

CIV/T/269/98**IN THE HIGH COURT OF LESOTHO**

In the matter between:

DIMO RAMOTETE**PLAINTIFF**

and

**SESELI MOSHE FALATA
SCORE FURNITURES****1ST DEFENDANT
2ND DEFENDANT****For the Plaintiff : Mr. B. Makotoko****For the 1st Defendant : In person****For the 2nd Defendant : No appearance****JUDGMENT****Delivered by the Honourable Mr. Justice T. Monapathi
on the 20th day of June 2000**

In this matter the Plaintiff issued out summons against Defendants wherein he claimed:

- “ 1. M47,077.00 for repairs
2. M37,500.00 loss of business

3. Costs of suit
4. Further and alternative relief.

This followed a collision of two vehicles one driven by the First Defendant and the other by Plaintiff's driver. It was alleged that the First Defendant's negligence had caused the collision. The legal basis was that :

“Where a vehicle which is damaged through the negligence of another has been in use for the business of its owner the damages which can be recovered, apart from the cost of repairs, include the loss of income to the owner due to loss of use of vehicle.” See SHROG v VALENTINE 1949(3) SA 1228(T) on 1236 and also MOSELBAY DIVISIONAL COUNCIL v OOSTHUIZEN 1933 CPD 509.

The first claim which was for fair, reasonable and necessary repairs of the vehicle was for damages for compensation of Plaintiff's loss of the motor vehicle (registration C7980) which he had used as a taxi. The vehicle has remained in disrepair to date. The next prayer related to alleged loss of funds of the daily business (takings) when the taxi used to make an average of M2,500.00 from March 1997 until the 20th June 1998.

Only the First Defendant filed papers in his own defence. He had been represented by T. M. Maieane-Attorneys. The attorneys later withdrew as attorneys of record. A plea was filed on behalf of the First Defendant. He ended up appearing in person. The latter Defendant's failure to file any papers warranted the Plaintiff to proceed against that defendant as he was entitled in terms of rule 27 (3) which rules empowers the Court to grant judgment by default in a claim for damages having heard plaintiff's formal evidence. In this case it was substantial evidence which was put in by PW 1 (Limo Ramotete - Plaintiff). PW 2 Mositi Matlali (driver) and PW 3 Policeman (Lesotho Police Service) No. 8409 Trooper

Khunong. The latter had attended at the scene, had taken measurements and other information which resulted in the Motor Vehicle Accident Report Form (RLMP 29) which was handed in as Exhibit "C" to this Court. First Defendant elected not to give in any evidence in his defence.

The evidence from the Plaintiff's three witnesses established the following: The Plaintiff's taxi had had a breakdown resulting from puncture or more serious removal of one of its wheels which occurred whilst still in motion. The right parts of its rear body was on the road but had still left space for other traffic using the same lane to pass safely without incident. The vehicle was travelling in a northerly direction (Maputsoe) near Ha Sekete where the vehicle had rested. It could not move because it had rested on the wheel drum while the wheel had been displaced. The driver had taken measures to warn the other traffic by means of a sign (red triangle). The collision occurred at night and both vehicles were flung over twenty (20) paces from the point of impact albeit in different directions. Both vehicles were extensively damaged. There had been no skid marks by which showing attempts to brake the vehicles to a halt.

The Court took trouble to explain to the First Defendant what his rights were including the right to cross examine witnesses and to put in his defence. These rights the Defendant did use very sparingly. And indeed it was more as a result of urging than any desire on the part of the Defendant. He suggested to one of the witnesses that he hit the stationery vehicle because his sight had been blinded by the headlights of an on-coming vehicle which was travelling in the opposite direction. This had not appeared in his plea or in any other papers. It rested on thin ground and the Court did not therefore believe the version.

Other facts which were established from the evidence were that the taxi was

bought by the Plaintiff for a sum of Nineteen Thousand Maloti (M19,000.00). This was to be viewed against the claim for repairs which was to the tune of Forty Seven Thousand Maloti (M47,000.00) as evidenced by that single quotation (Exhibit "A") which the Plaintiff had secured as the only quotation. He had made no attempt to secure others or the lowest one because he believed that none could be lower than the one he had already secured. About this estimate later. The amount claimed in the summons and/declaration as loss of business was proved by means of a record contained in cheap students' exercise book whose modesty would normally invite scrutiny from an equipped cross-examiner.

It was submitted quite correctly that the evidence tendered before Court adequately proved the Plaintiff's case. It entitled him to some damages and costs against both defendants jointly and severally one paying the other to be absolved. Negligence of a gross kind had been proved on a balance of probabilities. It was in the excessive speed of the kind called a maddening one. This spoke more for a suspicion that the First Defendant had been drunk. This was however not put in issue. The damages to the vehicles, the resting place of the vehicles, the absence of skid marks told an eloquent case of excessive speed which most probably disabled the First Defendant from avoiding the collision. Excessive speed was the cause of the collision as I was forced to conclude.

The issue of damages for repairs was easy to resolve. It was in that: however I believed of the estimate put forward for reasonable and necessary repairs I found it difficult and it was against principle that a plaintiff would recover more than the value of the item (property) sought to be repaired. In this case the value of the vehicle had been Nineteen Thousand Maloti (M19,000.00) which was the purchase price of the vehicle. When I made the award for damages I did not even consider depreciation of the vehicle. I had agreed however with the submission by Mr.

Makotoko that damages would normally be established, considering the compensation function of the law of delict, through payment of damages in that:

“Viewed in this light, damages indicate rather the process through which an impaired interest is restored to its former potential through money.”

THE LAW OF DELICT, Neethling, Potgieter and Visser, 1st Edition page 177. Mr. Makotoko correctly conceded that in this case Plaintiff’s vehicle could be restored by the sum of Nineteen thousand Maloti (M19,000.00) unless improvements could have been demonstrated which had increased that value.

In the end I entered judgment which awarded to Plaintiff:

- (a) A sum of M19,000.00 for damages for repairs;
- (b) A sum of M37,000.00 for loss of business; and
- (c) Costs-of-suit.–

These were to be paid by the Defendants jointly and severally one paying the other to be absolved.



T. MONAPATHI
JUDGE

Judgement noted by Mr. L . A. Molete