THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CV-CS-OO 14-1996

1. GEORGE GERMANY)
2. FRANCIS XAVIER BEHUTA)…….. PLAINTIFFS

VS

1. THE TRUSTEES OF MBARARA DIOCESE)
2. ELDAD RWABAJUNGU) ……DEFENDANTS

BEFORE: THE HON. MR. JUSTICE P. K. MUGAMBA

JUDGMENT

On 15th June 1993 at Rushasha along the Mbarara-Bushenyi road there was a collision involving two lorries. One of the lorries belonged to the first defendant and carried many students belonging to Kitabi Seminary. As a result of the collision eleven of the students were killed and this is a representative action brought by parents of the deceased children seeking for general and special damages under Law Reform (Miscellaneous Provisions) Act, Chapter 79 of the Laws of Uganda. The two defendants were sued as owners of the two vehicles involved in the accident aforesaid.

The record of proceedings does not contain a list of agreed issues but these appear to have been agreed upon. In any case counsel for the plaintiff does not object that they were agreed and both counsel for the defendants set them out. I find them apt and I proceed to put them down as:

1) Whether at the time of the accident lorry registration number UPL 819 belonged to the first defendant.
2) Whether lorry registration number UPE 708 belonged to the second defendant.
3) Whether the drivers of the respective lorries were servants of the respective owners.
4) Whether the drivers of any of them drove negligently leading to the accident.
5) Whether the defendants or any of them are vicariously liable for the acts of their servants.

6) Whether the plaintiffs are entitled to general or special damages.
7) Quantum of damages, if any.

Father Twinomugisha Beda testified as DW1. He presented to court a letter introducing him as a representative of the first defendant. The letter was written by the Diocesan Chancellor and authorized the witness to represent the Board of the Registered Trustees of Mbarara Diocese. It is exhibit D. 1. In his evidence DW1 admitted that vehicle registration number UPL 819 did indeed belong to the first defendant. To this issue therefore my finding is in the affirmative. The second issue is whether lorry registration number UPE 708 belonged to the second defendant. The plaintiffs produced no evidence showing the vehicle ever belonged to the second defendant. Rosemary Rwabajungu (D.W.5) widow of the second defendant and administratrix to his estate denied the lorry ever comprised part of his estate. DW6 Eridadi Bwarare who was a business associate of the second defendant testified that at no time did the lorry belong to the second defendant. Exhibit D.4 was proffered on behalf of the second defendant. It was received from the Uganda Revenue Authority and was dated 20th March 2003. It shows vehicle number UPE 708 was registered in the names of M/S Uganda Commercial Bank of P. 0. Box 973 Kampala. As of that date there had never been transfer of ownership. The Traffic and Road Safety Act, Cap. 361, provides as follows under S. 30 thereof:

‘The person in whose name a motor vehicle, trailer or engineering plant not subject to a hiring agreement, or a hire purchase agreement or a finance lease agreement is registered shall, unless the contrary is proved, be presumed to be the owner of the motor vehicle, trailer or engineering plant’.

In the circumstances M/S Uganda Commercial Bank have been and were at the material time the owners of UPE 708. As a matter of fact the plaintiffs, realizing this fact to have eluded them earlier, attempted to amend the plaint by adding M/S Uganda Commercial Bank as one of the defendants. As it was, the application was unsuccessful. The second defendant was never owner of the vehicle UPE 708.

The third issue is whether the drivers of the respective lorries were servants of the respective owners. I have already pronounced myself regarding the relationship between the second defendant and lorry number UPE 708. In the circumstances I do not find it relevant to discuss here if the driver of UPE 708 was a servant of the owner. Secondly, there is no evidence to show whose servant he was. On the other hand, according to the evidence of DW1 the driver in control of the lorry UPL 819 at the time of the collision was indeed the servant of the first defendant. On this issue I am satisfied that the driver of UPL 819 was a servant of the first defendant.
The fourth issue is whether the drivers involved in the collision drove negligently leading to the accident. The plaintiffs did not call any eye witness to the accident. The witnesses that were called arrived at the scene after it had taken place. According to PW6, No. 2931 Cpl. Mwebe Haji, he visited the scene along with his superior officer who is said to have since died. According to the witness the officer drew a sketch plan of the scene of accident. Strangely no effort was made by the plaintiffs to introduce in their evidence either the sketch plan or an accident report. The vehicle Inspection Report on lorry UPL 819, a Mercedes Benz, was made on 22nd June 1993. It is exhibit D.2. The mechanical defects found on the vehicle were:

‘1. All rear tyres nearly worn smooth.
2. Engine stop control missing.
3. Floorboard timber requires replacement.
4. Vehicle shabby requires respraying.’

The report went on to show that the road test was good. The inspector noted that in his opinion the vehicle was in a good mechanical condition before the accident and that the mechanical defects shown above could not cause an accident if both parties were careful. The driver of UPL 819 testified as DW2. It was his evidence he drove very carefully at a slow speed. He had his dim lights on at the time of the accident. It was his testimony that the other vehicle left its side of the road and came to his side thus colliding with the lorry he drove. DW3 was a passenger in UPL 819. His evidence also was that the other vehicle had gone over to the side of the road where UPL 819 travelled and had collided with it. It was his evidence the vehicle in which he travelled was going at what he said was a steady speed and that it had made a smooth halt. It behoves the plaintiffs to give necessary evidence to show any or both the drivers drove negligently. See Sections 101, 102 and 103 of the Evidence Act, Cap. 6 of the Laws of Uganda. I

find they have not discharged this burden of evidence and my answer to this issue is in the negative.

In the alternative the plaintiffs have advanced the doctrine of res ipsa loquitur. In Scott vs London and St Katherine Docks Co (1865) 3 H & C 596 the principle was laid as follows:

i. The thing in issue must be under the management of the defendant or his servants.

ii. The accident is such as in the ordinary course of things does not happen if those who have the management use proper care.

While in the case of lorry UPE 708 the issue would be academic since the owner of the vehicle involved is not joined, in the case of the first defendant it is admitted its driver was in control of their motor vehicle. However that driver has given explanation as to how the accident came to occur. He testified that he was involved in a collision with another lorry negligently driven. This evidence has not been rebutted by the plaintiffs. In the result I find the doctrine of res ipse loquitur does not apply as the accident has been explained away.

The next issue is whether the defendants or any of them are vicariously liable for the acts of their servants. In order for there to be vicarious liability the servant must first be found liable. Then where the answer is positive the principal will be held to shoulder the servant's liability where appropriate. I have shown above that the plaintiffs adduced no evidence of liability. As such consideration of liability on the part of the principals would be premature. I answer this issue in the negative.

Having found as I have the issue of damages, general or special, does not arise, as damages are an answer to liability. Liability is lacking.

This suit stands dismissed.

I should be considering the issue of costs. The matter seems to have eluded parties to this action which I consider cardinal. This suit was brought under the Law Reform (Miscellaneous Provisions) Act. Section 6 (3) of the Act ordains that the action to be brought under the Act should be commenced within 12 calendar months of the death of the deceased. This suit was

registered in 1996, clearly outside the statutory period and it was allowed to linger on for so long without as much as a demur. It is for this reason that parties must bear their costs of the suit.

P. K. Mugamba

Judge

2nd February 2004