

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
HCT-00-CV-CS-0112 OF 2009

KABUNGA GRACE:::PLAINTIFF

VERSUS

KISAMBIRA SENTAMU ISMAIL:::DEFENDANT

BEFORE: HON. LADY JUSTICE ELIZABETH MUSOKE

JUDGMENT

The plaintiff brought this action against the defendants jointly and severally for the recovery of special and general damages arising out of a tragic road accident allegedly caused by the negligence of the defendants.

This is also brought under the Law Reform Miscellaneous Provisions Act Cap 79 for the benefit of the beneficiaries of the late Nabuliba Betty, the deceased, wife of the plaintiff who perished in the accident.

The brief facts are that on the 14th day of December 2008 at about 01.30 a.m. the plaintiff and his wife while travelling in the plaintiff's car Motor Vehicle Registration No. UAE 661K Toyota Ace got involved in an accident at Bwaise along Bombo Road Kampala after a collision with Motor Vehicle Registration No. UAG 024H, Isuzu Dumper.

As a result of the said fatal accident the plaintiff suffered multiple injuries, broken right leg, fractured left leg and the same have left him severely disabled. As a result of the said accident, the plaintiff's wife, Nabuliba Betty died on the spot. The plaintiff contends that the accident was caused solely by the negligence of Kasule Motto, a driver and/or the agent of the defendant who recklessly drove the said vehicle in the course of his employment.

During hearing, the suit against the first defendant was dismissed on the grounds of absence of a cause of action.

The 2nd defendant did not file a written statement of defence though he was served with summons to file a defence. Consequently, court entered an interlocutory judgment against the 2nd defendant and the suit was set down for formal proof.

Three issues emerge from the pleadings:

- 1) Whether the accident occurred.
- 2) Whether the defendant is responsible for the accident.
- 3) Remedies available to the parties.

I will handle the first and second issues together. The plaintiff adduced evidence through two witnesses. The first witness was Mr. Kabunga Grace, the plaintiff as PW1, aged 35 years and an Engineering Assistant at Mulago Hospital, who testified that on the 14th day of December 2008 while driving his motor vehicle Registration No. UAE 661K Toyota Hiace in the company of his wife, a truck Registration No. UAG 024H coming from Kampala-Kawempe Police Station turning to Industrial area knocked his car injuring him and killing his wife on the

spot. He himself was in a comma for about one week; he suffered fractures on the thigh, and had two operations so far. He is still undergoing treatment. PW1 further stated that the defendant's truck had no lights or indicators.

The second witness was PW2, Dr. Orwotho Nobert, aged 42 years who stated that he was an Orthopaedic Surgeon working with Mulago Hospital, Department of Orthopaedics. He testified that he attended to the plaintiff at Mulago Hospital in 2009 after he was admitted following a motor accident. The plaintiff had been admitted with multiple fractures and PW2 conducted an operation where he fixed the femur, tibia and the pelvis. The doctor testified that the plaintiff's permanent incapacity was at 92%.

It was the submission of Counsel for the plaintiff, that since the defendant had not filed a defence and had failed to enter appearance, he had admitted the allegation in the plaint. See *Eridadi Ahimbisibwe Vs World Food Programme [1998] VI KALR 32*.

I have noted the evidence of the above two witnesses and the submission of learned Counsel for the plaintiff as regards the claims. I have also looked at the sketch plan and the Police accident report indicating the name of the deceased as Nabuliba Betty and the victim as Kabunga Grace and indicating that the accident was out of the negligence of the driver of M/V Registration No. UAG 024H. There is no doubt the accident occurred. I further agree with Counsel for the plaintiff that the accident was solely caused by motor vehicle Registration No. UAG 024H being driven by one Kasule Motto, and belonging to one Kisambira Sentamu Ismail.

The plaintiff also brought this suit under the Law Reform Miscellaneous Provisions Act, Cap 79 for the benefit of the beneficiaries of his late information. Section 5 of the Act states:

“If the death of any persons is caused by any wrongful act, neglect or default of any person, and the act, neglect or default is such as would, if death had not ensued, have entitled the person injured by it to maintain an action to recover damages in respect of it, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under such circumstances as amounts in law to a felony.”

According to paragraph 6 of the plaint, the plaintiff alleged that the accident was caused by the negligence of one Kasule Motto a driver and/or agent of the defendant, the particulars of which were given as:

- a) Driving motor vehicle Reg. No. UAG 024H without regard to other road users.
- b) Driving a motor vehicle with mechanical defects.
- c) Failure to stop, break, swerve or in any other way avoid colliding with the plaintiff’s car.
- d) Failure to indicate while turning from one side of the road to another.
- e) Driving at night without headlights.
- f) Driving recklessly and/or over speeding in a township.
- g) Driving in total disregard of the High Way Code.

To prove the above particulars, the plaintiff tendered in court the sketch plan which clearly shows how the accident was caused, and the police accident report which gave detailed information of what the Police officer witnesses on the ground at the

scene. All the above evidence was uncontroverted, and it all pointed to the fact that the accident was caused through negligence of the driver of the motor vehicle of Registration No. UAG 024H.

The allegation in the plaint has been, therefore, proved by plaintiff's evidence that the accident was caused by the negligence of the Kasule Motto, the defendant's driver. There is no evidence to show that the driver was not at the material time acting within the scope and course of his duties or employment with the defendant. As there is no contrary evidence, the defendant is, therefore, vicariously liable for the negligence of his servant/agent/diver. See *Barugahare Vs Attorney General HCCS No. 130 of 1986*.

The remaining issue is the remedies available. The plaintiff prayed for special damages, general damages, interest and costs.

The general principle is that special damages are by their nature compensatory. They must be specifically pleaded and strictly proved. See *Sali Vs Bwengye [1978] HCB 188*.

Particulars of special damages were set out in paragraph 10 of the plaint and can be classified as medical expenses, repair expenses, burial and medical expenses of the deceased and accident report expenses.

On repair cost, the plaintiff testified that after the accident, his vehicle became almost scrap as it was badly damaged. He took it for repair and the cost was assessed at Shs. 18,315,000= . The repair invoice was tendered in court as Exhibit

P2. I have looked at the figure above which is backed by an invoice. There is no evidence controverting the particulars in the invoice. I find the above to be a reasonable amount. The item is allowed.

The other claim was in respect of medical expenses. The plaintiff told court that the medical expenses were to the tune of Shs. 10,000,000= (Ten million shillings) only. He also testified that drugs cost was Shs. 4,000,000= and that the second operation cost is estimated at Shs. 20,000,000=. Although no receipts were produced for the above expenses, it is obvious, judging from the incapacity suffered by the plaintiff, that these are expenses that had to be incurred. They will, therefore, be considered by court.

The amount of Shs. 10,000,000= claimed for medical expenses (operation cost) and Shs. 4,000,000= (for drugs) appear reasonable, but will however be reduced by 20% each, since no receipts were tendered.

Shs. 20,000,000= is claimed as an alleged estimation of the next operation. It appears to be on the high side. Since there is nothing on record to support the anticipated operation, and such a high figure. The Doctor who carried out the first operation did not say there was need for another operation in the future. I will therefore disallow this item of the claim disallowed. Apart from there being no evidence that the operation is required to be carried out, the claim does not squarely fall under special damages, as it is a future expenditure.

The other claim was for Shs. 69,500= expended on the accident report. I will therefore disallow this item as there was no evidence adduced in court. No receipts were tendered in to show that the expenditure was incurred.

On burial expenses the plaintiff claims Shs. 7,000,000= as the expenses incurred to bury his deceased wife. No break down was given and neither was the expenditure itemized in the plaint. Although no break down was given and no receipts were produced for the above expense, this is an expense that had to be incurred though the figure Shs. 7,000,000= is on the higher side. Court will instead award Shs. 3,000,000= as a reasonable expenditure in this respect.

General damages:

Another remedy claimed by the plaintiff is general damages for loss of livelihood. PW1 testified that he is an Engineering Assistant at Mulago Hospital. He however did not show how much he was earning to help court in the assessment of the overall general damages. He also stated that he is a father of three children who are all school going. PW2, Dr. Orwotho Nobert aged 42 years, an Orthopaedic Surgeon working with Mulago Hospital, Department of Orthopaedics testified that the plaintiff's incapacity was at 92%. A medical report was tendered in court as Exhibit P3.

Counsel relied on the case of *Dr. Dennis Lwamafa Vs Attorney General, Civil Suit No. 79 of 1983 [1992] 1 KALR* where court held that in grant of general damages, the plaintiff must be put in the position he would have been had he not suffered the wrong and the valuation would be as at the time of judgment.

I have noted the evidence above and the submission of Counsel for the plaintiff. I have also looked at the medical report. The plaintiff proved that he is incapacitated and unable to work and support his family. The court saw the plaintiff who

appeared in court to give evidence, and there was no doubt as the level of permanent incapacity which was assessed at 92%.

Using the discretion of court, I will award Shs. 100,000,000= as general damages, to the plaintiff for the pain and suffering and loss of amenities of life.

Loss of dependency:

The other claim was made under the Law Reform Miscellaneous Act, on behalf of the beneficiaries of the deceased wife of the plaintiff. PW1 testified that his wife who was not working, died in the accident. She was a house wife. He testified that the deceased had three children all school going.

In *Akamba Public Road Service Ltd. Vs Aisha Babita, Civil Appeal No. 019 of 1998 page 7*, court held that:

“There is wealth of authorities which establish the procedure of calculating a multiplicand. It is to take the net earnings of the deceased and the proportions thereof which he would have monthly paid to his dependants or simply take the amount which he monthly paid to his wife less the amount she would use on him for example food. That amount paid to the dependants would be multiplied by 12 to get the annual value of the dependency.”

The death certificate indicated that the deceased was aged 32 years when she died. The evidence of PW1 was that the deceased Betty was not working but rather a house wife.

According to Aisha Babitas case, the multiplier would be calculated by looking at the remaining expectation of earning life of the deceased, the ages of various individual dependants and the duration of the dependence of the individual dependants.

Although the plaintiff's wife was not working, it would be unjust to say that she contributed nothing to her family. She would stay at home and take care of the house duties and take care of their young children. Such duties include cooking and washing for the family, looking after the husband and children's welfare both in sickness and health; in the absence of the wife, the husband who is now incapacitated had to hire house help to do all the house hold chores, and nurses to look after the family in sickness.

In Babita's case supra the Court of Appeal held that where the evidence as to the earning of the deceased is unsatisfactory or none-existent the court may take what it considers reasonable and realistic in the circumstances of the case.

In the circumstances, I would value the services rendered by the deceased wife at Shs. 500,000= per month as reasonable. To arrive at the exact figures for damage to be awarded, I will follow the multiplicand laid down in Babitas case supra.

The plaintiff did not plead the ages of the dependants children to enable court ascertain the period of dependence in calculating the multiplier. Neither were the children produced as is required for court to ascertain their existence and age. No award will be made in their respect. When Counsel was called to bring the children he informed court that they had left Uganda and were being looked after in the USA.

Bearing in mind that the husband is now 90% permanently incapacitated, I would estimate that the wife would have spent half of the amount I have valued her services at, on looking after the incapacitated husband, that is to say Shs. 250,000= per month. The husband testified that he was 35 years at the time of testimony in 2011. I will take the life expectancy for the man to be 55 years. Using the above said multiplicand, the loss of dependency for the husband would be:

$250,000 \times 12 \text{ months} \times 20 \text{ years (life expectancy)} = 60,000,000=.$

Shs. 60,000,000= would be awarded to the plaintiff as loss of dependency.

In conclusion, the plaintiff's claim against the defendant succeeds and the following awards made to the plaintiff:

1) Special damages:

a) Shs. 18,000,000= for repair expenses.

b) Shs. 10,000,000= as medical expenses less 20% = Shs. 9,800,000=.

c) Shs. 4,000,000= less 30% = Shs. 3,200,000= for drugs.

d) Shs. 3,000,000= for burial expenses.

Total Shs. 34,000,000=

2) General damages for loss of livelihood Shs. 100,000,000=

3) General damages for loss of dependency Shs. 60,000,000=.

4) Interest on the amount in (1) above at a court rate from the date of filing of the suit till payment in full; and on the amount in (2) above from the date of judgment till payment in full.

5) Costs of the suit.

It is so ordered.

Elizabeth Musoke

JUDGE

6/6/2012