feared that "it would be said he was reluctant to work due to insubordination".

PW3 took it upon himself to speak to the supervisor about the deceased's fear. The supervisor said the vehicle was

in order.

It is regrettable that the question of which Supervisor was the one in point was never pursued as a result the Court is in the dark about who the actual culprit was in this regard because it was never suggested that DW2 could have been the culprit either. But PW3's assertion cannot be discarded that he approached the Supervisor because he had determined that any further use of that vehicle would be dangerous. I have no doubt that he indeed approached a supervisor but it is regrettable that he did not identify which one.

PW3 testified that after the accident this vehicle was loaded on another bigger vehicle and transferred from the scene of the accident to the Workshop. It was at the Workshop that PW3, on examining what possibly could have resulted in that accident, discovered that the bushes for the rack and pinion were worn out. The rack and pinion had gone loose. These parts should as a rule remain tightly attached to the chassis. But they were not; thus accounting for the fact that the vehicle went out of control.

PW3 elaborated on a number of possibilities accountable for an accident involving a vehicle with defective rack and pinion. He said for instance if the vehicle steps or rides on a stone it would go out of control. Also if brakes are applied slightly the same result would obtain.

He determined that in respect of this vehicle because the bushes were worn out and the rack and pinion loose the wheels locked facing right. He stated that if the above defect exists application of brakes or rolling of wheels on a big stone would lock the wheel on one side while the wheel on other side is turning at full speed. In the result the vehicle will either effect a sudden turn or actually overturn. He stated that this type of phenomenon can be experienced on tarred roads as well, especially at curves.

This witness was adamant that the condition of the vehicle would not have been the same if some other cause than the defective rack and pinion was responsible for the accident.

He was indeed puzzled and somewhat disarmed when the deceased told him that the Workshop supervisor had inspected the vehicle and told him it was "O.K." and that the deceased should go in it. What else then could the humble deceased do but bow and scrape when orders from high authority were thus imposed on him, even to his peril!!

Just to buttress this point it is profitable to have regard to the following regarding PW3's evidence under cross-examination at page 11 of my notes onwards

"You didn't know who were regarded as insubordinate....." I didn't.

You tell us what you were told.....? Yes

You can't say if it is true or not.....? I can't.

Did you take the matter further with the Supervisors....? I asked the Workshop Supervisor.

What did the Supervisor say after you asked him.....? He said it was in good condition.

You found it unnecessary to ask him if he had test-driven it.....? He had seen my job card and noticed what was wrong with it (vehicle).

Ct. What do you mean it was not necessary yet you had known what was wrong with the vehicle and had prepared a job card in that regard.....? He is the Supervisor"

For all his protestations about repairs that he claims were made on this vehicle at the relevant time DW1 stated that he didn't know that the defect relating to rack and pinion as diagnosed by PW3 had not been repaired. He had claimed that the only defect he knew about related to brakes and bearings which had been repaired.

He was further probed at page 26 of my notes as follows

:

"Ct: Meaning you can't deny that the rack and pinion were never repaired.....? I wouldn't deny or confirm that.

Have you ever repaired any vehicle with defective rack and pinion.....? Yes.

How often.....? Very often for we had four vehicles with rack and pinion".

The rest of DW1's evidence corroborates PW3's evidence as to manner of behaviour exhibited by a vehicle with a defective rack and pinion.

For instance

"How does a vehicle behave that has rack and pinion problem.....? Its steering wheel would wobble and if you apply brakes it would effect an about turn. Moreover you would feel through the steering wheel that it tends to slide out of control.

Why is that.....? Because rack and pinion control front wheels and the steering column gets into the rack and pinion.

Meaning that if rack and pinion are defective then that means failure to do their job of controlling front wheels.....? True. You would even find that you have collided with other people's vehicles.

You said the tendency is that when you apply brakes the vehicle would undergo an immediate turn.....? Yes.

Why does it make the immediate turn.....? Because one wheel locks more than the other.

CC: can a vehicle with faulty rack and pinion still be driven and used.....? Yes:

If indeed the answer to the last question encapsulates the defendants' attitude it would not be wrong to conclude that they seem to be bent on pressing their luck too far by undertaking very serious risks in persisting in using a vehicle in vital need of repairs.

Indeed DW2's evidence is instructive and illustrative in this connection.

See page 32 of my notes where DW2 responds to questions under cross-examination :

"You said it was possible for any driver to report fault in a vehicle direct to the Workshop.....? Yes.

Was it possible that vehicles purportedly having undergone repairs would still come out with faults....? It was possible for once (a vehicle has) broken down Mechanical Supervisor would rush to

Ficksburg or Johannesburg for spare parts but if in his opinion such a vehicle could be used some weeks or a month it could happen that such vehicle would be used (unrepaired).

PW3 says he informed the deceased that the vehicle was in bad condition and that he should take it to workshop and he actually saw it at workshop. Is it possible this vehicle came out unrepaired.....? Knowing our Workshop this is possible.

Knowing deceased as a cautious and reliable driver do you think he would knowingly drive that vehicle despite its defect, driving especially you in particular.....? No. I don't think he would.

You said it was possible for a vehicle to come out of the Workshop not repaired. PW3 says he diagnosed fault with rack and pinion. DW1 says he repaired bearing and fitted new brake pads. Do you think he omitted repairs on rack and pinion though told of those.....? Once a vehicle goes into Workshop I personally don't know what goes on in there".

I have formed a firm opinion based on the evidence of PW3 and DW1 as to the behaviour of a vehicle with defective rack and pinion that the Pick Up driven by the deceased overturned because of the defect in those parts. The subsequent examination of that vehicle by PW3 buttressed this opinion beyond doubt. ^{As} I stated earlier DW2 struck me as an honest witness who was frank about lack of proper cooperation between various sectional heads at RIU Leribe. This lack of cooperation was bred by animosity between these sections. The animosity resulted from pressure of demands by one section on the other. For instance on occasions when DW2 requested a supply of seven trucks from the workshop he would be supplied with only two. When he questions why this is so then ill-feeling would set in perhaps because his demands would be read as casting doubt on the competence of the other section. Lack of cooperation and prevalence of ill-will among staff members often results with work not being done or only

sloppy performance of work.

It is possible therefore that the deceased even if he noticed that the vehicle he had taken for repairs was not repaired, he diffidently withheld his complaint to DW2 for fear that this might further deepen ill-feeling between DW2 and the workshop Supervisor who said the vehicle was in good working order therefore the deceased should use it.

I was also impressed with PW3's evidence. I am thus able to conclude that on the day he and the deceased were riding in the ill-fated Pick Up the fact that this vehicle lurched to a direction that was not intended by the driver is clear proof that the wrong wheel locked while the other was rolling at unimpeded rate, hence a sudden turn to the wrong direction i.e. away from the gate. This further supports DW1's view that a possibility in circumstances of faulty rack and pinion is collision with other people's vehicles.

I therefore find the defendants vicariously liable to the plaintiff for their agents' negligence which resulted in the death of the deceased when the vehicle he was driving capsised because of the faulty rack and pinion.

The award of compensation granted shall be only M12 000-00 plus costs. The funeral expenses have not been proved. So no award can be made in that regard. Claim number 3 too is

dismissed.

J U D G E

For Plaintiff : Miss Tau
For Defendants: Mr. Putsoane