

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT GULU
HCT – 02 – CV- CS – 0076 – 2007

KIBWOTA SANTONINO LAYOO >>>>>>> PLAINTIFF

VERSUS

1. WANYAMA BAKULLU

T/A BAKULLU JUNIOR COACH

2. BYESEKEKI ALI >>>>>>>>>>>>>>>>>>> DEFENDANTS

BEFORE: HON. JUSTICE REMMY KASULE

JUDGMENT

The plaintiff instituted this suit as administrator of the estate of the late Adonga David, who died on 24.04.2007 as a result of injuries sustained in a road traffic accident.

In the suit plaintiff the plaintiff, who is father of the deceased, claimed jointly and severally against both defendants for compensation for loss of life as well as both general and special damages.

The first defendant was sued as owner of motor-vehicle heavy omnibus registration number UAH 298R, while the second defendant was sued as the authorized driver of the said motor-vehicle at the material time.

Both defendants were served with summons to file a defence on 20.10.2007, an affidavit of service was filed on court record, but both defendants did not file any defences to the suit within the time prescribed by law. On 07.12.2007 interlocutory judgment was entered against both defendants. The suit proceeded to full hearing therefore by way of formal proof.

On 13.03.2008 the plaintiff, through his Counsel, applied to withdraw the case against the second defendant and court allowed the application.

The hearing of the case thus proceeded against only the first defendant.

Four issues were framed for determination:-

1. whether or not defendant's driver was negligent for causing the accident.
2. whether or not the defendant is vicariously liable for negligence of his driver.
3. whether or not the plaintiff and beneficiaries of the estate of late David Adonga have suffered damages and loss, and if so, the quantum.
4. what are the remedies available to the plaintiff.

On the first issue PW1, Nyero Gaudensio, an Assistant Inspector of Police, and the officer –in-charge of traffic, Gulu Police station, stated that on 24.04.2007 at 7.30 p.m. he proceeded to the scene of the accident along Gulu –Kampala highway at Koro, near Koro Sub-county Headquarters.

At the scene he found motor-vehicle heavy omnibus registration number UAH 298R had been involved in an accident with a pedal cyclist. The cyclist was lying away from the road side stuck on his bicycle and bleeding profusely. The dead body and the bicycle were on the left hand side of the road as one faces Kampala direction. The heavy omnibus was not at the scene of the accident.

The witness drew skid map of the accident, took key witness statements and rushed the deceased's body to Gulu Referral hospital mortuary and kept the accident bicycle at Gulu Central Police station.

He established the point of impact, the distance from point of impact to deceased's body being 11.5 metres, the width of the highway being 6 metres, and that from the point of impact to extreme right being 5.6 metres.

From his observations, both accident vehicles were from the Gulu direction facing Kampala direction and the deceased was knocked from behind on the left side of the road.

PW2 Number 0641 Police Constable Oloya Joe, attached to Minakulu Police Post, Oyam District, testified that on 24.04.2007 he was traveling in heavy omnibus registration number UAH 298R heading for Kamdini-Kampala. He sat next to Byesekeki Ali, the driver of the motor-vehicle who had been sued as second defendant.

While approaching Koro Sub-county Headquarters the driver drove the heavy omnibus motor vehicle in such a way that it rammed on the deceased cycle pedalist and killed him instantly. The accident bus had its windscreen smashed and windows broken.

The witness advised the driver not to stop at the scene of the accident due to security considerations, but rather to go to Minakulu Police post and report the accident. The driver complied.

At Minakulu Police Post, the witness impounded the bus, proceeded to report the accident at Kamdini Police Post. On 25.04.2007 the witness escorted the driver and the bus and handed over the same to PW1 at Gulu Central Police station.

From the evidence of PW1, and PW2, which evidence has not in any way been rebutted, this court concludes that the deceased, while pedal cycling on his bicycle and while on his proper side of the road, was knocked from behind by the motor-vehicle heavy omnibus number UAH 298R being driven by Byesekeki Ali, who was originally sued as the second defendant.

The incident was along Gulu-Kampala High way near Koro Sub-county Headquarters, at about 6.00p.m – 7.30 p.m. on the 24.04.2007. The deceased died instantly as a result of the accident.

A driver of a motor-vehicle on a road is under a duty to take reasonable care for the safety of other road users to avoid a collision. This duty to take care involves taking all measures to avoid a collision. Once a possibility of danger emerging is reasonably apparent, then to take no precautions is negligence, notwithstanding that the other driver or road user is in breach of some traffic regulations or even negligent. A driver of a vehicle should guard against reasonable probability of danger arising from the carelessness of the other driver: **See PAULO KATO vs UTC (1975) HCB 120**

On the evidence adduced the driver of the heavy omnibus motor –vehicle registration number UAH 298R was negligent in that he failed to brake, swerve his vehicle or avoid knocking the deceased who was lawfully pedal cycling on his proper left hand side of the road.

According to PW1 on 28.04.2007 defendant went to him at Gulu Central Police station with a photocopy of the Registration log book of heavy omnibus motor – vehicle and a certificate of third party insurance. The defendant stated he was the owner of the motor-vehicle and the same was registered in his names. The owner of the motor-vehicle admitted that the motor-vehicle was being driven by his authorized driver and PW1 gave him two (2) weeks to produce this driver. After two(2) weeks the owner of the motor-vehicle reported back to PW1, that he had not yet got the driver. PW1 caused the owner of the motor-vehicle to be criminally

charged and prosecuted under Criminal Case Number Traffic 42 of 2007 with the charge of employer failing to keep the record of the driver C/S 148 and 176(1) of the Traffic and Road Safety Act, 1998.

The owner of the vehicle was granted bail in this criminal case, but he never returned to court to date.

According to PW2 the driver of the motor-vehicle never claimed not to have been the authorized driver of the motor vehicle.

It follows therefore, on the evidence adduced of PW1 and PW2 that the plaintiff has, on a balance of probability, proved that the owner of the heavy omnibus registration number UAH 298R is the defendant and that the said defendant employed the driver of the motor vehicle at the material time when the accident happened.

The answer to the first issue is that the defendant's driver was negligent for causing the accident.

As to the second issue, whether or not the defendant is vicariously liable for the negligence of his driver, court received no evidence from the defendant that the driver of the motor-vehicle heavy omnibus registration number UAH 298R was not his authorized driver.

In order to fix liability on an employer for the negligence of this employee, it must be shown principally that the employee was, when he committed the act, acting in the course of his employment and the question in the course of his employment will depend on all the surrounding circumstances of the case: **See: ASADI MUGUMUZA vs. AGIP PETROL STATION (1975) HCB 288.**

The facts of this case are that the bus was being driven for public transport purposes on a main highway in broad day light. PW2, a policeman was one of the passengers. After the accident the driver and later the owner reported to police in connection with the accident. From the evidence of PW1 and PW2 both police personnel who were closely connected with investigating the accident, there is no instance when the owner or driver of the bus claimed that the driver, at the material time was on a florid of his own.

The circumstances of this case therefore point to the fact that the driver of the bus was at the time of the accident, authorized and/or employed by the owner to drive the same and that the accident happened when the said driver was acting in the course of and within the scope of his employment as each.

The second issue therefore is answered in the affirmative.

The third issue is whether or not the plaintiff and the beneficiaries of the estate of the late Adonga David have suffered damages and loss and if so, what is the quantum.

PW3, the plaintiff and father of deceased, testified that deceased carried on the work of a boda boda motor-cyclist and also carried out subsistence farming. The deceased on average earned shs 190,000/= per month. He was aged 30 years at the time of his death.

Deceased was married with a wife and is survived by five (5) children. The wife Ajok Florence is aged 35 years old and does subsistence farming.

The children left by the deceased are all of tender years some are school going, and others are not: court saw them in court. They are:-

1. Aromorach Florence, female, aged 12 school in primary 5.
2. Acen Brenda, female, aged 10, schooling primary 3
3. Okello Joel male, aged 6 in primary 1
4. Adongo Esther, female, aged 4 years, not schooling.
5. Alarorwot Candy, female, aged 9 months.

As a son, the deceased, now and then, would give support to his father, the plaintiff, even though the father is employed as a clerical officer in the Judiciary.

Court finds that the earning of shs 190,000/= per month from boda boda and farming is a reasonable figure, given the economic situation in Uganda. Court accepts this figure as the monthly earnings of the deceased at the time of his death.

Out of this amount the deceased looked after himself and his family. Court finds it reasonable that in all probabilities, the deceased would most possibly spend at least shs 50,000/= of what he earned monthly on himself and the balance of shs 140,000/= on his family.

The deceased was a young man aged only 30 years old. He had, on a balance of probabilities, expected to live up to 55 years old, the expected life expectancy in Uganda. He thus had another 25 years of living; if not more. Given the probable factors that could adversely shorten his life, such as sickness, war and/or accidents, court will reduce the 25 years life expectancy to 22 years. The deceased's earnings he would spend on his family, if he had lived, would thus have been: shs 140,000/= x 22 x 12) 36, 960,000/=.

The court makes an award of shs. 36,960,000/= for loss of dependency.

By virtue of section 6(2) of the Law Reform (Miscellaneous Provisions) Act, Cap. 79, this court is enjoined to distribute the sum of money awarded as loss of dependency amongst the beneficiaries of the deceased's estate.

Both the father and wife of the deceased are able to some how sustain themselves as a Civil servant (father) and a farmer (wife). Bearing this fact in mind each one of them is to take shs. 3,000,000/= loss of dependency.

As to the children surviving the deceased, all are still minors, three of whom are at school, and the others have not yet started school. Court finds it appropriate that the balance of the money for loss of dependency is divided equally amongst them, that is to say, each child is to have shs. 6,134,00/= of this money.

The plaintiff as administrator of the deceased's estate is entitled to damages for the pain and suffering that the deceased suffered before he died.

The evidence adduced is that the defendant's bus knocked the deceased from behind causing him to smash the screen of the bus and then he fell by the way side stuck to his bicycle and bleeding profusely.

The deceased therefore must have suffered a lot of pain before he died; even though he might have died soon after the accident.

The deceased died at a young age of 30 years and plaintiff, as a father lost the love and affection of a son and the wife and children lost a husband and a father. A sum of shs 3,000,000/= is thus awarded as general damages for pain and suffering and for the loss of a son, a husband and a father.

As to special damages, PW3, gave evidence which court accepts as truthful since the amounts are reasonable and not exaggerated, and some are receipted, that he spent

- i. Shs 150,000/= to hire transport to transport the body of deceased.
- ii. Shs 50,000/= for postmortem Report
- iii. Shs 40,000/= attendants' fee at hospital
- iv. Shs. 1,499,600/= burial expenses.
- v. Shs. 120,000/= value of deceased's bicycle damaged in accident,
- vi. Shs. 50,000/= cost of police report.

Total: shs. 1,909,000/=.

The said sum of shs 1,909,000/= is awarded to the plaintiff as special damages.

Judgment is therefore entered for the plaintiff against the defendant for:-

a) Shs. 36,960,000/= loss of dependency, divided as follows:-

(a) Plaintiff shs. 3,000,000/=

(b) Widow: Ajok Florence: shs 3,000,000/=

(c) Each of the five children of the deceased named in this judgment to have shs. 6,134,000/=.

b) shs. 3,000,000/= general damages for pain and suffering and loss of consortium.

c) Shs. 1,909,000/= special damages.

All monies awarded in this judgment are to be paid to the plaintiff' administrator of deceased's estate, who shall receive the same for and on behalf of the beneficiaries of the deceased's estate and pay the same out to the adult beneficiaries, otherwise deal and or keep the money due to the minor beneficiaries in such ways as are and shall be for the benefit of the said minors, until each one shall become of age of majority.

The sums awarded shall carry interest at the rate of 15% pa. from the date of the accident i.e. 24.04.2007, except the general damages, in respect of which interest thereon shall run from the date of judgment, till payment in full.

The plaintiff is awarded the costs of this suit.

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Remmy Kasule

Judge

11th July, 2008