

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CIV/T/518/2007

In the matter between:-

LEBOHANG SEHLABI

PLAINTIFF

AND

KOBELI MOLEMOHI

DEFENDANT

JUDGMENT

Coram : Hon. Mahase J.
Date of hearing : Various dates
Date of Judgment : 5th February 2015

Summary

Civil Procedure – Motor vehicle collision – Negligence – What constitutes same – Liability – Duty of motorist to avoid motor vehicle collision – Claim of payment of damages by defendant to plaintiff – counterclaim by defendant – Onus of proof – Res ipsa loquitur maxim

ANNOTATIONS

CITED CASES:

- **Marais v. Caledonian Ins. 1967 (4) S.A. 199 (E)**
- **Sanerman v. Barnard, 1958 (4) S.A. 149**
- **Santan Bepe v. Biddulph 004 (5) S.A. 586 (SCA)**
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STATUTES:

- **None**

BOOKS

- **The South African Law of Evidence, Hoffman et al, 4th Ed. 1998**

- [1] The plaintiff has issued summons against the defendant wherein he claims payment of certain sum of money in respect of damages he occasioned when his car collided with that of the defendant.
- [2] The defendant has also filed a counter-claim against the plaintiff in respect of damages he occasioned when his car collided with that of the plaintiff. The said motor vehicle collision occurred on the 29th June 2007 along the main North 1 public road at or near Lekokoaneng Lesotho sand stone.
- [3] The two vehicles of registration numbers B 4021 and A 3333 were driven by their respective owners; viz the plaintiff and the defendant. The plaintiff's vehicle, a Toyota Hiace taxi was carrying some passengers while the defendant's car, a Toyota Corolla Seden had only one passenger in it; viz its driver.
- [6] The plaintiff is claiming the sum of M74,815.00 being for fair, necessary and reasonable costs of repair and a further sum of M21,866.00 for loss of business. This was later reduced to M9,000.50.
- [7] The defendant has filed a counterclaim for payment to him by the plaintiff in the sum of M47,942.06 being for reasonable costs of repair. Parties did not each dispute the quantum sort by each other. The only issue which was disputed is that of liability. In principle, for either party to succeed in its claim(s) it has to prove negligence on the

part of the other. This being a civil claim, the standard of proof is on a preponderance of probabilities.

[8] In brief the evidence adduced by the plaintiff is that he was traveling from Butha-Buthe to Maseru, and that he was ferrying passengers who were going to attend a graduation ceremony at the Police Training College. The ceremony was to begin at 10 a.m. and that as he was driving along the main North 1 public road near the Lekokoaneng sand stone area, a road with curves, he saw the defendant's vehicle. This was travelling from Maseru to Teyateyaneng direction but that the defendant's car was being driven on the wrong lane. On the wrong lane meaning that it was driven and travelling on the left lane of that road.

[9] In other words, the defendant's vehicle, instead of being driven on the left lane, it was driven on the right side of the lane as one faces Teyateyaneng direction from Maseru.

[10] The plaintiff's vehicle was being driven on the correct side on the lane as it was driven on the right side travelling from Butha-Buthe to Maseru. The fact that the defendant was driving his vehicle on the wrong side of the lane has not been disputed and remains a matter of common cause.

[11] The collision between these two motor vehicles was ultimately reported to the police who then attended the scene of crime. PW2, Trp. Koneshe, No 11589 who did so later compiled an accident report form LMPS 29. The said report was handed into court as exhibit A

together with another identical copy market I.D.A. The original report could not be found.

[12] However, of importance is the fact that the point of impact s shown to be on the correct lane of the road in which the combi (E2) was being driven. This corroborates in material respects that the corolla sedom vehicle (E1) was being driven on the wrong lane of the road as it travelled on the right side of the road instead of being driven on the left side of the road as its driver was travelling from Maseru into Teyateyaneng.

[13] The above is also corroborated by the evidence of PW2, the police officer who attended the scene of crime and an author of exhibits A (I.D.A). Refer to his report in which he has clearly written; under the heading; Description of accident, - that *“the driver of E1 was not keeping his lane as he saw on coming traffic he failed to return to his lane and they collided”*.

[14] This evidence has not been denied and one wonders why the defendant had decided to drive his vehicle on the wrong lane. This kind of driving was bound to cause a collision with serious consequences.

[15] The defendant has himself failed dismally to explain in his evidence why he drove his vehicle on the wrong lane. It is no surprise therefore that he admitted that the collision occurred in the plaintiff's lave of travel.

- [16] There is more than ample evidence and proof that the defendant's vehicle was driven on the wrong or incorrect side/lane of the road in question at the time of the collision. This is indeed prima facie proof of the driver's negligence.
- [17] The plaintiff has convincingly testified that he tried to swerve his vehicle so as to avoid the collision but that the defendant did collide with his combi thereby causing this collision.
- [18] The defendant written submission deal and cover principles of the law in cases of this nature, but he has failed to substantiate his allegations to the effect that the plaintiff has been the sole cause of this collision nor that he contributed to the occurrence of this collision.
- [19] This Court does not understand how the principle of contributing negligence and or that of *res ipsa loquitur* applies in the instant case where the defendant drove his vehicle on the wrong or incorrect lane undisclosed reasons.
- [20] The plaintiff was at all material times driving his vehicle on the correct lane of the road and for the defendant to submit as he does in his written submissions is not only untenable, but, it defies all logic.
- [21] The plaintiff has testified that the road thereat the scene of crime is not very straight as it has curves but that at that time the weather was very clear and that visibility was very good.

- [23] That when he suddenly saw the defendant vehicle being driven on the incorrect lane, he swerved to the right side of the road thereby avoiding a head on collision. That he swerved to avoid the head on collision even though there was a big furrow and some stone boulders on that side.
- [24] This evidence is enough to show and prove that even though the plaintiff was driving on the right and or correct side of the road he did the best he could to avoid the collision from occurring; and which collision was caused by a driver who for unexplained reasons drove his vehicle on the incorrect lane of the road thereby endangering other road users who were travelling on that road at that time. The evidence in exhibit A under the column description of accident corroborates most materially that of the plaintiff. Refer to page 3.
- [25] The defendant's evidence leaves man to be desired as he, among others, failed to even explain to this court as to why he had driven his vehicle on the incorrect lane. He has failed to indicate how the plaintiff has allegedly contributed to this collision. Refer also to comments by police in exhibits A.
- [26] In the premises and for the foregoing reason; it is the considered view of this court that regard being had to the facts and circumstances of this case, the plaintiff has discharged the onus of proving on a balance of probabilities that it was the defendant who was negligent in having driven his motor vehicle on the wrong side of the lane of the road in question thereby colliding with the plaintiff's vehicle.

- [27] The police officer's evidence and explanation as written on exhibit A at page 3 of the Motor Accident Report Form LMPS 29 has not at all challenged by and or on behalf of the defendant.
- [28] On the other hand, and as has been alluded to above, the plaintiff has told this Court what steps he took to try to avoid the collision from occurring. In fact, the submission that it was the plaintiff who chose to drive his motor vehicle into the plaintiff's lane is not supported by evidence. This evidence does not at all supported the submission that it was the plaintiff who brought about this collision. The *re ipsa loquitur inference* is not by any measure applicable to the plaintiff in this case. He had always been keeping and or driving his vehicle on the correct side of the lane unlike the defendant. How it is submitted on behalf of the defendant that the plaintiff is guilty of contributory negligence, in the circumstances of this case is untenable.
- [29] In the circumstances, and for the foregoing reasons, it is the considered view of this Court that the plaintiff has discharged the onus of proving on a balance of probabilities that it was the defendant who was negligent in driving his motor vehicle as he did on the incorrect or wrong lane of the road in question thereby colliding with the plaintiff's vehicle.
- [30] The defendant, on the other hand, had not offered the slightest explanation as to why he drove his motor vehicle on the wrong side of

the road or lane. As a result this Court cannot find any excusable or justifiable reason why he did so thereby directly causing this collision.

[31] Counsel have both informed this Court that they are in agreement as to the quantum of damages which their clients have each claimed in the summons as well as in the counterclaim.

[32] Put conversely, there is no dispute between the parties in regard to the quantum of damages claimed on behalf of each other.

[33] It is the considered view of this Court that it is the defendant who is solely to blame for the cause of this collision; for the reasons stated above.

[34] In the premises, the defendant's counter claim is dismissed. The plaintiff's claim is granted as prayed in his summons. The defendant is accordingly ordered to pay to the plaintiff the sum of M74,580.00 as damages; with costs awarded to the plaintiff

M. Mahase

Judge

For Plaintiff: Mr. P.J. Loubser

For Defendant: Adv. Mpaka T.R.