



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 261/2015

In the matter between:

LOGICO UNLIMITED

PLAINTIFF

and

UNITRANS SWAZILAND LIMITED

DEFENDANT

Neutral Citation : **Logico Unlimited vs Unitrans Swaziland Limited**
[2018] SZHC 193 (06 DECEMBER 2018)

Coram : **MABUZA – PJ**

Heard : **07/08/2017; 28/08/2017; 30/01/2018**

Delivered : **06 DECEMBER 2018**

SUMMARY

Civil Law: Delict – Claim for damages - The Plaintiffs claim is for payment of the sum of E193,976.75 (One hundred and ninety three thousand nine hundred and seventy six Emalangeni seventy five cents) in respect of damages sustained to its motor vehicle after it collided with the Defendant’s motor vehicle - In addition the Plaintiff seeks payment of interest costs and further and alternative relief - The claim is opposed by the Defendant

JUDGMENT

MABUZA -PJ

- [1] The Plaintiff is Logico Unlimited, a Company duly registered and incorporated in accordance with the Company laws of the Kingdom of Eswatini, having its principal place of business at Plot 490, King Mswati III Avenue, Matsapha Industrial Site, District of Manzini.
- [2] The Defendant is Unitrans Swaziland Limited, a Company duly registered and incorporated in accordance with the Company laws of the Kingdom of Eswatini, having its principal place of business at King Sobhuza II Avenue, Matsapha Industrial Site, Matsapha, District of Manzini.

[3] The Plaintiff issued summons against the Defendant for the following prayers:

- (a) **Payment of the sum of E193,976.75 (One hundred and ninety three thousand nine hundred and seventy six, seventy five cents);**
- (b) **Interest on the said amount at the rate of 9% from date of judgment to date of final payment;**
- (c) **Costs of suit;**
- (d) **Further and/or alternative relief.**

[4] The claim is opposed by the Defendant.

[5] The claim arose out of damages sustained to the Plaintiff's motor vehicle, a horse and trailer in an accident that occurred on the 24th January 2013 between

between the Plaintiff and Defendant's motor vehicle.

[6] The accident occurred along the Hhelehhele/Siphofaneni MR8 public road at or near Ntabamhloshana area.

[7] The Plaintiff's vehicle BSD 597 AM was driven by Ntokozo Tony Mhlanga. The Defendant's motor vehicle was driven by Bernard Shabangu. It is alleged by the Plaintiff that the accident was caused by the Defendant's vehicle, a truck, registration number BY 10YM GP.

[8] The Plaintiff alleges that the accident was caused by the negligence of the said Bernard Shabangu, who at the material time was employed by the Defendant and was acting within the course and scope of his employment.

[9] The particulars of his negligence have been set out to be as follows:

5.1 He overtook the Plaintiff's truck whilst approaching a blind rise;

5.2 He failed to keep a proper look out for oncoming motor vehicles before overtaking;

5.3 He failed to ensure that he quickly overtakes the Plaintiff's truck;

5.4 He failed to slow down upon realizing that there was an oncoming truck in the opposite lane that he was using to overtake;

5.5 He failed to apply brakes timeously or at all to avoid the accident, but instead swerved to the left onto the Plaintiff's truck's lane thus forcing the Plaintiff's truck off the road

resulting in it losing control and overturning;

5.6 He failed to avoid the accident when, by exercise of due care and caution, he could and should have done so. And as a result the Plaintiff's truck driver in trying to avoid the accident lost control of the truck and veered off the road;

5.7 He travelled at a speed that was excessive in the circumstances, and failed to slow down upon seeing the oncoming truck;

5.8 He forced the Plaintiff's truck off the road as the guardrails on the left side of the road made it difficult for the Plaintiff's truck to give way to the Defendant's truck.

[10] It is alleged that the Plaintiff's trailer was damaged beyond repair and was written off whilst the horse required repairs, hence the claim for damages, interest and costs set out in paragraph 3 hereinabove.

[11] The amount of E193,976.75 is broken down as follows:

8.1 Repairs to the horse	E92,621.75
8.2 Value of the trailer/load body	E100,225.00
8.3 Assessor's fees	E1,080.00
8.4 Investigator's fees	<u>E1,149.00</u>
	<u>E193,976.75</u>

[12] It is alleged that notwithstanding demand the Defendant fails, neglects and or refuses to pay the amount claimed despite lawful demand.

[13] The Defendant in its plea denies that its driver was negligent and pleads that the accident was caused by the negligent driving of the Plaintiff's driver. It denies all the particulars of negligence set out by the Plaintiff in paragraph 9 supra and pleads as follows:

3.1 When Bernard Shabangu attempted to overtake the Plaintiff's slower moving vehicle, the Plaintiff's driver immediately accelerated once the two vehicles were more or less alongside, to prevent the Defendant's driver from overtaking.

3.2 The Defendant's driver continued to try to pass the Plaintiff's driver's vehicle but Plaintiff's driver continued to accelerate and this persisted over a distance of 600 metres when the Defendant's driver finally managed to pass the Plaintiff's vehicle.

3.3 The accident was caused by the fact that the Plaintiff travelled at an excessive speed in his attempt to prevent the Defendant's vehicle from passing him and lost control of the vehicle swerving initially off the road to the left and then back to the road, eventually capsizing in the oncoming lane without having had any contact with any other vehicle.

3.4 When the Defendant's driver initiated his attempt to overtake, he was more than 800 metres from the horizon and there was no oncoming vehicle in sight at that time. The oncoming vehicle that appeared did not play any role in the causal factors of the accident.

- [14] The Defendant further denies any liability to pay the amounts demanded by the Plaintiff as set out in paragraphs 3 and 11 supra.
- [15] In the event that the Defendant is found to have been negligent, the Defendant has pleaded contributory negligence and that the damages claimed should be apportioned in accordance with the Apportionment of Damages Act No. 4 of 1970 between the two drivers.
- [16] The parties led oral evidence. PW1 was Ntokozo Tony Mhlanga (Mhlanga) the driver of Plaintiff's truck, BSD 597 AM.
- [17] PW1 testified that on the 24th January 2013 at about 9.00 am, he was driving the horse and trailer owned by the Plaintiff. He was travelling along the Hhelehhele/Siphofaneni public road. At Ntabamhloshana, he noticed the Defendant's truck behind him. It took the fast lane and was overtaking PW1. As it was overtaking a truck came from the opposite direction and as the Defendant's truck had not completed overtaking, its driver caused the truck to lean too close to the Plaintiff's vehicle on its right side.

[18] As a result of the closeness, the Defendant's truck collided into the trailer of the Plaintiff's vehicle on its right side at the back. PW1 lost control and the Plaintiff's truck veered off the tarmac onto the gravel on the left side of the road. He tried to bring it back into the road but he failed because he had a heavy load of sugar and it overturned onto its left side. Both horse and trailer were extensively damaged on the left side. PW1 stated that he was travelling at a speed of 60 -70 km/hour.

[19] The Defendant's truck stopped ahead a short distance from the overturned vehicle. PW1 stated that the area where the Defendant's truck overtook was a blind spot, a person could not see traffic ahead. That the Defendant overtook on a solid line. PW1 could not drive onto the left side of the road because there were guard rails. Some people working ahead witnessed the accident. PW1 was travelling with two passengers.

[20] It was put to him in cross-examination that the Plaintiff's vehicle was actually parked at the bus stop when Shabangu came along, and that as he approached, PW1 entered into the main road and this caused Shabangu to abruptly apply his brakes in order to avoid an accident. That Shabangu decided to overtake as PW1 in entering the road had not yet gained

momentum. But PW1 accelerated and picked up speed. That when he eventually overtook, PW1's truck was no longer visible in the rear view mirror. PW1 disputed all this. And that when Shabangu was 100 metres away he noticed that PW1's truck had overturned and he stopped because he wanted to assist. PW1 denied this and responded that Shabangu was actually stopped by the people who were working on site. It was put to PW1 that Shabangu overtook on a broken line and that the accident was caused by PW1 because he decided to accelerate. The latter denied this.

[21] It was put to PW1 that the Defendant's vehicle did not collide with the Plaintiff's vehicle, but PW1 denied this and responded that the paint marks of the Defendant's truck were left on Plaintiff's trailer after the accident.

[22] 6332 Constable Ntokozo Nyamane (PW2) testified that he attended to the scene of the accident where he found BSD 597 AM driven by PW1 overturned in the middle of the road and lying on its left side. It was on top of both the broken line and the solid line. The broken line allowed vehicles from Siphofaneni side to overtake and the solid line stopped vehicles from Hhelehhele from overtaking. He also found that the driver (PW1) and his assistants Vusi Dlamini and Njabulo Dlamini lying on the side of the road.

He called 997, the police emergency line and some officers came and took them to the RFM Hospital in Manzini. He found skid marks made by the Plaintiff's truck which led to a concrete block which had been knocked down.

[23] PW2 drew a rough sketch plan of the accident. It shows the Plaintiff's vehicle in the centre of the road straddling both broken solid lines. The solid line is on the lane going to Siphofaneni and the broken line to Hhelehhele. A statement was recorded from an independent witness by 6779 Constable Mathunjwa while PW2 recorded a statement from Shabangu the driver of BY10Y MGP (Defendant's vehicle). On the 25 February 2013 PW2 recorded statements from PW1 and his two assistants, Vusi Dlamini and Njabulo Dlamini at Mafutseni police station. PW2 concluded that Shabangu had driven recklessly and charged him with contravening section 89 (2) of the Road Traffic Act. He said that the traffic case was never concluded and he last heard that it was struck off the court roll. Nothing much turns on the cross-examination of this witness.

[24] Sibusiso Mamba (PW3) testified the he resided at Ntabamhloshana near the scene of the accident and that he had witnessed the accident.

[25] He stated that between 8.00 – 9.00 am on the material day he was walking along the road on the same side as both trucks except that he was coming towards them.

[26] He says that the Logico truck was overtaken by the Unitrans truck. As Unitrans was overtaking another truck approached from the opposite direction (i.e. Big Bend direction). When the driver of Unitrans noticed the oncoming truck, he tried to return to his lane but collided with the Logico truck as it leaned too closely to it. Logico truck overturned as a result of the collision.

[27] He says that after the Logico truck overturned, the Unitrans truck also stopped. It was not stopped by anyone. The driver alighted and walked towards the Logico truck in order to assist the occupants of the Logico truck.

[28] PW3 was cross-examined by Mr. Gamedze. It was put to him that when Unitrans overtook, Logico accelerated. His response was that he did not notice any truck accelerating. He noticed that the Unitrans truck could not finish overtaking because it was disturbed by the oncoming truck coming

from the Big Bend direction and had to try to return to its lane. He further told the Court that he was unable to see the white lines on the road but he could see the movement of the trucks.

[29] Bonisile Lydia Mhlanga (PW4) testified that she was employed at Auto Supreme Panel Beaters where Plaintiff's truck (horse) was repaired. The cost was initially E73,097.71 (Seventy three thousand and ninety seven seventy one cents) but there was a problem with the rim. Even though Leites Motors first quoted E2,763.06 (Two thousand seven hundred and sixty three, six cents) for it, it was not in stock. So they supplied a more expensive one that was in stock. It cost E12,670.18 (Twelve thousand six hundred and seventy eight cents).

[30] This caused the repair cost to escalate to E92,671.75 (Ninety two thousand six hundred and seventy one seventy five cents) which the insurers paid. The trailer (loadbin) was a write off and could not be repaired and the insurers were accordingly advised. The quotation was submitted on the 29th January 2013.

[31] Mr. Gamedze in cross-examination raised the issue that the quotation was signed by Ernest Parken and not by PW4. PW4 answered that she prepared it and signed it and Mr. Parken approved it, hence his signature. I accept this explanation.

[32] She was asked to explain the difference between the price quoted for the rim at E3,676.90 (Three thousand six hundred and seventy six ninety cents) and another price of E2,763.06 (Two thousand seven hundred and sixty three six cents). She explained that Mssrs SRIC, the insurer, suggested that the service provider add a 25% mark up on the price of items, hence the difference, the higher price having been increased by 25%.

[33] Plaintiff further called a witness named Ngcobizwe Maziya (PW5) as an assessor but as it turned out he did not carry out the assessment herein. He was excused. The Plaintiff closed its case.

[34] The defence opened its case with the evidence of Benedict Shabangu (DW1) the driver of the Defendant's vehicle. He testified that on the 24th January 2013, he left Matsapha for Durban where he was to collect fuel.

[35] Along the Hhelehhele/Siphofaneni public road near Ntabamhloshana he noticed a stationery truck at the bus stop. It was the Plaintiff's truck. As he approached it, PW1 entered into the main road with Shabangu following behind him. He decided to overtake and before overtaking he checked for oncoming traffic. Having satisfied himself that the road ahead was clear he began the process of overtaking.

[36] Before he finished overtaking PW1 accelerated and picked up speed. DW1 says that at some point both trucks were travelling at the same speed and he failed to overtake PW1.

[37] While that was happening an oncoming truck approached and he was on its lane. He looked into his driving mirror to ascertain the whereabouts of the Plaintiff's truck driven by PW1 but could not see the whole truck that he was overtaking as the horse was off the road but the back right wheels were on the tarmac and the left wheels were off the tarmac on the gravel.

[38] DW1 moved back into his lane and while driving on, he noticed in his right view mirror that the Plaintiff's truck was overturning. The oncoming truck

had already passed. He decided to stop in order to render assistance as he had first aid knowledge.

[39] He alighted and while walking towards the overturned truck, along the way he met another man who was running towards him shouting at him that he had caused the accident. When he heard these words he no longer proceeded to help.

[40] He denied that anyone from the people that were working on site stopped him for failing to stop. He says that he stopped of his own accord. He denied that he collided with the Defendant's truck and or trailer. He denied that the area where he overtook the Defendant's truck was a blind rise. He says that where he began to overtake was a solid line and where he was overtaking was a broken line.

[41] When asked what caused the accident he responded that he did not know what happened to PW1. He was asked if he was the cause of the accident and he denied this. He explained that had PW1 accelerated earlier he would have braked down but he did so while he (DW1) was overtaking.

[42] He was cross-examined. He stated that he was about 50 metres away from the Plaintiff's truck when the latter drove into the road. He was driving at about 70 km/hour. He says that when he saw the Defendant's truck move into the road he slowed down to about 30 to 40 km/hour. He maintained his story that the Plaintiff's truck was stationary when he first noticed it ahead. He followed it until he was able to see an oncoming car or if the lane was clear for him to overtake.

[43] Asked what he did when the Plaintiff's truck accelerated and picked up speed when he tried to overtake it, he replied that he had almost finished overtaking when PW1 accelerated otherwise he would have backed down had PW1 done so earlier.

[44] It was put to him that the Plaintiff's truck was not parked anywhere and that it was in fact disturbed by him. He denied this and re-iterated that he found the Plaintiff's truck stationary. It was put to him that he swerved into the Plaintiff's truck because they were at a blind rise and he had not seen the oncoming car. He denied that the area was a blind rise and stated that the blind rise was much ahead from where they were. It was put to him that he was charged with negligent driving and he agreed but stated that no trial was

ever held and that the matter was dismissed. Asked what had caused the accident he responded that this question be referred to PW1. At the end of cross-examination, the defence closed its case.

[45] The evidence shows that there are credibility issues between the two respective drivers. Understandable so, no one of them wants to be seen to have driven negligently and to have been the cause of the accident.

[46] DW1 says that the Plaintiff's truck was stationary when he first saw it. PW1 the driver of Plaintiff's truck says that he had not stopped at all. DW1 has no witness to corroborate his evidence that the truck that PW1 was driving was stationary.

[47] The evidence of PW3 corroborates that of PW1 that the Plaintiff's truck was not stationary. It further corroborates the evidence of PW1 that DW1 attempted to overtake the Plaintiff's truck and in doing so disturbed PW1 who lost control of the Plaintiff's truck which overturned. PW3 further corroborates the evidence of PW1 that a truck from the Big Bend direction disturbed DW1 who was overtaking the Plaintiff's truck forcing DW1 to return to his lane prematurely thus colliding with the Plaintiff's trailer.

[48] I am satisfied from the evidence before me that the accident was caused by the negligent driving of DW1 (Mr. Shabangu) as set out in the Plaintiff's particulars of claim.

[49] PW4 was able to prove the amount claimed by the Plaintiff in respect of the sum of E92,671.75 (Ninety two thousand six hundred and seventy one Emalangenani seventy five cents). The said amount is in respect of damages sustained to the horse.

[50] The Plaintiff was unable to prove the remaining amounts claimed namely E100,225.00 (value of the trailer); E1,080.00 (assessor's fees) and E1,149.00 (investigator's fees) totaling the sum of E102,454.00.


[51] In the event the Plaintiff is awarded compensation in the sum of E92,671.75 (Ninety two thousand six hundred and seventy one Emalangenani seventy five cents). The claims in respect of the remaining amounts are hereby dismissed.

[52] Because of the negligent driving of the Defendant's driver, the Plaintiff is awarded costs and interest as claimed.

[53] The Court orders as follows:

- (a) The Defendant is hereby ordered to pay to the Plaintiff the sum of E92,621.75 (Ninety two thousand six hundred and twenty one Emalangeneni seventy five cents);
- (b) The Defendant is further ordered to pay to the Plaintiff costs of suit;
- (c) The Defendant is further ordered to pay to the Plaintiff interest at the rate of 9% from the 6th December 2018 to date of payment.

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Q. M. MABUZA
PRINCIPAL JUDGE

For the Plaintiff : Ms. S. Matsebula
For the Defendant : Mr. B. Gamedze

