THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-05-CV-CA-0024-2022

(Arising out of MBR-00-CV-CS-0122 of 2020)

CHONGQING INTERNATIONAL CORPORATION LIMITED :: APPELLANT

VERSUS

MUHIMBISE AGNES :: RESPONDENT

(Being an Appeal from the Judgment and Orders of His Worship Seruwo Benjamin, Magistrate Grade One sitting at the Mbarara Chief Magistrate's Court dated 12th April 2022)

BEFORE: HON LADY JUSTICE JOYCE KAVUMA

JUDGMENT

Introduction.

[1] This appeal arose from the lower court judgment where the trial court, on the evidence before it found that that the Appellant was negligent in respect of a motor accident that occurred on **5th January 2020.**

Background.

[2] The factual background of the suit as captured by the learned trial Magistrate was that the Respondent alleged that the Appellant's employees excavated a tree near the road leading to her home and negligently left a wide-open ditch without putting any warning sign. That the Respondent's motor vehicle fell into the ditch causing the engine crake case and gear box oil case to break.

That the Appellant in their defence alleged that the road to the Respondent's home had no ditch and therefore no damage was occasioned upon her. That prior to the said road works, the Appellant conducted community awareness, placed road signs and disclaimers to road users that the road was under construction.

After full trial, the learned trial Magistrate found that;

1. The claim in negligence against the Appellant in respect of a motor accident that occurred on 05/01/2020.
2. The Respondent is awarded Ushs. 2,257,000/= in special damages.
3. The Respondent is awarded Ug sh. 1,500,000/= in general damages.
4. The award of both special and general damages attract interest at 15% per annum from the date of judgment until payment in full.
5. The Respondent is awarded the costs of the suit.

[3] The appellant feeling dissatisfied with the decision of the learn trial magistrate preferred the instant appeal on the following grounds;

1. The learned trial magistrate failed to weigh, to scrutinize and to assess the evidence of the court records, as adduced by either party to the suit in a balanced and judicious manner; otherwise, he would have irresistibly arrived at a final decision in favour of the Appellant.
2. The learned trial magistrate erred in law and fact when he failed to make findings to the effect that the said accident (if it

ever occurred) was absolutely due to the negligence or largely due to contributory negligence on the respondent's part.

3. The learned trial magistrate erred in law and fact when he failed to make a finding to the effect that the Respondent failed to prove the occurrence of the purported road accident due to her failure to report the same to traffic police for purposes of informed investigations and as a mandatory requirement of the law.
4. They learned trial magistrate erred in law and fact when he failed to make a finding to the effect that the Respondent's motor vehicle suffered any damages or any serious damages, as a result of the purported accident and that PW3, (a purported non-professional mechanic) produced by the Respondent to prove alleged damages to her vehicle, was an incompetent witness in that regard.
5. The learned trial magistrate erred in law and fact when he awarded special and general damages to the Respondent who failed to prove the same in the required manner or that she ever suffered the same and, in the alternative, the special agent damages awarded to the Respondent were excessive and contrary to the legal principles governing assessment of the same.

The appellant prayed that;

1. The decision or judgment and decree of the learned trial Magistrate Grade one be quashed and set aside accordingly.

2. In the alternative but without prejudice the special and general damages be adjusted and reduced appropriately.
3. The cost of the appeal and of the lower court be awarded to the appellant.
4. Any other remedy dimmed proper and fit by court.

Representation.

[4] The Appellant was represented by Mr. Prince Munulo while the Respondent was represented by Mr. Collins Nuwagaba. Both counsel filed written submissions in the matter which I have considered.

Preliminary point of law.

[5] Counsel for the Respondent raised a preliminary point of law in relation all the grounds of appeal as framed by the Appellant in the instant appeal. According to counsel, the said grounds offended **Order 43** of the Civil Procedure Rules. According to counsel, the grounds were narrative in nature, wide and argumentative and did not specify what point or part of the decree they are objected to and as such could not be comprehended.

Counsel prayed that all the grounds be struck out and consequently the entire appeal.

In reply, it was submitted for the Appellant that the grounds did not offend the provisions of **Order 43 Rule 2** of the Civil Procedure Rules. That the grounds were precise and focused on the major short comings of the lower court judgment. It was prayed that since the preliminary

objection was intended mislead court, it ought to be rejected and dismissed accordingly.

[6] The appeal process is a legally constrained remedy with strict timelines and procedural rules.

This being the first appellate court in this matter, I am legally duty-bound to re-evaluate all the evidence that was available to the trial Magistrate during the trial and make my inferences on all issues of law and fact guided by properly drafted grounds of appeal. (**See Fr. Narcensio Begumisa & Others vs Eric Tibebaaga SCCA no. 17 of 2002, Bogere Moses and Another vs Uganda, Criminal Appeal No. 1/97, Pandya vs R (1957) EA 336) and Ndawula Ronald vs Hiraa Traders (U) Limited (Court of Appeal Civil Appeal no. 259 of 2021**).

Grounds of appeal are said to have been properly drafted where they conform with the law. The law governing appropriate drafting of grounds of appeal is **Order 43 Rule 1(2)** of the Civil Procedure Rules.

[7] **Order 43 rule 1(2)** of the Civil Procedure Rules provides that the memorandum of appeal shall set forth, concisely and under distinct heads the grounds of objection to the decree appealed from without any argument or narrative.

In **M/S Tatu Naiga & Co Emporium vs Verjee Brothers Ltd (Civil Appeal 8 of 2000)**, the Supreme Court held that:

> *"…counsel who frame memoranda of appeals and other legal documents which are ultimately presented to court should comply with the requirements of the rules and forms for framing memoranda and such other legal documents."*

(**See also** Ismail Serugo vs Kampala City Council and AG (Supreme Court Constitutional Appeal no. 2 of 1998 per Kanyeihamba JSC).

The grounds of appeal therefore ought to be clear and self-explanatory, brief and persuasive without narrative and argument. The ground of appeal must specify in what way, and what specific aspect of the decision being appealed against, the trial court erred in arriving at its decision. (**See** Ndawula Ronald vs Hiraa Traders (U) Limited (supra)).

[8] I have examined all the grounds of appeal in the instant matter and found, in agreement with counsel for the Respondent that they were not well formulated.

In relation to **ground 1** of the instant appeal which I reproduced herein above, I found that it did not specify which portions of the evidence that the learned trial Magistrate failed to *"weigh"*, *"scrutinize"* and *"assess"* in a *"reasonable, balanced and judicious manner"*. It was vague in nature.

In relation to **grounds 2, 3, 4** and **5**, I found them to be narrative in nature and at the same time argumentative.

In Lagedo and Others vs Obwoya (High Court Civil Appeal 82 of 2019), this court observed that;

> *"A ground of appeal should not be narrative or argumentative in nature. A ground of appeal must also challenge a holding, ratio decidendi and must specify points which were wrongly decided. Therefore, a ground which is framed thus, "had the learned trial magistrate…she/he would not have…" with respect, would be argumentative."*

[9] The stance that courts in this jurisdiction have taken where grounds of appeal have been found to be offensive to the Rules has been to frown against them and strike out the offending grounds and proceed with those grounds that were not offensive.
In the instant matter, all the grounds are offensive.

Badly drafted grounds of appeal may however only be ignored in the interest of doing substantive justice in the given circumstances of the case under **Article 126(2)(e)** of the Constitution. (**See** Katumba Byaruhanga vs Edward Kyewalabye Musoke (Court of Appeal Civil Appeal no. 2 of 1998), Sietco vs Noble Builders (U) Ltd Civil Appeal no. 31 of 1995 and Lagedo and Others v Obwoya (supra)).

In a bid to do substantive justice to the Appellant in accordance with **Article 126(2) (e)** of the Constitution whose whole appeal was to fall had this court decided to strike out the grounds of appeal, I took

exception to the poorly drafted grounds of appeal. It should however be pointed out that the purpose for which **Article 126(2)(e)** of the Constitution was enacted was not to encourage sloppy drafting of pleadings amongst advocates or litigants as this is why Rules were enacted to govern procedure in this court. I am buttressed in arriving at this finding by the decision of the East African Court of Appeal in **Mamji vs Arusha General Store [1970] EA 137** wherein it was held that;

> *"We have repeatedly said that the rules of procedure are designed to give effect to the rights of the parties and that once the parties are brought before the Courts in such a way that no possible injustice is caused to either, then a mere irregularity in relation to the rules of procedure would not result in vitiation of the proceedings. I should like to make it quite clear that this does not mean that rules of procedure should not be complied with- indeed they should but non-compliance with the rules of procedure of Court, which are directory and not mandatory rules, would not normally result in the proceedings being vitiated if in fact, no injustice has been done to the parties."* [**Per Sir Charles Newbold**].

(**See also Tororo Cement Co Ltd vs Frokina International Ltd Supreme Court Civil Appeal no.2 of 2001**).

The Preliminary objection is therefore overruled.

The merits of the appeal.

[10] Counsel for the Appellant argued grounds 1 and 2 jointly and grounds 3 and 4 jointly while ground 5 was argued separately.

Grounds 1 and 2.

On grounds 1 and 2, counsel for the Appellant submitted that had the learned trial Magistrate subjected the evidence before him to a proper scrutiny and assessment, he would have found that the Respondent contributed to the damage she suffered in the instant case.

According to counsel, the Respondent during her cross-examination during trial testified that she was aware of the ongoing incomplete road works. That secondly, the Respondent testified that at the point where her car plunged in a ditch or man hole, there was a big mitoma tree which she saw on her way to work but didn't find on her way back from work. That thirdly, the Respondent in her cross-examination also testified that she could see properly because it was day time and she actually saw the ditch but went on driving her vehicle. That fourthly the Respondent also testified that the road was slippery and this was the reason why the vehicle plugged in a ditch.

That all the above pieces of evidence showed that the Respondent was negligent since it was foreseeable by her that unless she halted or stopped further advancement of the car, it would slip into the ditch which was visible to her.

In reply, it was submitted on behalf of the Respondent that a critical perusal of the record of proceedings clearly showed that the learned

trial Magistrate properly evaluated the evidence on record before reaching the conclusions he reached at. That the learned trial Magistrate considered the testimonies of **DW1** and **DW2** whereby they stated that there was a consultative meeting held before the construction begun and that they had put up a promise themselves to provide an alternative access to the respondent and other locals which was not done. On authority of **Embu Public Road Services vs Riimi [1968] EA 22**, counsel submitted that the Appellant had to show or must show that there was no negligence on their part which contributed to the accident, or that there was no cause of the accident which did not connote negligence on their agent's part or that the accident was due to circumstances beyond their control. According to counsel, the Appellant failed to discharge this burden other than conceding to the negligent acts through its agents as was seen on the record.

[11] The learned trial Magistrate on the aspect of contributory negligence found as follows;

> *"In the defendant's submission, the defendant alleges the Plaintiff was negligent and goes on to put together some sort of evidence to prove the same however this has caused court legal challenges. Nowhere in the defendant's pleading did the defendant plead negligence on part of the Plaintiff. In fact, the written statement of defence completely denies the existence of a tree at the Plaintiff's junction, the excavation of that same tree and leaving any ditch, and*

claimed no damage could ever be occasioned to the plaintiff's vehicle. SEE paragraph 4 and 5 to the written statement of defence.

Claiming negligence in submission amounted to a departure from the pleadings which is not allowed under Order 6 Rule 7 of the Civil Procedure Rules…in the present case, the Plaintiff had no fair notice as negligence was not raised in the Defendant's written statement of Defence and would greatly be prejudicial to the Plaintiff's case raising the same at this stage. Therefore, reference by Counsel for the Defendant in his submission that the plaintiff was negligent is misplaced as negligence was neither pleaded nor particulars given."

[12] The law on pleading contributory negligence is settled. Where a defendant intends to rely upon an averment of contributory negligence, such allegations must be specifically pleaded and proved against the plaintiff. (**See Charlesworth & Percy on Negligence; Ninth Edition; para 3-13 at page 198, B.A.T (U) Ltd vs Selestino Mushongere [1995] KALR 80 and Fookes vs Slaytor [1979] 1 ALL ER**).

In **Fookes vs Slaytor(supra)** a motor vehicle driven by the Plaintiff ran into the rear of an unlighted articulated vehicle parked by the roadside which resulted in the Plaintiff sustaining personal injuries. In an action against the Defendant, it was held by the court as follows;

> *"It appears to me that, with all respect to Judge McDonnell, it was not right in this case to treat the matter as if there were a plea of contributory negligence before the court. That seems to me to be the rule in relation of procedure. The opposite view would mean that a plaintiff in any case where contributory negligence might possibly arise, even though it was not pleaded, would have to come to court armed with evidence that might be available to him to rebut any allegation of contributory negligence raised at the trial."* [Emphasis mine]

It therefore follows from the foregoing that in the event of a failure on the part of the Defendant to raise allegations of contributory negligence, the trial court is not only not supposed to apportion liability between the parties but also has no legal obligation to take considerations of contributory negligence into account. (See also Christie vs Bridgestone Australia Pty (1984) 33 S.A.S.R 377 and Owens vs Brimmel [1977] QB 859).

Where however, if the plaintiff's contributory negligence appears from the allegations of their plaint or from the evidence introduced on their behalf at trial, the plea of contributory negligence may be available to the defendant although it is not pleaded in their Written Statement of Defence. (See Hoffman vs Sothern Pacific Co. (84 Cal. App. 337)).

[13] On the above principles of law, this court has to therefore ascertain whether the Appellant, from their pleadings sufficiently pleaded contributory negligence against the Respondent or on the evidence brought by the Respondent during trial, an inference of contributory negligence can be made against her.

The Appellant's defense in as far as it relates to this issue, as filed in the lower court was in the following terms;

> *"**5**. Paragraph 6 of the Plaint and the particulars of negligence are denied, and the Defendant avers that the alleged road by the Plaintiff has no ditch as such no motor vehicle damage could have been occasioned to the Plaintiff's alleged car.*
>
> ***6.** In further reply to paragraph 6 of the Plaint, the Defendant avers that there were road signs 40 – 50 meters before the alleged scene of the accident indicating on-going road construction activities and this acted as an alert or caution to road users of any possible damages and accidents. Pictures of the road signs acknowledging the same are attached and marked "A".*
>
> *7. In further reply to paragraph 6 of the Plaint, the Defendant avers there were community awareness programs and meetings in the area where the Plaintiff resides to inform residents of future construction projects on Mubangizi road to prevent possible accidents and damages*

to road users. A copy of the minutes of the meeting acknowledging the same is attached and marked "B"."

[14] In **Hoffman vs Sothern Pacific Co. (supra)**, in relation to pleading contributory negligence, it was persuasively held by that court as follows;

> *"It has been a perplexing question upon which the courts have differed widely as to just what allegations would be sufficient to constitute an adequate defense upon a plea of contributory negligence. It is apparent that no fixed rule in this regard can be assigned which will fit all classes of cases; each case will depend upon the particular facts involved. It is not necessary to use the specific term of contributory negligence, although a concise statement of the facts indicating the commission or omission of acts which would be required of one under similar circumstances in the exercise of ordinary care and which would appear to directly contribute to the injuries complained of must be alleged. It is not sufficient to merely allege in the form of a conclusion that the acts complained of were due to the negligence or carelessness of the plaintiff." [**Emphasis mine**]*

From the pleading which I have quoted above verbatim, as filed by the Appellant in the trial court it is difficult to see how it was insufficient to present the issue of contributory negligence. The Written Statement of Defence specifically **paragraphs 6 and 7** show, on their face that the Appellant had exercised pre-caution during the road construction in

order to avoid the damage which the Respondent suffered as presented in her claim before the trial court by placing road signs on the road and holding a sensitization meeting with the residents prior to the road construction.

[15] Having found as I did above, the next step this court has to take is to examine whether the evidence as presented by the parties during trial supports a finding of contributory negligence specifically on the pleadings of the Appellant.

The Respondent's evidence at trial.

Three witnesses appeared on behalf of the Respondent.

PW1 Muhimbise Agnes testified in chief that on **5th January 2020** on while driving to her home, her car fell in a ditch which had been created by the Appellant's employees. That on **4th January 2020** she left for work and on the road leading to her home there was a big mutooma tree but when she returned the following day on **5th January 2020,** she found the tree had been removed and the road had not been leveled up. That on that day, owing to the fact that it had rained, the road being slippery and that the Appellant's employees had not put-up road signs on the road showing the ditch, her vehicle ended up falling in the ditch.

In **cross-examination** she testified that she could see properly because it was day time and the road was straight. She emphasized the fact that it was rainy that day and the road was slippery. That she was driving

slowly because she knew there were ongoing road works in the area. That there were ditches in the road. That meetings were held about the road construction. That in the meeting they were requested to cooperate with the contractors but were not told to take caution. That if it had not rained, then she would have been able to access her home.

PW2 Asingwire Willis the area chairperson testified in chief that the Respondent came to him on **5th January 2020** and reported that her vehicle had got damaged while she was driving home along Mubangizi road that was under construction by the Appellant. That the Appellant had uprooted a tree stump and dug an open ditch at the junction leading to the Respondent's home.

In **cross-examination** he testified that a meeting was held prior to the road works intended to inform the residents that there would be road works. That the Respondent attended the said meeting and was aware that road construction was taking place. That there were road signs on the road but not in all places. That the residents were expected to be cautious during the road construction.

In **re-examination**, it was his testimony that they had agreed on temporary access for residents to access their homes as the road construction was ongoing. That there was temporary access to the Respondent's home but there was also a ditch.

The Appellant's evidence at trial.

[16] For the Appellant, two witnesses appeared.

DW Simon Rugabariyo an employee of the Appellant testified in chief that there was no ditch at the alleged site where the Plaintiff's car got damaged. That there were road signs 40 – 50 metres before the scene of the accident showing "men at work" and "20 km/hr" speed limit indicating ongoing road construction activities and restricted speed limit. Pictures of the said road signs were admitted by the trial court as **DExb 1**. That he was present at a sensitization meeting held with the residents prior to road construction in which the residents were informed of the road designs, measurements, interruptions and also cautioned them in order to avert damages due to accidents. A copy of the minutes of the meeting was admitted by the court as **DExb 2**.

In **cross-examination** he testified that he was not the one that took the pictures of the road signs and he could not prove that the pictures were taken that day. That when the tree near the Respondent's home was removed, the entire section was leveled and covered up immediately. That when the accident occurred, he went to scene but never found the Respondent's car there.

DW2 Ssonko Goeffrey, a surveyor testified in chief that he was among the main presenters at the meeting with the residents.

In **cross-examination** he testified that the said meeting was after the construction of the road had started. That was a tree at the junction to the Respondent's home which was removed during the road works.

That at that exact spot, they did not clear its access roads to the residents. That they put warning tapes and signs to seal off the area. That whereas they agreed to provide access roads to all the residents

affected by the road works, none was done for that particular access road. That the place was not sealed off.

[17] 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. It means the failure by a person to use reasonable care for the safety of either themselves or their property so that they become blameworthy in part as the author of their own wrong. (**See Charlesworth & Percy on Negligence; (supra) para 3-04 at page 194**).

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.

In **Nance vs British Columbia Electric Ry [1951] A.C. 601**, the effect of contributory negligence was explored by the court. At page 611 of the judgment of the court it was persuasively observed as follows;

> *"When contributory negligence is set up as a defence, its existence does not depend on any duty owed by the injured party sued, and all that is necessary to establish such a defence is to prove…that the injured party did not in his own interest take reasonable care of himself and contributed, by this want of care, to his own injury. For when contributory negligence is set up as a shield against*

the obligation to satisfy the whole of the plaintiff's claim, the principle involved is that, where a man is part author of his own injury, he cannot call on the other party to compensate him in full." [Emphasis mine]

It follows from the above exposition of the law that court has to examine which of the parties' actions caused the harm complained of. This question must be dealt with broadly and upon common-sense principles. The test has been held to be whether the Plaintiff in the ordinary plain common-sense of the business contributed to the damage. (See Admiralty Comrs vs SS Volute (Owners) [1922] 1 AC 129).

The standard of care in cases of contributory negligence is that of objective reasonable foreseeability of harm to oneself.

[18] In the instant case, from the evidence on the trial court record, it is clear to this court and the same was never disputed during trial that the Respondent had knowledge of the fact that the Appellant was carrying out road works in her area.

The evidence further shows that the Respondent was however not aware that the tree that was in the junction leading to her home which she saw the day before when going to work had been uprooted. This state of affairs was made worse by DW1 who told the trial court that he did not know when the pictures of the road signs on the road were taken, whether before the accident or after. DW2 in his testimony also stated that the spot where the accident happened was not particularly sealed off.

From the above, I am of the stern view that the Respondent, owing to the lack of knowledge of the existing danger as the evidence above clearly shows could not have reasonably foreseen that her car would fall in the ditch that day.

[19] The knowledge by the Plaintiff of an existing danger or of the defendant's negligence is an important element in determining whether or not they have been guilty of contributory negligence. (**See for example A. C Billings & Sons Ltd vs Riden [1957]3 ALL ER 1**).

In **A. C Billings & Sons Ltd vs Riden (supra)** the Plaintiff found her way had negligently been blocked by the Defendants. She attempted to use another route which she knew and which a reasonable person with that knowledge would have realized was dangerous. In his judgment, it was observed by Lord Reid persuasively as follows;

> *"There may be many cases in which warning is an adequate discharge of the duty … but there are other cases when that is not …The conclusion to be drawn from these cases appears to me to be that there is no magic in giving a warning. If the plaintiff knew the danger, either because he was warned or from his own knowledge and observation, the question is whether the danger was such that in the circumstances no sensible man would have incurred it or, in other words, whether the plaintiff's exposing himself to the danger was a want of common or ordinary prudence on his*

part. If it was not, the fact that he voluntarily or knowingly incurred the danger does not entitle the defendant to escape from liability.' The plaintiff need not be a 'paragon of circumspection'". [**Emphasis mine]**

[20] In the case before me, even if I were to moot the idea that the Respondent was adequately warned about the ditch as the Appellant wanted the trial court to believe or that from her own observation, she saw the ditch, the conditions that day could not have made it possible for her to avert the danger. The Respondent in her uncontroverted evidence firstly pointed out that it was particularly rainy and slippery that day. Secondly, **DW2** told the trial court in his testimony that there was no alternative access road made for the residents that were affected by the particular spot where the Respondent's car fell in a ditch.

[21] For the foregoing reasons and the evidence at trial, this court is unable to infer contributory negligence against the Respondent.

Grounds 1 and 2 of this appeal are therefore without merit.

Grounds 3 and 4.

[22] On these two grounds of appeal, counsel for the Appellant submitted that the Respondent's claim ought to have been treated with suspicion and doubt. According to counsel, the Respondent failed to prove on a balance of probabilities that her vehicle was damaged that day. Counsel submitted that the Respondent never reported the matter to the Police Inspectorate of Vehicles for inspection to confirm the

purported damages. While relying on **Section 129** of the Traffic Road Safety Act, counsel submitted that placing or doing anything on a public road which impedes motion of any vehicle like the said ditch was an offence which the Respondent should have reported in order to cause investigations by police. That by reporting the incident an independent IOV report would have been produced verifying whether the Respondent was a qualified driver or if the Respondent's car was roadworthy that day.

In response, it was submitted on behalf of the Respondent that the grounds were without merit as they were based upon a disguised counterclaim which the Appellant raised by way of submissions but the same was dismissed by the learned trial Magistrate in his judgment. That all the above allegations were never canvassed during the trial and only came up during the filing of submissions.

The learned trial Magistrate's findings on this issue can be traced at **page 7** of his judgment where he stated as follows;

> *"Furthermore, the defendant in their submissions raised an issue of the Plaintiff failing to prove she was on the road legally since no driving license was ever availed as per Section 35 of the Traffic and Roads Safety Act. With respect I differ from that line of submission. I am persuaded that for a plaintiff to succeed, they must have a cause of action against the defendant being sued. The fact pf the plaintiff*

being legally or illegally on road was never in issue in the suit as it did not come out anywhere during the pleadings and/or hearing. In any case, this was an action based on negligence, which as I will show shortly entails the plaintiff to prove certain conditions which do not necessarily entail specific proof that they owned a driving licence."

[23] In relation to whether or not the Appellant pleaded the aspects of whether or not the Respondent possessed a driving licence or that her car was roadworthy, I entirely agree with the findings of the learned trial Magistrate. They were never pleaded and during the trial no questions were asked of the Respondent in that regard. The issue of the driving license only came up in the submissions of counsel for the Appellant before this court.

The law on the burden and standard of proof in civil matters is settled now. It lies on 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, who must prove those facts exist. (**See Section 101 of the Evidence Act**). 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 standard of proof is on a balance of probabilities. (**See Miller vs Minister of Pensions [1972] 2 All ER 372**).

The Respondent was desirous of proving to the trial court tat her car was damaged as a result of falling into a ditch that was negligently left open by the workers of the Appellant.

[24] At trial, the Respondent **PW1** to prove her case testified in chief that her vehicle fell in a ditch and she took snap shots of it which she annexed to her witness statement. The said photos were admitted by the trial court as **PE2**. She then went ahead to testify that she called her mechanic who came and realized that the vehicle could not be removed and having seen the oil leaking, he advised him to get a breakdown to carry the vehicle to the garage. That she incurred expenses which she went ahead and particularized in her statement adding up to a tune of UGX 2,257,000/=. Here invoice was admitted by the trial court as **PID1**.

In her **cross-examination** she maintained her evidence above in relation to the fact that her car was damaged that day. She went ahead to state that during the accident, no people were present and no one could testify to the fact that her car was damaged.

The area LC1 **PW2** testified to the fact that the Respondent reported the said accident to him on **5th January 2020**. That it was him that advised the Respondent to take her car to the garage while he engaged officials of the Appellant.

In his **cross-examination** he maintained that the Respondent called him about the incident. That he did not see the damaged her as he only saw it after the repairs were done to it. That he did not know anything about the breakdown.

PW3 Mujuni Didan a mechanic testified that he received a call from the Respondent on **5th January 2020** who told him that her car had fallen in a ditch. That he moved to the place and found that indeed the car had fallen in a ditch and was in poor mechanical condition and had got a problem with the engine. That he advised her to hire a breakdown to tow the vehicle to his garage which she did. That he repaired the vehicle at a total cost of UGX 2,257,000/=. His invoice to the Respondent was admitted by the trial court as **PE6** and case receipt for UGX 2,257,000/= was admitted by court as **PE5**.
In his **cross-examination** he maintained his testimony in chief.

[25] The burden that was imposed upon the Respondent by the law was probabilistic in nature and could only shift onto the Appellant when the Respondent had led evidence that was more than probable to be true.
Having assailed the above evidence as I am duty bound to do as the first appellate court, I found that the Respondent at that stage had discharged the initial burden imposed by the law upon her. She had managed to show the trial court that her averments in the plaint were probably true.
At that point the burden shifted to the Appellant to try and show the trial court that the Respondent's version of events that day were not probably true otherwise judgment would have been given against them.

DW1 Simon Rugabariyo testified in chief that indeed the Respondent reported a claim of her damaged vehicle due to a ditch in the road. He however stated that there was no such ditch in the road.
In his **cross-examination** he stated that when he went to the scene, a day after, he never found the said vehicle at the scene.

[26] On the evidence before me, even without an inspection report from the Police Inspectorate of Vehicles, I am of the considered opinion that the Respondent's version of events, that her vehicle was damaged that day when it fell into a ditch which was left in the road by the Appellant's workers was more than probable to be true compared to that of the Appellant. She had proved her case on a balance of probabilities.
It follows therefore that grounds 3 and 4 of the instant appeal are also without merit.

Ground 5

[27] On this ground, counsel for the Appellant submitted that they adopted their submissions in the lower court stating that considering the fact that the Respondent did not prove damages in a convincing manner, then she was not entitled to an award of the same.

Counsel for the Respondent submitted at length in relation to the law on special damages and concluded that the Respondent had proved her case to the required standard and that it was as a result of the Appellant's acts that her car was damaged. That the learned trial

Magistrate properly took into consideration the proven evidence and further considered that the case had taken two years to resolve and accordingly awarded general damages at UGX 1,500,000/= attracting interest of 15% per annum and special damages of UGX 2,257,000/=.

[28] It is the law that an appellate court will not interfere with an award of damages by a trial court unless the trial court has acted upon a wrong principle of law or that the amount is so high or so low as to make it an entirely erroneous estimate of the damages to which the plaintiff is entitled. (**See** Crown Beverages Ltd vs Sendu Edward (Supreme Court Civil Appeal No. 01 of 2005 per Order JSC).

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.).

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 Supreme Court Civil Appeal no. 17 of 1992).

It is now settled that in reaching a quantum of general damages, the 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.

The law is on award of interest is also settled by courts superior 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 (Court of Appeal Civil Appeal no. 6 of 2011)).

[29] Before reaching the quantum of general damages, the learned trial Magistrate rightly in my view laid out the law in relation to grant of general damages. He later found, at **page 11** of his judgment as follows;

> *"When making my decision on the appropriate damages to award, I take into consideration the proven evidence that the defendant's agent was negligent but also note that the accident wasn't fatal with no fatality. I do take into consideration that the case has taken 2 years to resolve and*

accordingly award general damages of UGX 1,500,000/= attracting an annual interest at 15% from the judgment until payment in full,"

Having found that indeed the Respondent's motor vehicle was damaged that day. I found no reason, either in principle or law to interfere with the learned trial Magistrate's award of UGX 1,500,000/= as general damages and the interest thereof.

The award is therefore upheld.

[30] On the special damages, are those 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, repairs, loss of earnings or income.

In the instant case as already pointed out from the evidence, the Respondent testified that when her car got damaged, her mechanic **PW3** took it to his garage, worked on it and invoiced her a bill of UGX 2,257,000/=. These facts were corroborated by **PW3** himself and the same were uncontroverted through cross-examination.

The learned trial Magistrate at **page 9** of his judgment, in relation to special damages observed that;

"PW3 Mujuni Didan a mechanic told court he diagnosed the car with an engine leakage described the accident as not fatal but enough to cause the lower parts of the car the said damage. The plaintiff claimed it cost her UGX 2,257,000/= in repairs and PW3 Mujuni exhibited to court both the invoice and receipt reflecting UGX 2,257,000/= I find an

award of shs. UGX 2,257,000 as special damages has been proved. The same shall attract an interest of 15% per annum."

Save for making it clear that the rate of interest on the special damages would accrue from the date of loss suffered by the Respondent till payment in full, I equally found no reason to interfere with the quantum of special damages and interest thereof as fixed by the learned trial Magistrate.

This sum is therefore upheld.

In the upshot therefore, this appeal therefore fails in the terms hereinbefore stated. The Respondent being the successful party in the appeal, she is accordingly awarded the costs of the appeal.

I so order.

Dated, delivered and signed at Mbarara this **30th** day of **April 2024**.

Joyce Kavuma
Judge