

IN THE SUPREME COURT OF SAMOA

HELD AT APIA

*Personal injury
Contributory negligence 50%
failure to wear seat belt*

BETWEEN: OWEN HUGHES of
Moto'otua, Manager

Plaintiff

AND: TAFEA SANG YUM of
Vailima, mechanic

First Defendant

AND: SOSEFINA TOLEAFOA
of Vailima, driver

Second Defendant

Counsel: T K Enari for the Plaintiff
H Schuster for the Second Defendant

Hearing: 24 July 1998

ORAL DECISION

In this case the Plaintiff Mr Hughes sues the First Defendant Tafea Sam Yum and the Second Defendant Sosefina Toleafoa for damages arising from a collision between vehicles on the Cross Island Road on 30 December 1996.

The First Defendant has taken no step in these proceedings so issue is joined between the Plaintiff and the Second Defendant who was the driver of the vehicle concerned.

As a result of a collision between the vehicle driven by the Second Defendant and the vehicle driven by the Plaintiff, the Plaintiff's vehicle was written off.

It had a value before the accident of \$80,000.00 and the wreck was sold for \$18,000.00 and so the loss that has been proven is \$62,000.00.

The Plaintiff also claims \$20,000.00 for pain and suffering for personal injury. That personal injury was three broken ribs and chest pain and difficulty breathing arising from impact upon the steering wheel. The Plaintiff has also proved in evidence some specific items of loss involving among other things medical expenses.

Those special damages are not pleaded and are not to be allowed.

The Second Defendant for her part counter claims for the cost of damage to her vehicle. The amount claimed is \$857.52.

At 8 o'clock in the morning of 30 December 1996 the Plaintiff and his family were coming down hill on the Cross Island Road going towards Apia. The section of road upon which he was driving was just below the New Zealand High Commission, a piece of road which is quite steep.

He was driving on his correct side of the road the right hand side of the road, as one would expect on that road at that time of the morning. He was travelling at about 30 miles per hour. Approaching a left hand bend the Defendant's car came out on to

the road way from his right. When he first saw the Defendant's vehicle it was only some 8 metres distant and there was no time to take any effective evasive action. As he went by in front of the intersection the Defendant's vehicle came forward and struck his vehicle in the right rear side about the rear wheel housing.

The road from which the Defendant's vehicle came intersects the highway at a point from which it is very difficult to see oncoming traffic from the left.

The Defendant and her uncle told me that she stopped before entering the intersection and in the light of that evidence I am prepared to accept that she did. If she looked to her left to see if there was any traffic coming downhill then she did not look carefully enough. She entered the road way and drove at a slow speed into the side of the Plaintiff's vehicle and in doing that she was clearly negligent and it is not surprising that she was convicted of negligent driving.

The force of the impact while not severe, was enough to knock the Plaintiff's vehicle out of control. The force of the impact moved the rear of his vehicle to the left and as a result the Plaintiff lost control.

He drove without slowing down to any appreciable degree a distance of the order of 20 or 30 metres into a shop on the side of the road. The Plaintiff tells me that he had no brakes as a result of the impact.

That evidence is substantiated by the evidence of the Defendant's uncle who told me that it was his belief that the other vehicle did not have good brakes.

I find that it was the force of the impact that caused brake failure to the Defendant's vehicle which was in good working condition before the impact. It was after all a modern vehicle still under warranty. I also find that it was the impact with the shop that caused the Plaintiff Mr Hughes to suffer the injuries he described.

It is alleged by the Defendant that the Plaintiff was speeding but apart from the behaviour of the Plaintiff's vehicle after impact which she saw, she had no evidence upon which to base her allegation of speed. She did not see the Plaintiff's vehicle before impact.

It is the evidence of the Defendant's uncle that the Plaintiff's vehicle was coming down hill very close to its correct side of the road at a speed of at least 50 miles per hour.

I do not accept that estimate of speed and prefer the estimate given by the Plaintiff Mr Hughes.

The negligence of the Second Defendant is clear. The remaining issue is to what extent if any was the Plaintiff, Mr Hughes, negligent?

I am not satisfied upon the balance probabilities that he was negligent at all.

The behaviour of his vehicle after impact is explained by the fact that he was knocked in the right rear side. The force of his collision with the shop is explained by the fact that his vehicle had lost its brakes.

The Second Defendant's counter claim based upon an allegation of negligence by the Plaintiff must therefore fail.

The Plaintiff's claim for the loss of his vehicle is proven in the sum of \$62,000.00. There is no contributory negligence in relation to that aspect of his claim. There will therefore be judgment against both Defendants for that \$62,000.00.

With regard to the claims for damages for personal injury the position however is a little different.

Mr Hughes has fairly conceded that he should have been wearing a seat belt. The injuries that he suffered are the very sort of injuries that seat belts are designed to prevent.

I find that he contributed to those injuries to the extent of 50%. The claim for damages for \$20,000.00 for pain and suffering arising from three broken ribs is excessive. I would assess damages under this head at \$5,000.00 reduced to \$2,500.00 as a result of the finding of contributory negligence.

Under that head there will be judgment for the Plaintiff against both Defendants
for \$2,500.00.

The Plaintiff will have costs on these proceedings according to scale and
disbursements as fixed by the Registrar.



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Moran J