

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA, AT KAMPALA

CIVIL SUIT NO. 982 OF 2001.

ASUMAN KAVUMA.....PLANTIFF

GALIWANGO.....DEFENDANT

BEFORE: V.FMUSOKE-KIBUUKA (JUDGE)

JUDGEMENT.

This suit was set down for the assessment of damages only under Order 9 rule 6, of the Civil Procedure rules. This short judgment is restricted to that formal proof.

The background to the suit, in brief, is that the Plaintiff, Asuman Kavuma, owns a residential house upon the lower part of Bukasa village on the Northern slopes of Muyenga hill. The house was along the Namuwongo Muyenga road. It was just directly opposite a site where stone aggregates were broken on the opposite side of the road.

On 30th June, 2001, at about 3.00 p.m., tipper lorry, reg. No. UAB 700 M, belonging to the defendant, and which was fully loaded with stone aggregates, run across the road and entered into the sitting room of the plaintiff's house. The vehicle caused extensive damage to the Plaintiffs house front wall and door. It also destroyed furniture and other belongings of the plaintiff which were in the sitting room. Two of the Plaintiff's children, namely, Lukumani All, aged 12 years and Kyeyune All, aged 9 years, who were in the sitting room watching T.V, at the time of the accident were injured. They were treated at Kibuli Hospital and in Victoria medical centre in Kampala.

Immediately after the accident, the driver of motor vehicle UAB 700m disappeared. The police failed to trace and arrest him. The defendant was subsequently arrested and convicted

of the offence of failing to keep particulars of his driver's particulars. He paid a fine of 400,000/= at the magistrate's court at Makindye in Kampala, on 4th September, 2001.

The Plaintiff filed this action on 18th November 2001. Summons to file a defence were issued against the defendant on 26th November, 2001. They were served upon the defendant personally on 30th November, 2001. The defendant defaulted in filing a defence. Judgement was, subsequently, entered against him, under order 9 rule 6, on 26th February, 2002. Hence this assessment of damages.

The Plaintiff's case is grounded in negligence. The plaintiff claims that the driver of motor vehicle UAB 700 M was negligent and accordingly, the defendant was vicariously liable since the driver was acting within the course and scope of his duties. He was coming from loading stone aggregates when he drove the vehicle into the Plaintiff's house. The plaintiff claims that the driver was driving too fast on a feeder road and he failed to control the vehicle by application of breaks or swerving in order to avoid the accident. The plaintiff avers further that the driver failed to exercise due care and attention which, in all circumstances, he owed to the plaintiff, the plaintiffs home and the persons living in it. The defendant's driver, following the accident, just fled into hiding to date. He failed to show up to answer charges of reckless driving and driving a motor vehicle in a dangerous mechanical conditions and which was not licensed to be driven on the road.

Those claims have not been denied by the defendant. The plaintiff has produced exhibit P4, a police report and a sketch map made by Number 26553, WPC Amuron. Both those documents support the plaintiff's claim of negligence on the part of the driver of the vehicle. The time was broad day light, at about 3.00 p.m. The plaintiffs house appears, on the sketch map, to have been located within the required distance from the road and was within the same distance as the other houses built along the same road. The negligence of the driver of the defendant, in the circumstances, therefore appears to have been solely responsible for the accident which resulted into the damage and the injuries complained of by the plaintiff.

It, therefore, appears to me that the driver of motor vehicle UAB 700 m owed a duty, to the plaintiff and the other persons whose houses were positioned along the road, of exercising reasonable care, while driving along the road not to drive into their houses. The driver did not exercise reasonable care. Mwadine V.Yaman and Another 119751 E.A 246. The duty of care was breached by the driver when he drove negligently failing to keep a proper look out thus

driving off the road into the house of the plaintiff causing damage to the plaintiff's property and injuries to the plaintiff's children. The plaintiff is entitled to damages for the damage and the injuries caused by the accident.

Since there is no denial that the driver was acting within the course and scope of his duties or employment, the defendant stands vicariously liable for the negligence of servant.

Barugahare Vs. Attorney General HCCS No 130 of 1986.

I will now turn to the assessments of the damages. I will start with special damages.

The overall principle is that special damages by nature are compensatory.

They must be specifically pleaded and strictly proved. A plaintiff who fails to satisfy those requirements of the law renders his own claim bad in law. Ssali Vs. Bwesigye 119781 HCB 188.

In his plaint, the plaintiff set out three particulars of special damages.

First, he claims Shs. 3,827,400. He says that the sum of Shs. 3,827, 400 includes the value of the properties which were in the sitting room of his house which were destroyed as a result of the accident and the cost of repairing the damaged house.

To prove the sum of Shs.3, 827,400 as special damages the plaintiff has adduced his own evidence as PW2. He also relies upon the evidence of his wife, Zula Kavuma, PW1. The plaintiff has produced exhibits P3 and P4. Exhibit P3 consists of three photographs showing the scene of accident, the damaged house and some of the properties damaged in the sitting room. Exhibit P4 is a valuation report made by Moses Balaba Tamale & Company, surveyors and valuers as well as Estate Agents.

Exhibit P4 lists the valued items as below:

- Repair of the wall and installation of door including concrete tinfoil-
1,800,000/=
- Sofa set- 700,000/=
- Dining table- 400,00/=
- Wardrobe- 800,000/=
- Table cloths (3)- 5,000/=

Curtains (3)- 2,400/
- Carpet- 24,000/=
- Cups (6)-6,000/=
- Sports bicycle (1)- 90,000/=
TOTAL = **3,827,400/=**

This court has no doubts with regard to the genuineness of the professional valuation or estimates set out above as the value or replacement value of the destruction caused to the plaintiff's properties listed by the valuers. The only difficulty confronting the court relates to the repair cost of the wall and door which was estimated by the valuers at Shs.1,800, 000 It is possible that the rest of the items listed by the valuer may not have been replaced by the plaintiff at the time of this assessment of damages, however, the impression which was created by the plaintiff and his wife before the court was that the repairs to the house had been carried out within one month after the accident or, at least soon after that period. The plaintiff should, therefore, have supported, his claim for the Shs. 1,800,000 with receipts indicating payments in relation to that item of claim. Not a single receipt was produced for that purpose.

The conclusion this court can draw from the failure to show the exact expenses incurred by him on that item of claim is that, although it was clearly inevitable that some expenses had to be incurred by the plaintiff, upon the replacement of the front wall and door of the plaintiff's house, the amount the Plaintiff incurred was not equal to that estimated by the professional valuer. He could have feared to produce receipts, if the amounts would not add up to the amount claimed in the valuation report.

For the above reason, while I allow the values of all the other items contained in the valuation report intact, for the first item of Shs. 1,800,000 the plaintiff will receive one third less. A sum of Shs. 1,200,000 is awarded for that item. Accordingly, in respect of the claim for the properties destroyed and for the rebuilding of his premises, the plaintiff is awarded Shs. 3,227,400 as special damages.

The second claim, in respect of special damages, is Shs. 81,200 relating to the medication and treatment of the two children of the plaintiff who were injured during the accident. The sum is duly supported by various receipts from Kibuli Muslim Hospital, Victoria Medical Centre and Forensic Consultation Clinic ltd. along Bombo road, all in Kampala. I am fully satisfied

that the amount has been strictly proved. The sum of Shs 81,200, is accordingly awarded as special damages.

The third claim, in terms of special damages, relates two sum of Shs 50,000 each.

The first 50,000/= is stated, in the pleadings, to have involved special hire for reporting the accident to Bukasa police post and later, to Katwe police station. The second involved special hire of a taxi from Bukasa to Kibuli Hospital and later to the police surgeon on Bombo road, in Kampala. In both instances no receipts were issued.

I find great difficulty, even after taking judicial notice of the fact that the special hire taxi operators in Kampala normally issue no receipts, to believe that it would require a special hire taxi to go to report an accident to a police post within the neighbourhood or to Katwe police station for that matter. Secondly, the plaintiff in his own testimony stated that he returned home hours after the accident had occurred. Where was the urgency necessitating hiring a taxi to report the accident which had, several hours before, been disentangled? The claim is rejected.

The second claim of Shs. 50,000 is claimed to have been spent upon hiring a taxi to rush the two injured children to hospital and later to the police surgeon. The claim does appear to me to be credible in the circumstances. There was urgency to rush the two children to hospital after the accident. There was also need for the two to be examined by a police surgeon. The two journeys combined could probably, in my view, cost the total of Shs.50,000 which the Plaintiff claims. I, accordingly, award the sum of Shs 50,000 as special damages in respect of this claim.

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There is another claim for Shs.50,000 indicated by exhibit P4. A general receipt was issued in respect of the amount as cost of the accident police report. However, the claim is inconsistent with the Plaintiff's pleadings. The plaintiff did not include this particular claim in his pleadings. He particularised all the other expenses claimed and left this one out. No attempt was made to amend the plaint. The fact that this particular expense was not specifically pleaded and also because a party must be restricted to his or her own pleadings, (see Interfreight Forwarders Uganda ltd. Vs. East Africa Development Bank, Sc Civil Appeal No. 13 of 1993, the claim fails.

The two last claims, in terms of special damages, relate to two sums of Shs. 200,000/= each.

The first of these is claimed to have been spent upon the purchase of food, by PW1, while she attended to the two sick children who were hospitalised at Kibuli hospital. The sum is supposed to include expenses incurred by the Plaintiff while taking the two children back to Kibuli hospital on different occasions as out patients after their discharge.

The second sum of Shs. 200,000 is claimed in the form of rent which the plaintiff says that he paid for one month to lodge himself and members of his family while awaiting for repairs to his damaged house. No documentary proof has been produced in support of both claims.

Regarding the Shs.200,000 claimed to have been spent on the purchase of food by PW1 while at Kibuli Hospital, PW1 testified that she used to buy the food from food vendors, usually women, selling food outside the hospital. It is general knowledge that such food vendors would, normally, issue no receipts. However it is also well know that food sold in that manner is not very expensive. The evidence of PW1 was that she stayed at the hospital from 30th June to 2nd July, 2001, although the two children continued to visit the hospital as outpatients up to 9th August, 2001. It cannot be believed that during the three days which PW1 spent at Kibuli Hospital, she could have spent Shs. 200,000/= on purchasing food from food vending women outside the hospital. The position remains the some even when one considers the fact that she had to feed two sick children besides herself.

The claim would still remain suspect even when it is considered as containing transport costs incurred by the plaintiff during visits to the hospital after the discharge of the two children. It is my view that the claim has not strictly been proved. No award is made in respect of it.

Regarding the Shs. 200,000 claimed as rent, PW2, the plaintiff, testified that he entered into a verbal agreement with one Katarawa Richard who charged him Shs.200,000/= for staying in his (katarawa's) house for about one and a half months. Katarawa was a neighbour to the plaintiff and he issued no receipt to the plaintiff in respect of the payment.

There are two reasons why I reject making an award in respect of this particular claim. The first is that since Katarawa was a neighbour of the plaintiff, the plaintiff could easily have brought him to court to testify about the verbal agreement and the fact of receiving rent in the sum of Shs. 200,000 from the plaintiff. That was not done. The second is that the evidence

shows clearly that the damage to the plaintiff's house affected only the plaintiff's sitting room and not the bedrooms or any other room. The rest of the house appears not to have been affected including whatever bedrooms there were. The possibility of the plaintiff being compelled to rent alternative accommodation, in those circumstances, appears to me to be very remote. The plaintiffs compelling priority was to repair his house. He had to do so from his personal resources. He testified that he was employed only as an office attendant. Which implies that he would not have money to spend unnecessarily considering his situation at the time.

For those reasons, I have to reject both claims. They are rejected.

A part from special damages, the plaintiff claims general damages.

Unlike special damages, general damages are awarded at the discretion of the court. The discretion has to be exercised judiciously.

In the instant case, general damages would address the inconveniences which the plaintiff endured after the accident.

Part of his house was damaged as the tipper lorry drove through the front wall into the sitting room. A good number of valuable properties were destroyed. The plaintiff has had to do without them for some time. Two children were injured. They had to be hospitalised and treated. The defendant did nothing to mitigate or ameliorate the plaintiff's inconvenience.

In the circumstances, I consider a sum of Shs.2, 000,000 as adequate to address those inconveniences. I ward Shs. 2,000,000 as general damages to the plaintiff.

The defendant will pay costs to the plaintiff. Special and general damages will attract interest at 20% per annum, from the date of filing the suit till payment in full.

In the final result, judgment is for the plaintiff against the defendant. The following orders are made:

- a) an order awarding a total of Shs. 3,358,600/= as special damages.
- b) an order awarding Shs. 2,000,000/= as general damages;

c) an order awarding the costs of this suit to the plaintiff.

d) an order awarding interest on (a) and (b) above, at 20% @ annum from the date of the filing of the suit until the date of payment in full.

V.F.MUSOKE-KIBUUKA

(JUDGE)

3.12.2002

Court: order

The Deputy Registrar/Civil, may, on a date and time set by her, deliver this judgment.

V.F.MUSOKE KIBUUKA (JUDGE)

3. 12.2002.