

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**  
**CIVIL SUIT NO. 036 OF 2016**

**BAGENDA DYABE TOMMY :::::::::::::::::::::::::::::: PLAINTIFF**

*Versus*

**PIONEER EASY BUS LIMITED :::::::::::::::::::::::::::::: DEFENDANT**

**BEFORE: HON. JUSTICE STEPHEN MUSOTA**

**JUDGMENT:**

The plaintiff, Bagenda Dyabe Tommy brought this suit claiming for the award of:

- (a) Special damages;
- (b) General damages;
- (c) Exemplary damages;
- (d) Aggravated damages;
- (e) Punitive damages;
- (f) Interest on the above damages from the date of judgment till payment in full.

He also prayed for a declaration that the defendant is vicariously liable in negligence.

According to the plaint, the facts constituting the cause of action are as follows:-

- (a) On the morning of the 31<sup>st</sup> day of July 2015 which was a sunny and clear day the plaintiff was moving on a motorcycle Kampala to Kiira when the Defendant's bus being driven by Irumba Francis and transporting passengers of and for the Defendant approached the plaintiff from behind;*

- (b) *The defendant's employee who was in the course of duty/employment was driving at an unreasonable/reckless speed at a point along the Najjera to Kiira Road that had a large pothole and at a time when another big truck was coming from the opposite side started to overtake the motorcycle; (A copy of police sketch map is attached hereto and marked as "A");*
- (c) *The driver of the defendant's bus then suddenly and simultaneously and without looking to ascertain whether he had finished overtaking the motorcycle being used by the plaintiff, swerved left sharply making and causing the bus ram, knock and or otherwise strike the plaintiff off the said motorcycle'*
- (d) *As a result of being rammed, knocked and or otherwise struck by the defendant's bus, the plaintiff sustained bodily/physical injuries, nervous shock and or psychiatric damage.*
- (e) *The plaintiff's spinal code was adversely injured and he is among others now paralyzed from the neck down to the rest of the parts of the body. (A copy of a medical report detailing his injuries is attached hereto and marked "B");*
- (f) *The defendant is the owner of a Yutong bus registration number UAR 696J, that is used in its business of transporting people in and around Kampala and at the time of the accident was driven by their employee in the course of his lawful duty. (A copy of the Registration book of the said vehicle is attached hereto and marked "C");*
- (g) *The defendant's employee and or servant Mr. Irumba Francis who was under lawful control of the motor vehicle and is responsible for driving the above mentioned vehicle along the Najjera-Kiira Road among others was fully trained and expected to act as a reasonable driver;*
- (h) *That according to the abstract of particulars of accident under police Reference No. 322 of 2015, the road surface was dry, in good condition, straight, the traffic was light and*

*the distance between the point of impact and the second point of impact proves that the defendant's driver was negligent, careless as he failed to break or swerve to avoid the accident;*

- (i) The plaintiff was an adult healthy businessman engaged in the business of constructing houses and other such civil works aged 34 (thirty four) years with a family and various dependants before the accident;*
- (j) The plaintiff worked for gain before the accident as a building contractor and supported himself and his family with a career that was blossoming with great future growth in income and reputation. (A copy of the contract is attached hereto and marked as "D");*
- (k) At the time of the accident, the plaintiff would at least earning ten million shillings from his contracts as indicated in paragraph (j) above on a monthly basis equating to one hundred and twenty million annually;*
- (l) That as a result of the accident and the injuries sustained, the plaintiff cannot procreate with and have carnal knowledge of his wife or any other woman an act he enjoyed and was looking forward to everyday. (A copy of a medical report detailing his injuries is attached hereto and marked "E");*
- (m) His role in the upbringing of his children had been adversely limited and or affected by the fact that he cannot fully engage in among other outdoor activities with his minor children. (A copy of a medical report detailing his injuries is attached hereto and marked "F");*
- (n) The defendant's employee has been found beyond reasonable doubt of having both recklessly/carelessly driven the defendant's said bus such that it knocked, collided and or otherwise struck the plaintiff and caused the plaintiff bodily harm; (A copy of the charge sheet & Conviction order are attached hereto in ground and marked "G");*

- (o) *That as a result of the fatal injuries sustained, the plaintiff has lost future earning from his trade as he cannot engage in any form of employment to support himself and his family and once a healthy hardworking man is now relying on his wife and well-wishers for survival;*
- (p) *The plaintiff avers that the defendant's driver acts and or omissions were negligent and the defendant is vicariously liable;*
- (q) *That the plaintiff undergoes medical checkups and examination on monthly basis and incurs medical expenses which the defendant should be held liable to pay for the future until his demise;*
- (r) *That as a result of the accident the plaintiff has hired a specialised caretaker to attend to him and his wheelchair and he incurs monthly expenses of three hundred thousand and he shall incur the same expenses in his lifetime until his demise and the defendant should cater for future expenses.*
- (5) *The plaintiff holds the defendant both liable for negligence in its own capacity and also vicariously liable for its employee's negligent and or reckless acts and or omissions, for all loss and damage and for all special, aggravated, punitive, exemplary and general damages, in addition to costs and interest on all the foregoing that arise therefrom.*

**PARTICULARS OF NEGLIGENCE:-**

- a) *Driving at a high speed on hilly terrain along the Najjera to Kiira Road which has several large pot holes;*
- b) *Suddenly and without ascertaining whether the other lane was clear starting to overtake the motorcycle that the plaintiff was using;*

- c) *Failure to hoot and or otherwise give warning to the plaintiff or other road users that the defendant's driver was overtaking;*
- d) *Failure to keep a proper look out;*
- e) *Failure to take adequate consideration for other road users;*
- f) *Failure to heed other approaching vehicles and motorists on the road;*
- g) *Failure to slowdown, swerve or in any other way control the vehicle so as to avoid collision;*
- h) *Overtaking other vehicle (s) without regard to other road users;*
- i) *Failure to keep the left hand side of the road;*
- j) *Driving at an unreasonable speed when overtaking on hilly terrain along the Najjera to Kiira Road which has several large pot holes;*
- k) *Failing to ensure that at point of recruiting the said driver, Mr. Irumba Francis, would not drive recklessly and or negligently during the course of his employment;*
- l) *Failing to ensure that after recruiting the said driver, Mr. Irumba Francis, there would measures to ensure that the said driver would continue driving in a manner that is not reckless and or negligent during the course of his employment;*
- m) *Failure to break or swerve to avoid hitting the plaintiff.*

**PARTICULARS OF SPECIAL DAMAGES:**

The plaintiff pleaded special damages as follows;

- a) *Food expenses while admitted in hospital worth UGX.770,000/= (seven hundred seventy thousand shillings only); as at the date of filing;*
- b) *Accommodation at Mulago Hospital Private Ward worth UGX.310,000/= as at the date of filing;*
- c) *Medical transportation costs worth UGX.8,610,000/= as at the date of filing;*
- d) *Police report about the accident worth UGX.81,000/=. (A copy of the receipt is attached hereto and marked “H”);*
- e) *Auxiliary Medical expenses worth UGX.5,010,100/=. (Copies of receipts are attached hereto in group and marked “I”); as at the date of filing;*
- f) *Terminated contract with Ssebatta James to build a residential house worth UGX.6,000,000/= which was terminated after the accident;*
- g) *Salary of the attendant UGX.1,200,000/= as at the date of filing;*
- h) *Special medication and physiotherapy by a specialised herbalist worth UGX.1,500,000/= as at the date of filing;*
- i) *Medical report worth UGX.100,000/=. (A copy of receipt is annexed as “J”).*

In his defence, the defendant Pioneer Easy Bus Limited denied liability to the plaintiff. They denied being negligent and averred that the accident was majorly caused by the unlicensed motorcyclist on whose motorcycle the plaintiff was riding. That it was the said cyclist who was recklessly riding and suddenly rammed into the defendant's bus causing the plaintiff who was a passenger on the motorcycle to fall beneath the defendant's bus. That the defendant's driver exercised due diligence by trying to avoid the motorcyclist who was riding recklessly. That the driver applied brakes and in fact did whatever was in his power at the moment the accident in vain. The defendant listed particulars of contributory negligence to include;

*(a) Taking a lift from unlicensed motorcycle rider.*

*(b) Permitting the rider to carelessly and recklessly ride the motorcycle on the road without a valid riding permit.*

*(c) Failure to wear a helmet while on the motorcycle and thus escalating the gravity of injuries sustained.*

*(d) Failure to ascertain the sanity and/or state of mind of the motorcyclist before riding on his motorcycle.*

The defendant further avers that the accident was inevitable and that the injuries suffered by the plaintiff were aggravated by contributory negligence on the part of the plaintiff and should not be imputed entirely on the defendant's employee. That the plaintiff's specifications of special damages are unfounded and exaggerated. That therefore the suit should be dismissed.

In the joint scheduling memorandum, it was agreed that on the morning of 31<sup>st</sup> July 2015, the plaintiff who was a healthy, vibrant working man was knocked down while moving on a motorcycle from Kampala to Kiira by the defendant's bus being driven by Irumba Francis in the course of his employment. The plaintiff sustained bodily injuries, nervous shock and psychiatric damage that paralysed him from neck down to the rest of the parts of the body making him undergo a lot of expenses. The defendant's employee was charged and convicted of reckless/carelessly driving and causing bodily harm.

The issues agreed for determination are:

- 1. Whether the defendant is vicariously liable for negligence?**
- 2. Whether the plaintiff is entitled to the remedies sought?**

The hearing of this suit proceeded by way of witness statements. PW1 was the plaintiff Bagenda Dyabe Tommy. PW2 was Namutebi Prossy wife to the plaintiff who explained that they have so far expended money on the plaintiff to the tune of UGX.10,891,200/=.

PW3 was Kweyamba Vianney who prepared Exhibit “P5” and attended to the plaintiff. He scanned him and found him with cervical spinal injuries and a fracture on the arm. That the injuries were caused by forceful transmission. The nerves connecting the hand were pulled out of their roots. He further explained that wearing a helmet could not prevent the injuries caused and they caused reduction of life expectancy by half. That the plaintiff now is at either 3% or 4% of what he used to be. He is checked on a monthly basis. That the injuries are now categorised as permanent.

PW4 was No. 38629 C/PC Namulwana Grace who drew Exhibit “PE1” the sketch plan. She confirmed that the defendant’s driver pleaded guilty to the charges.

The defendant did not call any witnesses. It relied on its written statement of defence.

I will now go ahead and resolve the issues as raised;

***1. Whether the defendant is vicariously liable for the negligence of Irumba Francis.***

In the joint scheduling memorandum it was an agreed fact that Irumba Francis was an employee of the defendant company and at the time of the accident he was driving motor vehicle registration No. UAR 696J whose log book disclosed that it belonged to the defendant (Exhibit “P8”). This was confirmed by the investigating officer of this accident who testified that Irumba was in the course of driving passengers on behalf of the defendant when he knocked the plaintiff. She revealed that Irumba was driving at a speed along Najjera/Kiira Road when he swerved left

causing the bus to knock the plaintiff off the motor cycle. Irumba was charged and was convicted for reckless driving and causing bodily harm.

It was held in **Paul Byekwaso Vs Attorney General CA No. 10 of 2002** that:

***“A Master is liable for tortuous acts committed by his servant in the course of his employment.”***

An employee is said to be in the course of his employment if he/she is doing that which they are employed to do even if the employees are adopting a wrong method of doing the act or doing the act in a wrong manner. In the instant case Irumba was acting within the course of his employment because he was manning the defendant's bus with passengers. He was not on a frolic of his own but in the course of his employment.

At the trial, the defendant did not adduce any evidence to contend otherwise or show on a balance of probabilities that there was no negligence on the part of the driver or contributory negligence on the part of the plaintiff. Negligence on part of the defendant's driver has been proved and I will find so. The driver admitted driving recklessly when he hit the motorcycle from behind. He did not keep a distance or brake in reasonable time to avoid hitting the said motorcycle.

I have been unable to find that the plaintiff was guilty of contributory negligence because he was not in charge of the accident motorcycle and even if he had worn a helmet, it would not have prevented the injuries sustained.

Consequently, I will find that the defendant is vicariously liable for the negligent driving by Irumba Francis.

### ***Issue 2: Remedies:***

In paragraph 5 of the plaint the plaintiff pleaded outlining particulars of special damages. From the evidence adduced by both PW1 and PW2, the medical and all pleaded special damages were proved. PW2 proved that not all special damages were supported by receipts because not all expenses in this country are receipted by the service providers. The Doctor PW3 also confirmed that not all medical expenses are receipted. The evidence by the plaintiff was not challenged by the defendant. The law is clear that special damages must be pleaded but production of receipts or documentary evidence is not the only way/method of proof of special damages. Witness oral evidence may suffice. **John Eletu Vs Uganda Airlines Corporation [1984] HCB 44.**

In the result, I will allow special damages as pleaded and proved as follows:-

- i. *Food expenses on admission UGX.770,000/=;*
- ii. *Accommodation at Mulago Hospital Private hiring UGX.310,000/=;*
- iii. *Medical transportation from the time of filing the suit worth UGX.8,610,000/= ;*
- iv. *Auxiliary Medical expenses UGX.5,010,100;*
- v. *Special medication and physiotherapy UGX.1,500,000/=;*
- vi. *Medical report worth UGX.100,000/=.*

### ***General Damages:***

General damages are a monetary recovery in a lawsuit for injuries suffered such as pain, suffering, inability to perform certain functions for which there is no exact value which can be

calculated. These damages are traceable to and are the probable and necessary result of the injury complained of or which are presumed by or implied in law to have resulted therefrom.

General damages need not be specifically pleaded.

In assessing the appropriate damages to be awarded to the plaintiff, I will take into account what he has revealed to this court as having been his status of life, the extent of his lost earnings and loss of his business prospects, the pain and suffering got from the injuries.

In the circumstances I will award the plaintiff UGX.100,000,000/= as general damages.

***Exemplary and Punitive damages:***

These are damages requested for and awarded when the defendant's wilful acts were malicious, violent, oppressive, fraudulent, wanton or grossly reckless.

From the evidence on record I am unable to find that the plaintiff is entitled to exemplary damages since the cause of action in this suit is a result of an accident which had been caused negligently.

There was nothing arbitrary, malicious or oppressive in the conduct of the defendant to warrant an award of exemplary damages.

In the final result, judgment is entered for the plaintiff in the following terms: for

- (i) *An award of UGX.16,300,100/= (Sixteen Million Three Hundred Thousand and One Hundred shillings) in special damages.*
- (ii) *UGX.100,000,000/= (One Hundred Million shillings) as general damages.*

The decretal sum shall carry interest at court rate from the date of judgment till payment in full.

The plaintiff shall get the costs of this suit.

I so order.

**Stephen Musota**

**J U D G E**

**16.11.2017**

JUDGMENT