

IN THE SUPREME COURT OF SAMOA

HELD AT APIA

C.P. 223/96

BETWEEN: TUPUTA MEAFOU of,
Faleasiu, Planter

Plaintiff

A N D: PUBLIC TRUSTEE a
corporation sole created by the
Public Trust Office Act 1975

First Defendant

A N D: PENAIA TIALINO c/- Public
Trust Office, Public Servant

Second Defendant

Counsel: T K Enari for plaintiff
G Latu for first and second defendants

Hearing: 29 June 1998

Judgment: 29 June 1998

JUDGMENT OF SAPOLU, CJ

At about 7 o'clock on Monday morning, 19 August 1996, the plaintiff's four wheel drive pick-up vehicle was being driven by one Loveni Temese along the West Coast Road. The pick-up vehicle was travelling on the inland lane of the road from the westerly direction towards the easterly direction. According to its driver, Loveni Temese, when his vehicle was approaching at about 25mph the bend on the road at the eastern end of Malua, he saw a bus travelling from the opposite direction on the

seaward lane of the road. The bus then stopped at the bend, on the seaward side of the road, to pick up passengers.

The witness Loveni testified that when he was close to the stationary bus, he was taken by surprise when he observed a vehicle driven by the second defendant overtaking the bus at a fast speed which he estimated at about 65mph. He tried to swerve his pick-up vehicle to the inland side of the road to avoid collision but the vehicle driven by the second defendant came on and hit his pick-up vehicle on the left side causing it to spin around twice and stopped very close to a coconut tree on the inland side of the road. Loveni also testified that when the second defendant's vehicle hit his pick-up vehicle, the second defendant's vehicle had not completely overtaken the bus. And at the time of the collision the bus was already being driven away and it did not stop for the accident that happened.

It was also stated by the witness Loveni in his testimony that there was a white centre line on that part of the road where this accident occurred. On the inland lane from that centre-line were broken glasses from the collision between the vehicle driven by the second defendant and the vehicle driven by the witness Loveni. There were also paint from Loveni's vehicle on the inland lane of the road where the accident happened.

The testimony by police sergeant Aneteru Tago who investigated this accident was that on the morning in question he was travelling with another police officer from Faleolo when they picked up at Fasitoota a call about a traffic accident at Malua. When they arrived at Malua at the scene of the accident it was after 7.00am. Sergeant

Aneteru testified that he found the land cruiser vehicle which was driven by the second defendant parked on the centre of the road but more on to the inland lane. The pick up vehicle which had been driven by the witness Loveni was at that time under the coconut trees on the inland side of the road and it appeared to be leaning against one of the coconut trees. Broken glasses and paint were also seen by sergeant Aneteru near the centre of the inland lane of the road where this accident occurred. He also observed that only the left side of the pick-up vehicle was damaged.

The police officer also testified that when he arrived on the scene and questioned the second defendant, the latter told him that he was rushing to the wharf at Mulifanua to collect a passenger from Savaii who was arriving on the 7.000am ferry. Later on the same morning, the second defendant was again interviewed by sergeant Aneteru and the police officer testified that the second defendant again told him that he was rushing to collect a passenger from the wharf at Mulifanua when he came to a stationary bus on the bend at Malua. He thought the road was clear, so he overtook the bus. His speed was over 30mph. That was when the collision occurred. The second defendant was then charged with careless driving by the police.

The police officer also gave evidence that the bend on the road where this accident occurred was 'blind'. He explained that to mean that the driver of a vehicle approaching that bend would have a very limited vision of a vehicle approaching the same bend from the opposite direction until they are on the bend.

The evidence given by the second defendant was that he was driving on Monday morning, 19 August 1996, to pick up his boss who had gone to Savaii, from

the wharf at Mulifanua. When he came to Fatitu at Salcimoa, he met a bus. He kept following that bus until his vehicle reached the gate on the eastern end of Malua when he saw a speeding on-coming pick-up vehicle. The distance at that time between his vehicle and the bus at the front was from about the witness stand in the courtroom to the side door of the courtroom. The second defendant said that when the on-coming pick-up approached his vehicle, it veered towards his side of the road and hit his vehicle. It was the left headlight of his vehicle that was hit by the left headlight of the pick-up vehicle. The bus was at that time about 100 to 150 metres to the front of the second defendant's vehicle and never stopped.

The second defendant also denied that he told sergeant Aneteru that he was rushing to collect a passenger from the Mulifanua wharf or that he was overtaking a bus. He also said that the broken glasses and paint were at the centre-line on the road and not on the inland lane of the road. Even though he was charged with careless driving, the second defendant said that when he appeared at the Magistrates Court on that charge, he agreed that he was involved in the accident and was discharged without conviction. This part of the second defendant's evidence was not entirely clear, but it does suggest that he admitted to the charge of careless driving.

I have considered the whole of the evidence and I have decided that the evidence given for the plaintiff is to be preferred as opposed to the evidence given for the defendants. The evidence given by the driver of the plaintiff's pick-up as to the location of broken glasses and paint on the inland lane of the road is consistent with the evidence given on the same matter by the police investigating officer who arrived on the scene shortly after the accident occurred. The location on the road of the

broken glasses and paint is also more consistent with the evidence of the witness Loveni as to where the collision between the two vehicles occurred as opposed to the evidence of the second defendant.

I have also decided to accept the evidence of the police investigating officer regarding the statements made to him by the second defendant as to how this accident happened. I find the police officer's testimony to be quality evidence. These said statements are also quite consistent with the evidence of the witness Loveni as to how this accident. Accordingly, I find that it was the negligence of the second defendant which caused the accident in this case. It was conceded by counsel for the defendants that the vehicle driven by the second defendant belonged to the first defendant and that at the material times the second defendant was in the course of the first defendant's employment. The first defendant is therefore vicariously liable for the negligence of the second defendant.

It was suggested for the defendants that if the second defendant was in fact overtaking a bus at the time of the accident, that bus should have stopped to find out what had happened. While that may be so, I do not know the reason why the bus did not stop. The bus-driver was also not called to testify. The real truth as to why the bus did not stop would only be known if the bus-driver had been called to testify. I can think of possible reasons as to why the bus did not stop but that would only be speculating.

On the question of quantum of damages both counsel are in agreement that the sum of \$6,000 represents a mutually acceptable amount for damages. These damages

represent the costs of repairs to the plaintiff's vehicle and consequential loss for the hire by the plaintiff of other vehicle while his vehicle was out of use.

I, therefore, give judgment for the plaintiff against the defendants in the sum of \$6,000 plus costs to be fixed by the Registrar.

T.F.M. Sa'polu
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CHIEF JUSTICE

Solicitors:

Kruse, Enari & Barlow Law Firm, Apia, for plaintiff

Attorney-General's Office, Apia, for first and second defendants