THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CV-CS-0020-2017

ADAM RWANYARARE :::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

ENGANO MILLERS LTD :::::::::::::::::::::::: DEFENDANT

BEFORE: HON LADY JUSTICE JOYCE KAVUMA

JUDGMENT

Introduction.

[1] Adam Rwanyarare (hereinafter referred to as the Plaintiff) brought this suit against Engano Millers Limited (hereinafter referred to as the Defendant) for special and general damages with interest and cost as a result of the negligence of the Defendant's driver.

Background.

[2] The factual background of the instant suit as can be deduced from the plaint was as follows;

The Plaintiff alleged in his plaint that on 18th October 2016 his motorcycle reg. no. UEK 643H was involved in a collision with the Defendant's delivery van reg. no. UAX 721B along Mbarara-Masaka highway which was being driven by the Defendant's authorised driver. That as a result of the accident, the Plaintiff's motorcycle was badly damaged and its driver sustained serious bodily injuries and mental tremor. That the Defendant took the Plaintiff's motorcycle which he undertook to repair within three days but by the time of institution of this suit, the Defendant had not done the said repairs and had

threatened to sell off the said motorcycle and keep the proceeds as storage charges. The Plaintiff particularised the negligence as follows;

1. Driving the Engano Millers Limited truck reg. no. UAX 712B into the Plaintiff's motorcycle without regard to it or its driver.
2. Failing to hire a competent driver and failing to ensure that the aforesaid truck is roadworthy.
3. Failing to stop, swerve, brake or in any other way avoid knocking the Plaintiff's motorcycle.
4. Driving at a speed which was reckless and/or excessive in the circumstances.
5. Failing and/or refusing to obey the Highway Code or the Traffic and Road Safety Act.

[3]The Defendant denied each and every allegation above and stated that the accident was wholly caused due to the Plaintiff's negligence for which they were not liable. That it was true that a memorandum of understanding was entered into with the Plaintiff for repair of his motorcycle, but this was not an admission of liability on their part. That the Defendant repaired the Plaintiff's motorcycle which he refused to take delivery off despite several reminders and had no intentions of selling it.

Representation.

[4]The Plaintiff was represented by Mr. Muhanguzi Bruno while the Defendant was represented by Ms. Nyamwija Mary.

Analysis and decision of court.

[5] It is a settled principle of evidence that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts, must prove those facts exist. (**See Section 101 of the Evidence Act**). It is said that this person has the burden of proof. This is the person whose suit or proceeding would fail if no evidence at all were given on either side. (**See Section 102 of the Evidence Act**).

The instant matter, being civil in nature, the standard of proof is on a balance of probabilities. (**See Miller vs Minister of Pensions [1972] 2 All ER 372**).

It therefore follows that the Plaintiff, being desirous of getting judgment in their favour on the cause of action based on the negligence of the Defendant's agent in causing the collision with the Plaintiff's motorcycle, had the initial evidential burden of proving their case on a balance of probabilities.

This burden is probabilistic in nature and can only shift onto the Defendant when the Plaintiff has led evidence that was more than probable to be true. Failure to do so would lead to the dismissal of their case.

[6] In a joint scheduling memorandum filed in this court on 19th May 2021 both counsel agreed on the following issues for determination by this court;

1. Whether the Defendant's driver was negligent.
2. Whether the defendant is vicariously liable.
3. What are the remedies?

Both advocates filed written submissions which I noticed that counsel for the Plaintiff raised new issues different from those raised in the joint scheduling memorandum.

This court in **Nakivumbi and 9 others vs Leather Industries Limited (Labour Dispute Reference no. 8 of 2021)**, in relation to case scheduling and scheduling memoranda observed as follows;

> *"Order 12 rule 1 provides for Scheduling conference. It is intended to sort out points of agreement or disagreement, the possibility of mediation, arbitration and any other settlement. It is mandatory to schedule conference under Civil cases. Although scheduling conference should be in the hands of the Judge, due to it's unique nature, the Industrial court decided that the parties should schedule by filing a Joint Scheduling Memorandum. This memorandum is to enable parties identify issues for disagreement between them, evidence to be relied on and witnesses are identified and time tables for the progress of the case are set. The role of court is to set time schedules or filing the Joint scheduling memorandum. Furthermore, although the parties are expected to develop a Joint Scheduling Memorandum, the*

Claimant is expected to initiate the process, by preparing a draft and serving it on the Respondent."[**Emphasis mine**]

I find no reason to depart from the above reasoning of this court on this matter. Given the mandatory nature of **Order 12 rule 1** of the Civil Procedure Rules, this court moved and considered the issues as were raised in the joint scheduling memorandum in resolution of the instant matter.

From the said joint scheduling memorandum, the following were the agreed facts;

1. That on 18th October 2016 the Plaintiff's tricycle reg. no. UEK 643H collied with the Defendant's motor vehicle no. UAX 741 B.
2. That the motorcycle reg. no. UEK 643 H belonged to the Plaintiff and was being driven by the Plaintiff's authorized driver in the course of his employment.
3. That motor vehicle no. UAX 741 B belonged to the Defendant company.
4. That at the time of the accident, the Defendant's driver or agent was in charge of the aforementioned vehicle. And driving it in the course of his employment.

Issue 1: <u>Whether the Defendant's driver was negligent.</u>

[7]To prove to this court that the Defendant's driver was negligent, the Plaintiff led his evidence through four witnesses. From the evidence of

all the witnesses, only that of two of the witnesses was relevant to the instant issue.

PW1 Mutebi Sulait testified in chief that around July 2016, he was contracted by Ranch III as a rider of a three-wheeler motorcycle commonly known as "Tuk-Tuk"/ Motorcycle. That on 18th October 2016 at around 0945hrs while riding past Hass Petrol station at the exit sign, the driver of a truck registration no. UAX 741B who was exiting Hass petrol station bumped into the "Tuk-Tuk"/ Motorcycle and knocked it sideways, pushed it towards Global Petrol station where it landed. That in the process he sustained severe injuries on the left leg, broke the left arm and also sustained injuries on the upper thigh and severe chest pains. That the driver of the truck never stopped to observe the oncoming traffic coming from Masaka but negligently entered the road. In cross-examination he testified that before the accident, he had ridden a long time and it wasn't his first time to ride on the said road. That it was not true that he knocked the truck. That the truck did not break and knocked him.

PW2 Kassimu Karyango testified that on that day he was at Hass petrol station refuelling his truck and the Defendant's truck was also at the petrol station. That he witnessed the truck collide with the "tuk tuk". That the said truck driver, before joining the road, never stopped to observe the oncoming traffic.

In cross-examination he maintained his evidence in chief.

[8] In order to show that the Plaintiff's version of events as stated above were probably not true, the Defendant led evidence through two witnesses. Only the evidence of one Defence witness was relevant to this issue.

DW1 Kasowole Samuel testified in chief that he was in the Defendant's truck that day being driven by a one Abdul Razac. That the driver had packed at Hass Petrol Station along Masaka-Mbarara road. That he decided to cross and supply Global Petrol shop. That he indicated that he needed to cross to global shop. That there was a trailer coming from Kampala which stopped and gave him way so that he could cross. That as they were entering global petrol station, the Plaintiff's "Tuk-Tuk"/ Motorcycle tried to overtake the trailer which had stopped and, in the process, knocked the door of the truck on the side of the driver. That they called a traffic officer by the names of Satya who came to the scene. In cross-examination, he maintained his evidence in chief and further testified that Hass Petrol station was opposite Global Petrol station. That the exit and entry of both places is difficult. That on that day, he went to Hass Petrol station to put pressure in the tyres of the truck. That after, they went to Global supermarket.

[9] Negligence is in its nature a specific tort which occurs in situations where a person fails to exercise care which the circumstances require. (See Grant vs Australian Knitting Mills Ltd [1936] AC and Vaughan vs Taff Vale Rly Co. (1860) 5 H & N 679). It therefore follows that

negligence is determined in accordance with the unique circumstances of each case.

Negligence is not synonymous to absolute carelessness but rather the want of such a degree of care as is required in particular circumstances.

In order for a Plaintiff to succeed in a claim in negligence, he or she must show that:

1. The Defendant owed the Plaintiff a duty to take care.
2. That duty has been breached.
3. The Defendant's breach of duty has caused the Plaintiff to suffer loss or damage.
4. The damage is caused in law by the Defendant's negligence/is not too remote/is within the scope of the duty.

The idea of negligence and duty are correlative.

Duty of care is an essential element of the tort of negligence. (**See for example in Fardon vs Harcourt-Rivington (1932) 146 LT 391 at 392**).

A Defendant will not be liable in tort of negligence for every careless act. A Defendant will only incur liability for negligence that causes damage if he or she is under a legal duty to take care. Such a duty to take care must be owed to the Plaintiff. (**See Peel, E., & Goudkamp, J. (2014). Winfield & Jolowicz on Tort. (19th Edition ed.) Thomson Reuters** at **pg. 611**)

Where on the facts of the case, the Defendant is found to owe a duty of care, then they are legally required to take reasonable care to avoid such acts or omissions which can be reasonably foreseen to be likely to cause physical injury to others or property. (**See Halsbury's Laws (4th edn, 1980) 34, para 1;**).

What constitutes negligence varies under different conditions and the determination of whether it exists in a particular case requires the court to examine all the attending and surrounding facts and circumstances. To make a determination whether an act was negligent, it is relevant for the court to further determine whether if any reasonable man would foresee that the act would cause damage or not.

[10] There ought to be reasonable evidence of negligence, however, where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in absence of explanation by the defendants, that the accident arose from want of care. (**See Scott vs London & St. Katherine Docks Co., 3 H. & C. 596, 159 Eng.Rep. 665 (Q.B. 1865)**)

The law on the duty of care imposed on motor vehicle drivers is now settled. A driver of a motor vehicle is under a duty to take reasonable care of the safety of other traffic on the road.

It therefore follows that once the possibility of danger emerging is reasonably apparent and no precautions are taken by the driver, then they are held to be negligent despite the fact that the other road user is negligent or in breach of some traffic regulations. (See Paul Kato vs Uganda Transport Cooperation [1975] HCB 11; Sekitoleko Joram vs Kato Edward and Anor HCCS no. 97 of 2017 and Atto Filder vs Waibi Elijah and Anor HCCS no. 26 of 2013).

The standard of care required in such situations is that of an ordinary driver. The law will not give allowance to inexperienced or learner drivers. The road user ought to be able to anticipate that the other road users may not show this requisite standard of skill, experience and care.

[11] A driver on the main road or highway is said to have the "right of way" as compared to that other driver trying to enter the main road or highway. (See Archie Fernandes vs A.F.E.A. Noronha [1969] EACA 3). The driver coming onto the highway or main road is expected to exercise a high degree of care while coming onto the road.

In Archie Fernandes vs A.F.E.A. Noronha (supra), the Appellant was riding a motorcycle at about 0120am proceeding along the main road, there was no, on the evidence other traffic save for the Respondent's motor vehicle which was about 200 yards away, approaching from a side entrance onto the main road with the intention of proceeding to the city center. When the Respondent entered the main road, his motor vehicle collided with the Appellant's motorcycle. The learned Justices

of the East African Court of Appeal who found both parties equally negligent observed as follows;

> *"I agree that some degree of caution is needed by all drivers even if they have a right of way on the main road but a much higher degree of caution is needed by the driver coming out of a side road or entrance onto the main road… A driver on the main road may be negligent if he did not or could not stop in time in order to avoid an obstacle on his path-way but a greater duty of care must lie on the driver of the vehicle coming out onto the main road who should only do so when he would cause no obstruction to the users of the main road."*

[12] From the evidence of both parties to the instant suit, there are two versions of the events that occurred on that day.
The evidence of both parties is in concurrence with the fact that it was the Plaintiff's "Tuk-Tuk"/ Motorcycle that was on the main road that day while the Defendant's truck was the one that was coming onto the road from a side entrance.

The Plaintiff's witnesses on one hand testified that the Defendant's truck which was exiting from a nearby petrol station and entering the main road rammed into their "Tuk-Tuk"/ Motorcycle without first stopping to observe oncoming traffic.

On the other hand, the Defendant's evidence indicates that on that day, the oncoming traffic (a trailer) indicated to the Defendant's truck driver that they could enter into the road and stopped for them to do so. However, the Plaintiff's "Tuk-Tuk"/ Motorcycle which tried to overtake the now static trailer knocked the Defendant's truck in the door as they tried to enter the main road.

[13] I ought to point out that none of the above two versions of events of 18th October 2016 were challenged by either party to this suit through cross-examination.

The settled position of the law on this is that, an omission or neglect to challenge the evidence-in-chief of an adversary during trial, on a material or essential points by cross-examination would lead to the inference that the evidence is accepted subject to its being assailed as inherently incredible or probably untrue. (See **Habre International Co. Ltd vs Ebrahim Alarakhia & Others Civil Appeal No. 4 of 1999 (SC)** and **Uganda Revenue Authority vs. Mabosi (Civil Appeal 26 of 1995) [1996] UGSC 16 per Karokora JSC (RIP)**).

This court was therefore left with the legal duty of assailing both pieces of evidence to ascertain which of the two versions of events were probably true.

In my attempt at testing the veracity of both accounts of events that occurred that day, this court went further to examine the evidence of

the damages to the "Tuk-Tuk"/ Motorcycle and the extent of the injuries suffered by the Plaintiff that day.

According to **PW1** Mutebi Sulait the parts that were damaged were all at the front of the "Tuk-Tuk"/ Motorcycle that is, the windscreen, frame, the front indicator, right hand shock absorber, chalk cable, wiper, fuel gauge and branding was scratched. Furthermore, according to PW1, he sustained severe injuries on the left leg, broke the left arm and also sustained injuries on the upper thigh and severe chest pains.
When cross-examined, PW1 testified that he went to Mayanja hospital for treatment after the accident occurred where he stayed for a week until when he was discharged. That he did not have any documents showing the history of the accident. That he did not know where he put the medical documents.
PW2 testified that he saw injuries on PW1 which were behind the ear, on the head which according to him were minor compared to the injury on PW1's leg.

[14] The evidence above, specifically the alleged damaged parts of the "Tuk-Tuk"/ Motorcycle shows and is consistent with the "Tuk-Tuk"/ Motorcycle making a head on collision. Considering the fact that the Defendant's truck was entering the road, the evidence is not consistent with **PW1's** and **PW2's** evidence that it was the Defendant's truck that knocked the said "Tuk-Tuk"/ Motorcycle sideways, pushing it towards Global Petrol station where it landed.

The evidence also shows that though the cause of the accident was the driver of the Defendant's truck who entered the road from the side entrance, it also points to the fact that **PW1** was partly to blame for the accident. This is so because from the unchallenged evidence of **DW1** a static trailer was in front of **PW1** at the time of the collision, he should have been able to slow down and taken extra caution while overtaking the static trailer in order to avoid any obstacle in front of it.
In my view, it was this failure to take caution that was the direct cause of the collision with the Defendant's truck thus making PW1 liable in part for the damage resulting from the accident.

[15] Where the Plaintiff fails to take reasonable care of his or her own safety where means and opportunity are afforded to do so leading to injury, they are said to have, by their actions or omissions contributed to their injury. (**See Lewis vs Denye [1939] 1 KB 540**). This is the doctrine of contributory negligence.
When the doctrine of contributory negligence is triggered, it does not defeat a Plaintiff's action but his or her damages will be reduced according to what the court thinks is just and equitable. A person is guilty of contributory negligence if he or she ought reasonably to have foreseen that, if he or she did not act as a reasonable, prudent person, he or she might be hurt; and in his or her reckonings he or she must take into account the possibility of others being careless. (**See Peel, E.,**

Goudkamp, J., Winfield, P. H., Jolowicz, J. A., & Winfield, P. H. (2014). Winfield and Jolowicz on tort at 23-036).

In cases of contributory negligence therefore, the court considers whether the injured plaintiff was negligent and if so, whether they were solely or partly responsible for the accident and the extent of their responsibility.

Contributory negligence only applies to the conduct of the Plaintiff. The actions of the Plaintiff should have materially contributed to the damage they suffered and such acts should in their nature be able to be classified as negligent. (**See** Charlesworth, John, 1893-1957 and Percy, R. A. (Rodney Algernon). (1959). Charlesworth on Negligence/ by J. Charlesworth. London: Sweet & Maxwel 3rd Edn. Para 328).

In the instant case, I am of the considered view that a fair and justiciable apportionment of blame on both parties should be at 50% on the part of PW1 and 50% on the driver of the Defendant's truck.

Issue 2: Whether the Defendant is vicariously liable.

[16] The law is that where the Defendant, in a suit premised on negligence, is in their nature incapable of physically doing the alleged acts save by its human agents, then the plaint must contain an allegation that such a defendant's liability was vicarious in nature arising out of the negligence of its human servant or agent.

Such a plaint, on account of failure to plead such material facts is defective in nature and a court cannot proceed on it unless and when

it has been amended. Where however the plaint alleges ownership and negligence as it was in the instant suit, there is a presumption that at the time of the accident the vehicle was being driven by a person for whose negligence such a defendant was responsible. (See Vyas Industries vs Diocese of Meru [1976 - 1985] EA 596).

[17] Employers may be vicariously liable for the torts of their employees that are committed during the course of employment. Vicarious liability is a relationship-based liability. Vicarious liability signifies the liability which a person (D) may incur to another (C) for damage caused to C by the negligence or other tort of a third party (A). The fact that D is liable does not, of course, insulate (A) from liability. (See Peel, E., Goudkamp, J., Winfield, P. H., Jolowicz, J. A., & Winfield, P. H. (2014). Winfield and Jolowicz on tort at 21-001 and Standard Chartered Bank vs Pakistan National Shipping Corp [2002] UKHL 43). The type of relationship required to established such liability is a specific one, that is, it is one arising under a contract of service and the tort must be referable to that relationship in the sense that it must have been committed by the servant in the course of his or her employment. This is what is known as a master-servant relationship. It is worth noting that the master-servant relationship may not be confined to employment in the strict sense, courts have looked at whether the relationship between (D) and (A) is one that is capable of giving rise to vicarious liability. However, employment is still the most common and best way of

establishing the relationship of master- servant. (**See for example Catholic Child Welfare Society vs Institute of the Brothers of the Christian Schools [2012] UKSC 56 per Lord Phillips.**)

To establish and apportion liability in a case like the instant case, three questions are usually asked by the court;

1. Was the tort committed?
2. Was there a relationship between the tortfeasor and employer which was capable of giving rise to vicarious liability?
3. Was there a close connection between that relationship and the tort committed?

From the joint scheduling memorandum filed by the parties to this suit on 19th May 2020, the agreed facts were that the motor vehicle no. UAX 741 B belonged to the Defendant company and that at the time of the accident, the Defendant's driver or agent was in charge of the aforementioned vehicle and driving it in the course of his employment. It therefore follows, in answer to the instant issue, that the Defendant was vicariously liable for the actions of their driver on the day of the collision.

Issue 3: What are the available remedies?

[18] In their plaint, the Plaintiff sought for;

(a) Special damages in the form of hiring a motor vehicle to fulfil his contracts of supplying milk owing to the damage done to his "Tuk-Tuk"/ Motorcycle whose primary purpose was that. He placed the special damages at UGX 100,000/=

per day calculated from 21st October 2016 up to the date of filing the instant suit. The total sum was placed at UGX 17,200,000/=.

(b) Expenses of hiring another driver to drive the hired motor vehicle from 21st October 2016 at a rate of UGX 70,000/= per day which as at 10th April 2017 stood at UGX 12,040,000/=.

(c) General damages of UGX 100,000,000/=

(d) Interest at Bank of Uganda rate of 12.5% from the date of judgment till payment in full of the special and general damages.

(e) Return of his motorcycle with repairs fully done by verma company limited/Nish Auto Limited.

(f) Costs of the suit.

The special damages.

[19] In relation to the quantum of special damages, it was submitted by counsel for the Plaintiff that the Plaintiff had adduced sufficient evidence in form of annexure **H1-H2** which proved the UGX 17,200,000/=. That **PEX 4** proved the UGX 12,040,000/=.

That the expenses to repair the motorcycle were proved by annexures **J1-J20** at a tune of UGX 10,760,000/=. That compensation to the "Tuk-Tuk"/ Motorcycle driver was proved by **PEX3** at UGX 8,000,000/=.

On the part of counsel for the Defendant, it was their submission that **PW1** never tendered into court any form of proof, receipts of payment of medical bills to justify the compensation he received from the Plaintiff in form of **PEX3**.

In relation to the money used to hire an alternative driver, counsel submitted that this was a forgery since the parties had already entered a memorandum of understanding in which this was never reflected. That there was no proof of any payments to the said driver from the Plaintiff.

[20] Damages are the pecuniary compensation obtainable by success in an action, for a wrong which is either a tort or a breach of contract. (See McGregor, Harvey. (1988). *McGregor on damages.* London: Sweet & Maxwell at page 3 and Broome vs Cassel & Co. [1972] A.C. 1027, 1070E per Lord Hailsham L.C.). Damages are not meant to enrich the successful litigant far beyond their actual losses nor should the successful litigant get any less at the expense of their adversary. They are awarded on the principle of "restitutio in integrum."

Damages are of two kinds, these are general or special damages. Special damages, which are relevant to this part of the judgment are damages which can be computed in terms of money or which can be specifically proved. These may, but not limited to, include expenses for medical

treatment, loss of earnings or income as a result of a vehicle which was involved in an accident.

In **Gsrtc vs Hargovindas R. Modi and 6 Ors AIR2007GUJ39**, it was persuasively observed by the court that;

> *"It is now undisputed proposition of law that when the person is not able to go to work because of the injury suffered by him, he is entitled to be compensated for loss of earnings actual as well as future. The same analogy has to be applied, in view of the foregoing discussion, when the vehicle has remained idle for a particular period on account of damage caused to it in a vehicular accident and the loss of earning for that period is required to be compensated. If such loss cannot be compensated then in case of bodily injury also compensation cannot be awarded for Special damages but it can be awarded only for general damages."*

The above position of the law is a sound position of the law that this court will adopt in resolution of the instant matter.

[21] At trial, **PW1** in relation to the special damages testified in chief that he mutually agreed with his employers to be paid UGX 8,000,000/= as compensation for the medical bills resulting from the injuries that he sustained on that day.

It ought to be pointed out that PW1 first asked the Plaintiff for UGX 10,000,000/= as compensation as shown in **PExh2** the sum was later agreed by both parties to be UGX 8,000,000/=. An acknowledgment letter of receipt of the aforementioned money was admitted by this court as **PExh3**.

Counsel for the Plaintiff in the instant suit submits for recovery of the UGX 8,000,000/= from the Defendant.

[22] My understanding of the above state of affairs is that the Plaintiff was trying to make the Defendant a party to the understanding they had with PW1 for compensation in form of the two documents **PExh2** and **PExh3**.

The longstanding and accepted position of the law is that no one may be entitled to or bound by the terms of a contract to which he is not an original party. (**See Prince vs Easton (1833) 4 B & Ad 433 and Twedle v Atkinson (1861) 1 B & S 393**).

In situations like the instant one where one-party steps in the shoes of another party and tries by way of subrogation to collect payment on behalf of the former, the party against whom the sum is being claimed is entitled to know the terms and conditions of that arrangement or contract. (**See generally Suffish International Food Processors (U) Ltd.; vs Egypt Air Corp. T/A Egyptair Uganda SCCA no. 15 of 2001 per Oder JSC (RIP**).

In the instant suit, the Plaintiff and PW1 agreed to a sum of compensation of UGX 8,000,000/= without the input of the Defendant. It would be grossly unjust for this court to order that they refund the said sums to the Plaintiff.

[23] In relation to the sum of UGX 12,040,000/= at a rate of UGX 70,000/= which the Plaintiff alleged to have paid to another driver to drive another truck owing to the fact that their driver PW1 was injured due to the accident, no evidence was adduced by the Plaintiff of any payment vouchers to the said driver save for the driver's agreement with the Plaintiff. I found this item not proved to this court.

[24] In relation to the UGX 17,200,000/= which the Plaintiff alleged to have spent at a rate of UGX 100,000/= hiring an alternate vehicle to carry out his business of supplying milk, save for **PExh 11** an internal memo from the Plaintiff's company Transport Department to the General Manager relating to hiring a delivery van, no further evidence was led to show that indeed a van was hired at this rate.
I found this item not proved as well.
In the upshot, it is the finding of this court that the Plaintiff is not entitled to the special damages prayed for.

[25] In relation to general damages, the Plaintiff in his plaint placed the quantum at UGX 100,000,000/=.

Counsel for the Plaintiff in their submissions broke down the sum into the following heads;

(a) Loss of business at UGX 900,000/=.

(b) Loss of supplier contracts due to cancellation at UGX 74,000,000/=.

(c) Loss of transport revenue at UGX 7,000,000/=.

(d) Mental anguish and general inconvenience at UGX 10,100,000/=.

Counsel for the Defendant while relying on the decision of this court in **Stephen Kasozi and 3 ors vs Peoples Transport Services Limited HCCS no. 680 of 1992** submitted that the remedy of general damages was not available to the Plaintiff since he failed to demonstrate that as a result of the accident, he suffered any damage.

[26] It is now a settled position of law that in reaching a quantum of general damages, court considers the nature of harm, the value of the subject matter and the economic inconvenience that the injured party might have been put through. It is also the position of the law that general damages are at the discretion of court and their award is not meant to punish the wrong party, but to restore the innocent party to the position he or she would have been had damage not occurred. (**See Uganda Commercial Bank vs Kigozi [2002] 1 EA 305, Charles Acire vs M. Engonda HCCS No. 143 of 1993 and Kibimba Rice vs Umar Salim SCCA no. 17 of 1992**).

This court admitted various documents annexed to Plaintiff's (**PW3**) witness statement. Among these were contract cancellation documents. **PExh 15** showed that the Plaintiff's contract with Golf Course Fresh Milk was cancelled "…due to high prices comparing with other suppliers and market available…" the said contract was terminated on **19th January 2017**. **PExh 16** showed that the Plaintiff's contract with Bontao Food Processors (U) Ltd was cancelled on 30th October 2016 the reason was because the Plaintiff was facing transport challenges and requested to supply once a day.

[27] The law as already stated is this, a person owes a duty of care not to cause physical damage to another person's property and if this duty is breached, then they are liable to pay damages to compensate for the diminution in value of that property and any other financial loss consequent on the damage. (See **SCM (United Kingdom) Ltd vs WJ Whittall & Son Ltd [1971] 1 QB 337; Spartan Steel and Alloys Ltd vs Martin and Co. (Contractors) Ltd [1973] QB 27**).

The loss occasioned must not be too remote to the damage caused. Pure economic loss is therefore not recoverable. (See **Hedley Byrne & Co Ltd v Heller & Partners Ltd (1964) AC 465**).

In a recent decision of **Armstead vs Royal & Sun Alliance Company Ltd [2024] UKSC 6**, it was persuasively held as follows;

"Where it is shown that loss has (factually) been caused by the defendant's breach of a duty of care, five principles are capable of limiting the damages recoverable by the claimant. They are: (i) the scope of the duty; (ii) remoteness; (iii) intervening cause; (iv) failure to mitigate; and (v) contributory negligence."

[28] The first and fifth principles above have already canvassed by this court and this court already found that the Defendant's driver **DW1** owed a duty of care to the Plaintiff's ridder **PW1** who also equally had a duty of care and that the Plaintiff's ridder partly contributed to the damage that the Plaintiff suffered.

On the second principle above, loss is said to be too remote to be recoverable as damages if the type of loss suffered was not reasonably foreseeable at the time of the breach of duty. (See **Overseas Tankship (UK) Ltd vs Morts Dock & Engineering Co, The Wagon Mound [1961] AC 388**).

In my considered opinion, the reasonably foreseeable loss flowing from the damage to the Plaintiff's "Tuk-Tuk"/ Motorcycle in the instant case was that, that would result from the inability by the Plaintiff to use the "Tuk-Tuk"/ Motorcycle at the time it was being repaired by the Defendant. From the facts and evidence before me, the Plaintiff in the

instant case did not carry on using the "Tuk-Tuk"/ Motorcycle when the Defendant took it for repair.

On the third principle, an intervening cause or as commonly known as novus actus interveniens is said to exist where events occur that break the chain of causation between the Defendant's actions and the Plaintiff's damages. In the instant case, I done not find any such events in the evidence led by both parties.

In relation to the fourth principle, in relation to mitigation, it is now the law that an injured party is under a duty to minimize the damages, this what is known as mitigation of damage. An injured Plaintiff should not recover more than he or she would have suffered if he or she acted reasonably because any further damages do not reasonably flow from the Defendant's breach of a duty. (See **Mukankusi vs URA (Court of Appeal Civil Appeal no. 6 of 2011) and The Iron & Steel Wares Ltd.; vs GW Martrs & Company 7 [ULR] 146**).

PW3 the Plaintiff in his evidence in chief testified that he initially approved the hiring of a motor vehicle to enable the company meet its client's contractual obligations at the time that the Defendant undertook to repair the "Tuk-Tuk"/ Motorcycle. However, as I already pointed out earlier in this judgment, the Plaintiff's evidence stopped at **PExh 11** an internal memo from the Plaintiff's company Transport

Department to the General Manager relating to a need to hire a delivery van, no further evidence was led to show that indeed a van was hired. This court can therefore not draw an inference of mitigation of damages only on the said evidence.
It therefore would follow that the Plaintiff did not mitigate the damage that occurred due to the damage of the "Tuk-Tuk"/ Motorcycle.

Taking into consideration of all the circumstances of the instant case as explained above, I therefore find that an award of general damages of UGX 8,000,000/= proper.

[29] On the aspect of interest, counsel for the Plaintiff rightly submitted that the award of interest is at the discretion of the court. Counsel suggested a commercial interest rate of **2.7%** to be imposed per month from the date of judgment till payment in full.
No submission was made in opposition by counsel for the Defendant.

[30] The law is on award of interest is now settled that by superior courts to this, the award of interest is at the discretion of the court. The determination of the rate of interest is also at the discretion of the court. (**See** Omunyokol Akol Johnson vs Attorney General [2012] UGSC 4).
According to **Section 26 (2)** of the Civil Procedure Act, this court has powers to award interest where non is agreed upon. (**See also** Crescent

Transportation Co. Ltd.; vs Bin Technical Services Ltd Court of Appeal Civil Appeal no. 25 of 2000).

Interest rates on special damages should be with effect from the date of loss till payment in full while on general damages it should be from the date of judgment as it is only ascertained in the judgment. (See Hope Mukankusi vs Uganda Revenue Authority (Supra)).

In the instant matter, I find an interest rate of 6% per annum on the general damages to be appropriate in the circumstances. The rate is to run from the date of judgment till payment of the damages in full.

[31] In relation to the costs of the instant suit, the rule of thumb is that a successful party is entitled to costs unless for good cause court orders otherwise. (See Section 27 (2) of the Civil Procedure Act and also James Mbabazi & Another vs Matco Stores Ltd. & Another (Court of Appeal Civil Reference No. 15 of 2004).

The Plaintiff being the successful party in the instant suit, I found no reason to deny him the costs of the suit. The costs of the suit are accordingly awarded to the Plaintiff.

I so order.

Dated, delivered and signed at Mbarara this 16th day of April 2024.

Joyce Kavuma
Judge