

IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA

'CORAM: MUSTAFA, J.A., OMAR, J.A. And MWALILA, Ag. J.A.)

CIVIL APPEAL NO. 5 OF 1986

BETWEEN

PAUL JOSEPH SHIRIMA.....APPELLANT

AND

GUIDO H. KINKEDQ.....RESPONDENT

(Appeal from the judgment and decree of the
High Court of Tanzania at Arusha) (Chua, J.)
dated the 15th day of October, 1985

in

Civil Case No. 65 of 1980

JUDGMENT OF OMAR, J.A.:

The appellant Mr. Shirima brought the suit in the High Court as a result of motor vehicle accident which occurred in Moshi/Himo road on the 14th April, 1979, at 11 p.m. Appellant prayed compensation for shock pain and suffering, costs of repairs to his motor vehicle, loss of earnings plus medical expenses.

Appellant deposed that on the material night he was driving a taxi No. AMH 44 with a passenger in it along Moshi/Himo road when he noted a vehicle coming from a side road and without stopping went and collided with his vehicle. This other motor vehicle belonged to the respondent Mr. Kinabo and had one head lamp. The impact was so great that appellant suffered fractures of the right thigh and ribs and his vehicle was damaged extensively. Appellant could not trace his passenger to give evidence and so relied on the one Mr. Shayo P.W.2 who happened to be the militiaman on duty in the area that night.

P.W.2 stated that he was on the material night guarding the area near the shops which are situated at Kiborloni along Moshi/Himo road when he saw respondent's vehicle entering the main road from the side road and without stopping at the junction went and ramed into the respondent's car causing it some damage and injuring the appellant. P.W.2 noted that the respondent's car had one head lamp before the collision. He saw one passenger in respondent's car but he was not sure there was any passenger in appellant's vehicle.

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Respondent averred that it was the appellant who caused the accident by driving towards him in an opposite direction and in a wobbling manner. Respondent said that though he drove to his extreme left the on-coming vehicle of appellant followed him and collided with his vehicle and because of great speed appellant's vehicle after collision veered round and almost faced the direction it came from. Gengoran Narotin D.W.3, respondent's passenger corroborated the respondent's story. The sketch plan was drawn the same night and it supported the respondent's story about the head on collision. The sketch plan showed the point of impact as 6 feet from the left side of the road as one faces Noshi thereby leaving 13 feet on the right side for the appellant's car to pass. The trial judge concluded, and quite rightly, that since the two motor vehicles collided by their right mudguards it meant that the appellant had failed to keep to his side and went as far as the side of the respondent. Similarly the point of impact while it was placed at 6 feet from the left side of the road was also found to be 42' from the junction of the road where it was averred by the appellant that that was where respondent's vehicle came from. The learned trial judge rightly concluded that the point of impact would have been right at the junction if the appellant's story and his witness were true, but it was not so. He therefore rejected the version of the appellant and his witness and believed the story of the respondent thereby attributing negligent driving to the appellant. I am of the same view as the learned trial judge. The controversy over sketch plan has also been adequately explained and the tendered sketch plan drawn by Sgt. Juma (who was not available to give evidence) and witnessed by D.W.4 Detective Corporal Azuma was the proper sketch plan.

I agree with the findings of the trial court that because negligence in driving falls squarely on the appellant he is not entitled to claim compensation for the damages incurred on his damaged vehicle nor on the pain and suffering claim for the fractured leg and loss of earnings from his damaged taxi. On the other hand respondent's claims are well founded and judgment was rightly entered in his favour and costs of shs. 51,810/= awarded quite correct.

I would dismiss the appeal with costs.


DATED at ARUSHA this 24th day of September, 1987.

A. M. A. OMAR

JUSTICE OF APPEAL

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I certify that this is a true copy of the original.


(J. H. MOFFET)

DEPUTY REGISTRAR.