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IN THE SUPREME COURT OF THE  
TERRITORY OF PAPUA AND NEW GUINEA.

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GEORGE DICKSON

Plaintiff

- and -

AMBROSE GOROGA

Defendant

J U D G M E N T

This action, claiming the sum of £10,000 damages, arose out of an unfortunate accident on the 21st July, 1959 when a jeep No. T.P.N.G. 7129 and a B.S.A. motor cycle No. 022 came into collision whereby the Plaintiff, a young man, George Dickson, sustained serious injuries to his left leg including a compound fracture of the left tibia and fibula with some shattering of the bone, as well as damage to the skin and muscle. The injury has entailed (amongst other things) twelve months in Hospital and two operations. Since then he has been in hospital in November and December of 1960. He was on crutches for two months and had to wear calipers for six months.

The action against the Defendant, Ambrose Goroga, is based upon the negligence of the Defendant, who was the driver of the jeep, a left-hand drive vehicle, a negligence consisting of his failure to keep a proper look-out, his failure to make a right-hand turn with safety, his failure to give right-of-way to the Plaintiff, and in his failure to avoid a collision with the Plaintiff's motor cycle and in overtaking a stationary vehicle at the intersection on the incorrect side.

The Defendant denied the negligence and alleged that the Plaintiff had failed to keep a proper look-out, that he drove at excessive speed in the circumstances, and that he failed to observe the Defendant before the collision was imminent.

In order to understand the facts, some description of the area in which the collision occurred seems necessary.

The collision occurred in Hubert Murray Highway where Minihi Avenue junctions with it, and nearly opposite a minibus which was stationary in about the centre of the Avenue.

Minihi Avenue runs at an angle to the Highway and thus does not junction with it at right angles.

Where it junctions, the Avenue rises to the Highway enough (from its appearance) for a vehicle stationary to run back if not checked. It is an unsealed dirt road. Entry on to the Highway from the Avenue requires great care and caution.

Hubert Murray Highway, where Minihi Avenue junctions with it, is a sealed road, but the sealed portion is a comparatively narrow strip, shown on the Plan produced to the Court as being 21 feet 9 inches wide, whilst the unsealed portion of the road on the Minihi Avenue side is approximately 12 feet 6 inches wide.

On the day in question the Plaintiff was riding on his motor cycle towards Port Moresby on the Highway at a little before eight o'clock at a reasonable speed, namely twenty to twenty-five miles per hour. As he approached the Minihi Avenue junction with the Highway, the Highway is straight and is straight for a considerable distance, both before and after that Avenue.

The Plaintiff saw the minibus stopped at the junction of the Avenue as he approached, but he did not see the jeep until he drew level with the minibus, although he heard an engine being accelerated. The jeep then made a shallow turn into the Highway, in the opposite direction to the way the motor cycle was travelling. It was then too late for the Plaintiff to avoid a collision with the jeep, which was coming unexpectedly towards him, having made the turn, and the two came into collision, the motor cycle striking or being struck by the jeep on the left-hand bumper bar.

The minibus was awaiting entry into the Highway and was awaiting the safe passage of the Plaintiff on his motor cycle, as the jeep should have been awaiting.

It is clear from the evidence of the Defendant that his jeep had first drawn up behind the minibus, but later it emerged so as to draw level with it, but on its wrong side.

Not long before the accident a utility turned into Minihi Avenue from the Highway with a passenger, David Barmes, a Dental Officer, who saw the jeep and the minibus side by side. At the time the jeep was on the left-hand side of the minibus, both the jeep and the minibus facing towards the Highway, but with the jeep a little in advance of the minibus. Mr. Barmes says that the jeep appeared to be riding the clutch. Mr. Barmes is a reliable and careful witness with no interest in these proceedings.

The utility was coming from the direction of Jackson's Airport and turned into Minihi Avenue, passing the minibus, which

was in the centre of the road, on its right.

The evidence satisfies me that the Plaintiff was in no way negligent. The evidence does not satisfy me that he should have seen the vehicle before he did. I am not certain that he could have seen it before, though it was visible to Mr. Barmes some time before the Plaintiff arrived.

I think that the Defendant was at fault in overtaking the minibus on the wrong side.

In the view of this Court, the accident occurred by reason of the Defendant entering the Highway when he did; I do not think that he came on to the road at an unreasonably fast speed, but he should not have entered at all, and did so without due regard to the traffic on his right, which it was his duty to give way to. To his great credit the Defendant admits that he failed to see the motor cycle approaching, and thus, of course, failed to give way as he should have done. He says that he could not see the approaching motor cycle because the minibus obstructed his view.

In my view, there is no evidence to show that the Plaintiff was not keeping a proper look-out, and in any case, had he seen the jeep earlier, he would not have expected it to enter the road into the Highway in contravention of the rules of the road.

In view of the foregoing, I find a verdict for the Plaintiff.

I understood that Counsel agreed (subject to proof) that the amount of special damage amounted to the sum of £2,538. To this I propose adding the sum of £800 as general damage, making a total sum of £3,338. The Defendant to pay the taxed costs of and incidental to the action.

J.

10 a.m. 21/ 7/61.