

lided with a child who ran out into the street. An eye witness for the prosecution testified that he was about twenty feet away when the collision occurred in the middle of the road, that appellant was not driving at a high speed but was going within the speed limit, and that the injured child had "dashed out into the road". There was no testimony whatever that appellant was driving in an erratic fashion or that there was any evidence that he was inattentive to his driving or to traffic conditions. I am unable to find from the record any evidence of negligence on the part of the appellant and am, consequently, unable to sustain the judgment of the District Court.

The judgment of conviction in Ponape District Court Criminal Case No. 1556 is hereby reversed.

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ENDORU SEIOLA, Appellant

v.

EDWIN SANTOS, Appellee

Civil Action No. 346

Trial Division of the High Court

Ponape District

January 17, 1969

Appeal from judgment rendered in action to recover damages arising out of a collision. The Trial Division of the High Court, H. W. Burnett, Associate Justice, held that while evidence supported lower court's findings as to responsibility where there was no evidence to support amount of damages awarded that matter would be returned to the lower court for a determination of loss actually suffered.

1. Appeal and Error-Scope of Review-Record

Where lower court's findings were supported by credible evidence its findings may not be disturbed on appeal.

2. Civil Procedure-Damages

On appeal, where record was completely devoid of any evidence of damages actually suffered by the plaintiff, the matter must be returned to the lower court for a determination of loss actually suffered.

**BURNETT, Associate Justice**

This matter comes before the court on appeal from the judgment in Ponape District Court Civil Action No. 953 dated October 31, 1967. Plaintiff filed a motion for new trial November 7, 1967, which was denied by order of the court on May 13, 1968. Appellant thereafter filed timely notice of appeal, stating as grounds therefor that the judgment entered by the court below was not reasonably supported by the evidence.

The action was brought to recover damages arising out of a collision of scooters operated by the plaintiff and defendant. The District Court found the defendant to have been negligent, and gave judgment to the plaintiff in the amount of \$50.00 for loss during a ten-day period in which he was unable to work, \$25.00 for hospital treatments and \$25.00 for damages to the plaintiff's scooter, plus \$.50 court costs.

This appeal must necessarily be considered in two parts, that is, the question of liability and, secondly, the question of damages suffered for which judgment might issue.

**[1]** As to liability, appellant urges that the court erred in not accepting testimony on behalf of the defendant to the effect that he was driving slowly in the proper lane of travel at the time the collision occurred. Which of the two parties was driving on the right side of the road was, as might be expected, the subject of conflicting testimony. As correctly stated by counsel for the appellee, the trial court was in the best position to weigh the credibility of witnesses and to make a factual determination as to the disputed issues. The trial court in this instance found that defendant-appellant had crossed into plaintiff's lane of travel and was consequently responsible for the accident which resulted. Upon a thorough review of the record I am of the opinion that the court's findings were supported

by credible evidence, and that its determination of liability on the part of the appellant may not be disturbed on this appeal.

**[2]** On the question of damages, however, the record, which includes the Clerk's transcript of testimony, is completely devoid of any evidence of damages actually suffered by the plaintiff. Appellee asserts that the transcript in this regard is at least partially defective in that it is his recollection that questions were asked as to the rate of compensation which his client normally received at the time of the accident. Whether his assertion is correct or not is not now material since no evidence was adduced whatever with respect to property damage for which \$25.00 was allowed in the judgment, nor as to the cost of hospital treatments for which an additional \$25.00 was allowed. The matter must, therefore, be returned to the District Court for a determination of the loss which plaintiff-appellee actually suffered.

It is, therefore, ordered, adjudged, and decreed:-

1. District Court Civil Action No. 953 is affirmed insofar as the determination of liability on the part of the defendant is concerned.
2. This action is returned to the District Court for further hearings on the question of damages for which judgment may issue against the defendant.
3. Upon completion of the hearings and entry of a revised judgment by the District Court, such judgment will be returned to this court for review.