

IN THE HIGH COURT OF LESOTHO

CIV/T/861/2020

Held at Maseru

In the matter between:

‘NONO R. MOTSELEKATSI

APPLICANT

AND

TLOKOTSI MANYOOKO

PLAINTIFF

Neutral citation: ‘Nono R. Motselekatsi v Tlokotsi Manyooko [2022] LSHC
175 Civ (9th August 2022)

CORAM: M. J. MAKHETHA J

HEARD: 1ST JUNE 2022

DELIVERED: 9TH AUGUST 2022

SUMMARY

Undefended action for delictual damages arising from a collision between Plaintiff's and Defendant's motor vehicles – Negligence and liability - Proof of - Held: Defendant found negligent and liable in damages for fair, necessary and reasonable cost of repairs to Plaintiff's vehicle.

ANNOTATIONS:

CITED CASES

LESOTHO

Lebohang Sehlabi v Kobeli Molemohi CIV/T/518/2007 (2015)

Leuta v Kobe Motors (Pty) Ltd (CIV/T/412/18) [2019] LSHC 12 (27 September 2019)

Mamotumi Sauli vs Lesotho National General Insurance Company LTD CIV/1672008

Monate V Mefane C of A (CIV) No.19 of 2017(para 24)

Thabang Malelu vs Lesotho National Insurance Company CIV/T/212/2006

SOUTH AFRICA

Janeke v Ras 1965 (4) SA 583 (T) 586G

Marais v. Caledonian Ins. 1967 (4) SA

Minister of Defence v African Guarantee and Indemnity CO. Ltd SA 1943 AD

BOOKS

W E Cooper, *Delictual Liability in Motor Law*: Juta & Co Ltd Cape Town 1996

STATUTES

High Court Rule No. 9 of 1980

JUDGMENT

A. INTRODUCTION

[1] This is an undefended action in which the Plaintiff ‘Nono Rafael Motselekatsi, is suing the Defendant Tlokotsi Manyooko for damages caused by the negligent driving of the Defendant who hit and damaged a motor vehicle belonging to or in the lawful possession of the Plaintiff.

[2] The Plaintiff’s claim against the Defendant is as follows:

- a. Payment of the sum of M31,300.00;
- b. Interest thereon at the rate of 12.5% per annum at *tempore morae*;
- c. Costs of suit; and
- d. Such further and/or alternative relief

[3] There is a return of service which proves that the Defendant was served with the summons through his wife, Makananelo Manyooko, on the 8th January, 2021.

[4] Despite service of the summons the Defendant has not entered appearance to defend. As a result, the Plaintiff has approached this court to request judgment by default in terms of **Rule 27(3)** of the High Court Rules.¹ On the

¹ No. 9 of 1980

date that the application was moved the court determined and ordered that the Plaintiff should lead viva voce evidence to substantiate his claim in terms of the Rules.²

B. PLAINTIFF'S EVIDENCE

[5] The Plaintiff's evidence is that on or about the 11th November 2018, he was driving his motor vehicle, Honda CR-V registered DE 241, along the Main North 1 Public Road near Marabeng in the district of Berea. He handed in annexure 'NRM1', a certified copy of his vehicle's Registration Certificate and the court marked it 'Exhibit A.'

[6] As the Plaintiff was driving his vehicle from Maseru to Berea another 4x4 vehicle registered BA 075, driven by the Defendant, approached him from the Berea direction. The oncoming vehicle was driven into Plaintiff's lane and hit his vehicle on the right side. The Defendant tried to drive on past the Plaintiff's vehicle but his vehicle turned around and stopped looking back in the Berea direction where he came from. Upon the impact, the Plaintiff's vehicle also turned around and stopped looking in the direction of Maseru where he came from.

² Supra Rule 27(5)

[7] The Plaintiff sustained minor injuries on his right leg due to the impact on the driver's door. He was rushed to Tsepong hospital where he was treated as an outpatient.

[8] When the Plaintiff returned to the scene of the accident, he and the Defendant were attended to by two police officers who instructed them to remove their vehicles from the road to allow normal traffic. They were later attended to by two other police officers including investigation officer Kapa who drew a sketch of the accident. The Plaintiff handed in annexure 'NRM 2', a copy of the Lesotho Mounted Police Service Motor Vehicle Accident Report Form LMPS 29 in respect of the accident. The court marked it 'Exhibit B'.

[9] The Plaintiff claims that because of the collision his vehicle was damaged and it has not been repaired since then. According to 'Exhibit B', the collision caused the following damage to his vehicle; the right side fender, right side CV joint, suspension, driver's door, air bags, right side mirror, right side window shade, windscreen, front bumper, front right side tyre and rim. The Plaintiff had to tow his vehicle home for a break-down fee. However, the Plaintiff did not provide proof in relation to this expense. The damage to the Defendant's vehicle was as follows; the right side head lamp, right side fender front, bumper, bonnet, right side v-arm, right front tyre and rim.

[10] When the investigation officer had invited the Plaintiff and the Defendant to negotiations, the latter refused to discuss anything in relation to the incident. The Defendant was a member of Parliament at the time of the collision.

[11] The Plaintiff sought three quotations to ascertain the cost of new parts and labour for repairs to his vehicle. He handed in annexure 'NRM3', a quotation from Tsehla Panel Beating & Spray Painting totaling **M28,970.00**. It is marked 'Exhibit C'. Plaintiff told the court that he could not locate the other two quotations.

[12] According to the Plaintiff, a fair, necessary and reasonable cost of repairs to his vehicle amounts to **M31,300.00**, calculated and made up as follows;

- (a) M28,970.00 in respect of the fair, necessary and reasonable repair costs;
- (b) M1,630.00 in respect of the assessor's fees;
- (c) M700.00 for towing break-down.

[13] He therefore holds the Defendant liable for payment of the amount claimed, following failure and/or refusal of the Defendant to pay same upon demand.

C. ISSUES FOR DETERMINATION

- Whether the Defendant was negligent in causing the collision.

- Whether the amount of damages claimed by the Plaintiff is reasonable.

D. THE LAW

Negligence and Liability

[14] The test for negligence and liability arising out of motor vehicle collision was enunciated by Her Ladyship Justice Majara (as she then was) in

Thabang Molelu v Lesotho National Insurance Company³ as follows;

*It is now well-established that in determining negligence, the applicable test is the objective one i.e. how would a reasonable person have acted under the conditions prevailing at the time of the accident, as experienced by the driver whose conduct is being scrutinised. See in this regard the case of **Minister of Defence v African Guarantee and Indemnity CO. Ltd**⁴.*

At Paragraph 15 of the judgement her Ladyship went further to articulate as follows;

“There is a standard of care and skill that is expected of a driver which also depends on the typical circumstances of each individual case. Thus in order for the Court to carry out this judicial analysis the following factors must be considered among others; (a) Whether the (insured) driver adhered to his ongoing obligation to keep a proper lookout in all circumstances; (b) Whether the (insured) driver kept a reasonable speed (within the range of his vision) immediately before the collision; ...”

[15] Negligence is also described by W E Cooper as, “the absence of the standard of care which a reasonable and prudent person would exercise in

³ CIV/T/212/2006 and CIV/T/167/2008

⁴ 1943 AD at 15

the same circumstances as those in which the defendant is situated. Viewed from the point of view of the doer of the harm complained of, negligence is usually regarded nowadays in objective sense. It is an inference from facts, not upon a careless state of mind, but on blameworthy conduct⁵.

[16] Thus, a motorist will only be held to have been negligent if he is found to have failed to exercise care and skill which would have been observed by a reasonable man in his position in order to prevent harm to other road users as a result of his act or omission in the circumstances of each case.

Reasonableness of Damages

[17] Authorities accept that in assessing the Plaintiff's loss, the court should be concerned with the damage to his estate – the actual pecuniary loss that the Plaintiff has suffered as a result of the damage to his motor vehicle. Accordingly, the Plaintiff is entitled to recover the difference between his estate as it was after the damage to the motor vehicle and as it would have been if the motor vehicle had not been damaged.⁶ In other words, the Plaintiff is entitled to a sum of money (damages) which will place him in the financial position he would have been in if his motor vehicle had not been damaged.⁷

⁵ *Delictual Liability in Motor Law*, Juta & Co. Ltd, Cape Town 1996

⁶ *Janeke v Ras* 1965 (4) SA 583 (T) 586G

⁷ *Cooper* (supra)

[18] In considering what is fair and adequate, the judge whilst having a wide discretion of how to assess the quantum of damages in motor vehicle collisions he must consider the following⁸:

- (i) Decide each case on its own unique circumstances;
- (ii) Provide some reasonable basis for the amount awarded;
- (iii) Generally have regard to previous awards in comparable cases for guidance, but always bearing in mind that such comparison can never be decisive, but is instructive.
- (iv) When using not so recent awards, make allowance for depreciation in value of money;
- (v) When using Southern African cases for guidance on quantum, factor in the different economic conditions in Lesotho and that country;
- (vi) Take care to ensure that the award is essentially fair to both parties.

E. ANALYSIS

[19] This action is not defended and therefore the only evidence that the court has relied on to determine whether the Defendant was negligent in his driving or not at the time of the accident is that which the Plaintiff tendered before court.

⁸ Leuta v Kobe Motors (Pty) Ltd (CIV/T/412/18) [2019] LSHC 12 (27 September 2019) para 10

[20] The Plaintiff claims that the collision occurred as a result of the sole negligence of the Defendant in one or more or all of the following respects⁹;

- He drove too fast in the circumstances prevailing;
- He failed to keep a proper lookout;
- He failed to apply the brakes of his vehicle which he was driving, timeously, alternatively, effectively;
- He failed to avoid a collision when by the exercise of reasonable care he could and should have done so;
- He acted unreasonably and irrationally in the circumstances, failed to drive with the necessary care, skill and diligence and failed to keep the vehicle which he was driving under control, alternatively under proper control;
- He entered Plaintiff's lane of travel where he had right of way.

[21] The Plaintiff's evidence, undisputed by the Defendant is that the latter drove his vehicle into Plaintiff's lane from the opposite direction and hit his moving vehicle. The fact of a Defendant driving onto an incorrect side/lane of the road and causing a collision was held to be indeed

⁹ Record page 7 Plaintiff's Declaration para 6 and page 11 Plaintiff's Affidavit para 8

prima facie proof of the Defendant's negligence¹⁰. This view particularly obtains where the Defendant has chosen not to provide any defence to explain away the Plaintiff's averments in his declaration/evidence.

[22] It appears from Exhibit B that the accident occurred during a clear and dry climate, around 19:55hours (not yet dark) during the month of November which is already in summer. All happened along the stretch of the Main North 1 road where there is no junction within 10 meters (see investigating Officer's assessment at page 3 of Exhibit B, A17 styled 'Type of Location'). Thus there is no suggestion, based on the evidence before court, that the collision occurred under the circumstances that could have prevented the Defendant from exercising the care required of a reasonable driver.

[23] While the sketch/map of the accident and the Investigating Officer's description of the accident in Exhibit B also does not shed much light on how exactly the impact occurred at the scene before the vehicles were removed from inside the road, I am nonetheless satisfied with the Plaintiff's own version under oath of what transpired on the material day. He has discharged the onus of proving on a balance of probabilities that it was the Defendant who was negligent by driving his motor vehicle into the

¹⁰ Marais v Caledonian Ins 1967 (4) SA 199(E)

wrong lane of the road in question and thereby colliding with his vehicle. This burden does not, in my considered view, become any lesser in undefended actions. In his description of the accident, the Investigating Officer simply states in Exhibit B as follows;

“The driver of E1 (BA 075) was coming from Berea direction going to Maseru direction and he said when at Marabeng the driver of E2 (DE 241) came to his lane and their vehicles collided ... while the driver of E2 (DE 241) also claims that the driver of E1 came to his lane”

The Officer ends up with a ‘no comment’ conclusion on his investigation.

[24] The Plaintiff’s evidence is that the collision impacted, among other areas, the right driver’s door of his vehicle, causing him some injury. Considering the areas of the damage caused to each of the vehicles as per Exhibit B, it is improbable in my assessment that it could have been the Plaintiff’s vehicle that moved towards the Defendant’s, but vice versa. This is a clear case where the Defendant acted unreasonably and irrationally in the circumstances, failed to drive with the necessary care, skill and diligence and failed to keep the vehicle which he was driving under proper control as envisaged by the law¹¹.

[25] It is also not common that the Defendant, after claiming to the Investigating Officer that it was the Plaintiff who drove into his lane, later refused to

¹¹ Mamotumi Sauli vs Lesotho National General Insurance Company LTD CIV/1672008. See also Lebohang Sehlabi v Kobeli Molemohi CIV/T/518/2007 (2015)

engage in negotiations with the Plaintiff over the matter. If the Plaintiff was in the fault, it can reasonably be expected that the Defendant would have sued the Plaintiff for damages for repairs to his vehicle. That has not happened to date.

[26] Considering the facts and the circumstances of this case in the absence of the Defendant's defence, I am persuaded to conclude that the defendant did not take sufficient steps that a reasonable careful man should have for the reason that a motor vehicle is a potentially dangerous machine and unless kept under proper control by the driver it can cause serious accident affecting other road users along the road.

F. DAMAGES

[27] In *casu*, the Plaintiff claims total damages in the amount of **M31,300.00** made up of M28,970.00 being the cost of parts and labour for repairing his damaged vehicle, M1,630.00 for assessor's fees and M700.00 for towing fees paid to remove the vehicle from the scene of the accident to his home. In order to substantiate the first portion of his claim for parts and labour, the Plaintiff handed in a quotation from a panel beater, but none for the rest of the other claims. It is trite that for the Plaintiff to succeed in his claim for pecuniary loss, it has to be substantially and precisely proved.¹²

¹² *Monate V Mefane C of A (CIV) No.19 of 2017*(para 24)

Documentary proof in the form of receipts/invoice would be sufficient. The Plaintiff *in casu*, has failed to provide such documentation to prove that the amounts claimed for assessor's and towing fees were indeed incurred in relation to the collision. For this reason, the court considered successful only the Plaintiff's claim for parts and labour as substantiated by the quotation handed in before court. Looking at his evidence as to the quantum, it seems to me that the Plaintiff gave all the evidence which he could possibly give under the peculiar circumstances of the case, to prove the amount of damages that he suffered.

[28] In awarding damages to Plaintiff, I have taken into account some of the factors proposed by His Lordship Justice Moahloli in **Leuta's** case above, including but not limited to, previous awards in comparable cases for guidance, the fairness of the award to both sides, etc.

F. ORDER

[29] In the result, judgment is granted in favour of the Plaintiff for an order against the Defendant as follows;

- a. Payment of the sum of **M28,970.00** for repairs to Plaintiff's vehicle;

- b. Interest thereon at the rate of 12.5% per annum at *tempore morae*;
- c. Costs of suit;

M. J. MAKHETHA
JUDGE

For the Plaintiff: ADV. L. F. MALEKE

For the Defendant: NO APPEARANCE