

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CIVIL SUIT NO. 307 OF 2016**

**MBABAZI FLAVIA.....PLAINTIFF**

**V**

**1. GLOBAL COACHES LTD**

**2. BASALILWA YASIN.....DEFENDANTS**

**BEFORE HON. LADY JUSTICE H. WOLAYO**

**JUDGMENT**

From the particulars in para 4 of the plaint that gave rise to the cause of action, it is apparent that the plaintiff sued the two defendants in negligence. The plaintiff was represented by Newmark advocates at the hearing but at the stage of written submissions, Lugolobi associated advocates filed a notice of change of advocates.

The 1<sup>st</sup> defendant filed an amended written statement of defence through abbas advocates.

The 2<sup>nd</sup> defendant did not file a defense . There is no proof that he was served neither did counsel apply for an interlocutory judgment nor did he apply to proceed against him as if he had entered a defense even when prompted to do so by court. For all intents and purposes, it appears counsel for the plaintiff abandoned the claim against the second defendant in the result that the suit is struck out as against the 2<sup>nd</sup> defendant.

Both counsel filed written submissions that I have carefully considered.

At the trial two issues were agreed upon.

1. Whether the 2<sup>nd</sup> defendant negligently or recklessly drove bus UAU 523 M
2. Whether the 1<sup>st</sup> defendant is liable for the 2<sup>nd</sup> defendant's negligence or recklessness.
3. Remedies.

In his submissions , counsel for the 1<sup>st</sup> defendant raised two preliminary points of law that I will now dispose off. The first point was that the plaintiff admitted on oath in court that she did

not understand English and therefore the omission by counsel to indicate that the witness statement had been read to her in a language she understood renders it inadmissible.

The plaintiff's counsel did not respond to this point.

Under section 4 of the Illiterate Protection Act Cap 78, the person who reads the document to the maker must confirm that the maker understood what she was signing. I agree with the authority of **Tiken Francis and anor v EC and two others HCEP 1 of 2012** cited by counsel for the defendant in which the court held that section 4 is a legal requirement whose breach cannot be cured by article 126 (2) (e) of the Constitution.

This means the witness statement of Mbabazi Flavia is struck off the record. What remains is her evidence in cross examination, and admitted facts in the joint scheduling memorandum.

The second point of law raised by counsel for the defendant was that the plaint does not give particulars of negligence. I have examined the plaint and found that although the plaintiff did not expressly state that the cause of action was in negligence, the particulars in para 4 of the plaint disclose a cause of action in negligence.

**Whether the 2<sup>nd</sup> defendant negligently or recklessly drove bus UAU 523 M**

As I have struck out the suit as against the 2<sup>nd</sup> defendant, I need not belabor this issue.

**Whether the 1<sup>st</sup> defendant is liable for the 2<sup>nd</sup> defendant's negligence or recklessness.**

As the suit against the 2<sup>nd</sup> defendant has been struck out, the issue will be rephrased to read:

**Whether the 1<sup>st</sup> defendant is liable for the negligence of its driver.**

It is an agreed fact that on 17<sup>th</sup> June 2015 at about 01.30 a.m, at Katende along Masaka Kampala highway, an accident happened involving a passenger bus reg. No. UAU 523 M and a sand laden truck registration number UMA 057Q. It was also agreed that the defendant is the registered owner of the bus and that at the time of the accident, it was being driven by Ssebagala Godfrey.

Further, that three people were injured in the accident including the plaintiff while two died. The plaintiff and other injured passengers were taken to Mengo hospital.

In cross examination, the plaintiff testified that when the accident happened, she was seated near the entrance of the bus and that the driver was over speeding as he tried to overtake a lorry carrying sand that he knocked from behind.

The defendant's witness Tumwine Jude confirmed he was on the bus when the accident happened and he confirmed the bus was moving towards Nsangi behind a lorry and suddenly, the accident happened.

It is an agreed fact that both the bus and the truck were subjected to an inspection by the Inspector of vehicles. A copy of the said report was in the trial bundle. The report on PF 37 indicates that the plaintiff was on the bus and she sustained injuries as per PF3 which unfortunately was not included in the trial bundle.

Particulars of negligence pleaded in the plaint are over speeding, driving while on telephone and that the facts speak for themselves.

It is now settled law that for negligence to be proved, the plaintiff must prove that the defendant owed a duty of care, that duty was breached and the plaintiff suffered damage. **Donoghue v Stevenson (1932) AC 362** refers.

In civil cases, the burden of proof is on whoever alleges the existence of a fact while the standard of proof is on a balance of probabilities.

It was the defendant's case that the plaintiff was not a fare paying passenger and that she was an employee. However, no evidence of employment was produced.

Even if she was not a fare paying passenger, the fact that the 1<sup>st</sup> defendant's driver agreed to transport her means the driver had a legal duty to transport her safely to her next destination but this did not happen because the bus was involved in an accident with a truck on 17.6.2016 at 1.30 a.m at Katende .

The fact that the bus was moving behind the truck when the accident happened is prima facie evidence of reckless driving.

Counsel for the defendant submitted that the plaintiff had a duty to prove that the driver was reckless and that that duty was not discharged.

That an accident happened is enough to impute reckless driving on the part of the defendant's driver unless the defendant called evidence to show that the truck was responsible for the accident, which was not done.

On a balance of probabilities, I find it is more probable than not that the defendant's driver drove the car recklessly when the accident occurred.

### **Remedies.**

The plaintiff claimed

- a) medical expenses from the date of the crash to date;
- b) an order that the defendant meets all medical expenses till discharge from treatment;
- c) General damages for pain and suffering;
- d) punitive and exemplary damages.

For the plaintiff to qualify for any of these reliefs, she had to prove that she suffered injuries and the extent of the injuries, pain and suffering. She also had to prove expenses.

### ***Medical expenses on admission at Mengo hospital on 17.6.2015***

It was an agreed fact in the scheduling memorandum that the plaintiff was taken to Mengo hospital on the date of the accident. An uncertified copy of a receipt in the trial bundle shows that she paid for medical treatment 21,000/ , 6000/ and 35,000/ on three different receipts issued by Mengo hospital making a total of 62,000/ on 17.6.2016 immediately after the accident. A sum of 62,000/ will be allowed as special damages.

### ***Medical expenses after discharge from Mengo hospital***

Other receipts were issued by among other medical facilities St. Catherine's hospital, more payments were paid to Mengo hospital in May 2016, Mbarara surgical clinic, Mayfair Medical services, Kampala imaging centre. Originals of these receipts were seen by court.

Medical expenses at St. Catherine hospital will be discounted because it was for an ailment not connected with the accident. The amount spent at this facility was 306,000/.

Medical expenses allowed include the following:

1. consultation at mbarara surgical clinic-30,000
2. goodwill imaging centre-30,000
3. scan at Corsu-60,000
4. Mengo hospital.....62,000

Total awarded as medical expenses after discharge is 182,000/

### ***Future medical expenses***

With respect to expenses to be incurred in the future, a sum of 17,500,000/ was claimed being an invoice issued by Corsu.

Apart from this invoice, no medical report was presented to show that the plaintiff would need hip replacement . The invoice which is a photocopy indicates at the back that the plaintiff suffered displacement of the left knee and no fracture.

Even if these notes were to be accepted as justification for future medical expenses, there is no mention of hip replacement as indicated in the invoice.

Nevertheless, as the plaintiff will need medical attention in the future as she still limps, I will award a sum of 2,000,000/ for future medical expenses.

### ***General damages***

With respect to general damages, the plaintiff was not clear on the nature of injuries suffered apart from the invoice from Corsu. However, she was definitely traumatized by the accident and therefore sustained psychological suffering. She also suffered pain and continues to do so which was evident in court as she walked with a limp.

The plaintiff is not in formal employment and therefore it is impossible to ascertain with certainty impaired ability to earn in the future. However, as an adult, she is expected to fend for herself even if she was not in formal employment.

Doing the best I can, I award the plaintiff general damages of 15,000,000/ to cover pain and suffering, and impaired capacity to earn a living.

***Exemplary and punitive damages***

No evidence was led to show that there was flagrant violation of the plaintiff's rights , moreover, she was taken to hospital by 1<sup>st</sup> defendant's staff.

These will not be awarded.

In the result, I allow the plaintiff's claim and make the following awards.

1. Special damages 62,000/ medical treatment on admission at Mengo hospital soon after the accident.
2. 182,000/ on medical expenses after initial discharge from hospital
3. 15,000,000/ general damages
4.  $\frac{3}{4}$  of the taxed costs of the suit to the plaintiff owing to the negligence of counsel in not complying with the Illiterates Act with respect to the plaintiff's witness statement.
5. Interest on (3) above at 8% from date of judgment until payment in full.

**DATED AT KAMPALA THIS 16<sup>TH</sup> DAY OF DECEMBER 2016.**

**HON. LADY JUSTICE H. WOLAYO**