

1 **JUDGMENT THE REPUBLIC OF UGANDA**
2 **IN THE HIGH COURT OF UGANDA HOLDEN AT MUKONO**
3 **HCT 102-2018**
4 **FORMERLY HCT 03-CV-0147-2013**
5 **ASIMWE ALEX:::PLAINTIFF**
6 **VERSUS**
7 **1. MARACHA SAMA**
8 **2. SCOUL CORPORATION (U) LTD:::DEFENDANT**
9 **BEFORE HON. LADY JUSTICE MARGARET MUTONYI, JUDGE HIGH COURT**

10 **JUDGMENT**

11 **1. INTRODUCTION**

12 Asimwe Alex hereinafter referred to as the plaintiff, sued Maracha Sama herein after referred to as the
13 first defendant and Sugar Corporation of Uganda Limited (SCOUL) herein after referred to as second
14 defendant, jointly and severally for special and general damages arising out of a motor accident which
15 was alleged to have been caused solely by the negligence of the 1st Defendant, an employee of the 2nd
16 Defendant, interest on both special damages and decretal amount till payment in full.

17 **2. PLAINTIFF’S PLEADING**

18 The special damages pleaded as per paragraph 4 of the Plaint were Ug. Shs. 12,477,000/= [Uganda
19 Shillings Twelve Million, Four Hundred Seventy Seven Thousand] only.

20 The facts constituting the cause of action which arose on 25th October 2013 were stated as follows in
21 brief:

22 Those at all material times, the 1st Defendant was the Employee of the 2nd Defendant based at Lugazi as
23 a driver of motor vehicle registration number UAH 205D, which was a tractor, here in after referred to
24 as the tractor.

25 That on the fateful day, around 9:30 a.m., along Bamungaya–Buikwe road, the 1st Defendant while in
26 the course of his employment with the 2nd Defendant, negligently and recklessly drove the tractor

27 belonging to the 2nd Defendant thereby knocking the Plaintiff, causing him grievous bodily injury as
28 described on the Police Form that was annexed as A.

29 That as a result of the accident, the Plaintiff has suffered a permanent incapacity, under gone several
30 operations and is still undergoing treatment which is costly and suffered mental anguish. The
31 Defendants have not assisted him at all.

32 The Plaintiff contends that the accident was caused solely by the negligence of the 1st Defendant.
33 Consequently he is holding the 2nd Defendant vicariously liable for the negligence of its employee.

34 The particulars of negligence as contained in paragraph 7 of the Plaint are as follows:

- 35 (a) Driving too fast, recklessly negligently without keeping proper look out in the circumstances.
- 36 (b) Driving in such a manner that did not give due regard to and disrespecting other road users.
- 37 (c) Failing to break, stop, swerve, or in any way avoid knocking the Plaintiff.
- 38 (d) Failing to keep to his lawful side of the road.
- 39 (e) Failing to obey or observe road traffic regulations.
- 40 (f) Failing to mitigate the injury by stopping motor vehicle to avail aid to the Plaintiff even after by
41 passers signaled to 1st Defendant that he had killed a person.

42 The Plaintiff further pleaded special damages under paragraph 8 that totaled to Ug. Shs.12, 477,000/=
43 [Uganda Shillings Twelve Million Four Hundred Seventy Seven Thousand] the details of which will be
44 reverted to later in the Judgment.

45 The Plaintiff further stated the particulars of injuries as follows: Damaged Urethral structure, Loss of
46 erection, broken pelvis, loss of consciousness for a month from 25th October to 17th November 2012,
47 Deformity in both legs, concussion, strain in the neck, muscles and scalp tenderness in neck muscles,
48 Resident tenderness in the neck muscles.

49 He further pleaded that he will rely on the principle of Res Ipso Loquitur and averments in paragraphs
50 7 and 8.

51

52

53 **3. DEFENDANT'S CASE**

54 The Defendants on the other hand in their joint written statement of defence 7th November 2013
55 admitted the employment relationship but denied the other allegations alleging that the Plaintiff
56 filed the suit in bad faith as the Plaintiff contains deliberate falsehoods to create a cause of action that
57 does not exist.

58 The Defence alleged that the Plaintiff was injured as a result of his own negligence after which he
59 tried to defraud the 2nd Defendant.

60 They further pleaded the Plaintiff is not entitled to the claims and other reliefs sought in paragraphs
61 4 of the Plaintiff or any part thereof.

62 The Defendants further pleaded under paragraph 8 of the Written Submissions of Defence that the
63 accident was caused solely by the Plaintiff and or alternatively was contributed to by the Plaintiff's
64 own negligence.

65 The Particulars of contributory negligence were stated as follows;

66 (a) Riding his motor cycle at a high speed, recklessly without keeping a proper look out in the
67 circumstances.

68 (b) Failing to break in total disregard of his life and other road users.

69 (c) Jumping off the motor cycle thus not giving due regard for his life.

70 The particulars of intention to defraud were that he forged the amount of Ug. Shs. **750,000/=**
71 **[Uganda Shillings Seven Hundred Fifty Thousand]** on the Medical Form of the outpatient
72 department of Mulago hospital, forging the amount of **Ug. Shs. 70,000/= [Uganda Shillings**
73 **Seventy Thousand]** on Mulago Hospital Medical Form serial number 1389698 and inflating the
74 figure for medical services at Kasubi General Clinic by **Ug. Shs.150,000/= [Uganda Shillings One**
75 **Hundred Fifty Thousand]** and inflating food expenses while at Mulago Hospital.

76 They prayed that the suit be dismissed.

77 **4. LEGAL REPRESENTATION**

78 The Plaintiff was represented by Mr. Joseph Lubega from Byamugisha, Lubega, Ochieng and
79 Company Advocates, while the Defendants were represented by Mr. Sekonde Eddie from the Legal
80 Department of the Respondent.

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83 **5. WRITTEN SUBMISSIONS**

84 Both learned Counsel filed written submission which I have put into consideration while writing
85 this Judgment. They are on record and I will refer to them as and when necessary.

86 **6. ISSUES FOR COURT'S CONSIDERATION**

87 **1. Whether or not the Defendants were solely responsible for the accident.**

88 **2. What remedies are available to the parties?**

89

90 **7. LEGAL PRINCIPLES AND THE LAW APPLICABLE**

91 It is trite law that in civil matters, the burden of proof rests on that person who desires any court to
92 give Judgment as to any legal right or liability dependent on the existence of facts which he or she
93 asserts exist and would fail if no evidence is given on either side unless it is provided by any law
94 that the proof of any particular fact shall lie on any particular person. Sections 101 -103 of the
95 Evidence Act chapter 6 Laws of Uganda refers.

96 The standard of proof unlike in criminal matters is on the balance of probabilities.

97 It is also trite that under the Common Law Doctrine of vicarious liability sometimes referred to as
98 imputed liability, liability of another person is assigned to an individual or legal entity that did not
99 actually cause the harm or injury complained of. In a work place context like in the instant case, an
100 employer can be held liable for the acts or omissions of its employees, provided it can be shown
101 that the injury or harm complained of occurred in the course of employee's employment.

102 In other words vicarious liability is founded in the tort of another even though the person being
103 held responsible may have not done anything wrong.

104 To hold an Employer liable three pre requisites must be satisfied:

105 1. There must be an employment relationship.

106 2. There must be a wrong doing committed by the Employer

107 3. The act must have been committed during the course of employment.

108 The Plaintiff's Counsel relied on the doctrine of Res Ipsa Loquitur which in the Common Law of
109 Torts, infers negligence from the very nature of an accident or injury in the absence of direct
110 evidence on how any Defendant behaved.

111 It is a Latin phrase meaning "*the thing speaks for itself.*"

112 The Defence on the other hand pleaded contributory negligence which is a common law defence
113 available to a claim in tort based on negligence. If it is proved and available to the Defendant, it
114 bars the Plaintiff from any recovery if they contributed to their own injury through their own
115 negligence.

116 Court will be guided by the above legal principles and the law in resolving the dispute at hand.

117 **8. RESOLUTION OF ISSUES.**

118 I will resolve the issues in their chronological order.

119 ***Whether or not the Defendants were solely responsible for the accident.***

120 It was agreed during the scheduling conference that the accident occurred that caused severe injuries to
121 the Plaintiff, and consequently he underwent treatment and continues to go for treatment.

122 What was not agreed upon was the liability of the Defendant for the accident and the consequences
123 thereof.

124 To support his case the Plaintiff called three other witnesses to wit PW2 KIGHOMA PHILEX, PW3
125 OKILLU PETER AND PW4 SGT APOO CATHERINE NO. 18556.

126 PW1 Asimwe Alex in his written witness statement dated 2/11/2016 from paragraphs 4 to 8 narrates
127 how the accident happened at Bumuganya in the sugar cane plantation.

128 His evidence was to the effect that on the fateful day as he was riding his motor cycle registration
129 number UDU 205D, he met with PW2 around the same place, stopped to pass over a message to him
130 and they chatted for a while from the left side of the road. This was in the morning between 9:00 a.m.
131 and 10:00 a.m. That in the middle of the discussion, he saw the tractor registration number UAH 205
132 D belonging to the 2nd Defendant driven by the 1st Defendant on a straight clear terrain. (Court
133 observed that he made a mistake in the registration number of his motor cycle which was UDU 348X
134 NOT 205D) and I have treated it as a typing error).

135 The 1st Defendant was driving on the right side of the road and the witness had parked off the left side
136 off the road.

137

138

139 That as the tractor drew closer, they noticed it was moving very fast in a zigzag motion and whereas he
140 attempted to scamper for safety, it had already lost control, crossed over to where he had parked,
141 followed him into the sugar cane and ran over him at about 2 meters off the road into the sugar cane.

142 This part of evidence was not discredited during cross examination.

143 PW2 OKILLU PETER was with the Plaintiff at the time of the accident. His testimony according to his
144 written witness statement dated 2nd November 2016 paragraphs 5 to 7 is to the effect that as they were
145 exchanging pleasantries with the Plaintiff, he saw the tractor approaching them. They were standing on
146 the left side off the road and the tractor was on the right side.

147 That as the tractor drew closer he noticed that it was being driven recklessly without due regard to
148 other road users. He further noticed it was moving in a zig zag manner which prompted him to jump
149 on the right side of the road. That it was apparent it had lost control. It followed the Plaintiff into the
150 sugarcanes where he had scampered for safety, ran over him causing serious harm to him. His
151 evidence was not discredited in cross examination.

152 PW3 No 18556 SGT APOO CATHERINE a Police Officer attached to Lugazi Police Station then,
153 visited the scene of the crime. She found when the tractor and victim had been removed from the scene
154 of the accident. She however used tyre marks since they were still fresh. According to her the tyre
155 marks indicated that the tractor crossed from the opposite side for a distance of about one and a half
156 meters. According to the sketch plan and abstract of the traffic report dated 21st November 2012, the
157 suspected point of impact was 1 and half meters from the road in the sugarcane plantation. The tractor
158 MOVED FROM THE ROAD AND ENTERED THE SUGAR CANE PLANTATION according to the
159 re constructed sketch plan.

160 While under cross examination, the officer maintained the scene was very fresh and she could see the
161 tyre marks of the tractor very clearly.

162 The 1st Defendant in his oral testimony informed court that he was a driver working for the 2nd
163 Defendant. That on 25th October 2012 he was sent to get sugarcanes from Buwundo in tractor

164 Registration number UAH 205 D. As he approached Rwankima, there was a tractor whose registration
165 number he did not recall, coming from the opposite side as he was driving down wards.

166 Each side of the road had sugar canes plantation. That he thought the driver of the tractor was going to
167 bypass him but he immediately swerved off towards a place where they had cut sugarcanes which was
168 about four meters away.

169 That he did not see any motor cycle or any pedestrian apart from the sugar cane cutters.

170 That he immediately knocked the pavement and branched off to the sugarcane plantation and
171 negotiated back to the main road.

172 That there was an Indian who saw him, screamed at him asking him what he had done.

173 That he realized he had made a mistake, continued to the sugar cane plantation and reported to security.

174 That he did not know at that moment that he had knocked some body. He went on to inform court that
175 the sugar cane he entered into were not young but tall, so he could not see clearly.

176 (When he looked at the sketch map , court observed that he agreed with it save for the existence of the
177 motor cycle which was true because at the time he drove towards the scene of the accident ,the motor
178 cycle was not on the road as indicated on the re constructed sketch map)

179 In cross examination he said he learnt that he had knocked some body when he reported at security and
180 that he was not reckless. That it was just an accident.

181 Careful evaluation of evidence from both sides reveals that the 1st Defendant was driving a tractor
182 owned by the 2nd Defendant at the time of the accident. The Plaintiff had stopped by the road side
183 having a conversation with his friend PW2. Indeed the 2nd Defendant admits that he swerved from the
184 main road entered into the sugarcane plantation. According to him he was avoiding another tractor
185 whose registration number he does not recall.

186 Since this was a sugar plantation belonging to the 2nd Defendant and the 1st Defendant being a driver in
187 the Company, he ought to have known or at least later on the other tractor. Court is taking that
188 statement as a lie to avoid liability.

189 The second Defendant clearly informed court how he swerved and went off the road to the sugar cane
190 plantation. He told court how one of the Indians around screamed at him asking him what he had done.

191 The Plaintiff and his eye witness PW2 tried to run away from the tractor that had lost control.
192 Unfortunately for the Plaintiff, he took the direction the tractor followed while his friend took the
193 opposite direction and survived.

194 It is apparent that the Plaintiff was not riding the motor cycle and did not jump off from it injuring
195 himself as alleged by the 1st Defendant. It is also not possible that he contributed to the accident by
196 standing by the road side and chatting with a friend in a busy sugarcane plantation as submitted by
197 Counsel for the defendant.

198 Roads in sugarcane plantations are not closed to the Public.

199 In any case the Plaintiff was not reckless in any way.

200 Contributory negligence is a defence available to the Defendant and as such must be proved. It is not
201 enough to merely plead it. The Defendants did not adduce any evidence to prove that the Plaintiff was
202 negligent and his negligent acts contributed to the accident.

203 To the contrary, the Plaintiff proved that he was lawfully standing off the road, chatting with his friend
204 when the 1st Respondent recklessly rammed into them forcing them to scamper for life.

205 As regards the Application of Doctrine of Res Ipsa Loquitur, I do agree with the submission of Counsel
206 for the Plaintiff on this doctrine.

207 It is obvious that the tractor was being driven at a high speed that made it difficult for the 1st Defendant
208 to control it on the main road. Even if his story of an oncoming tractor was to be believed, which I
209 have not, had he been at a reasonable speed, he would have avoided it without causing damage to
210 anyone or anything.

211 In view of the above, I find that the 1st Defendant drove the tractor recklessly without due regard to
212 other road users thereby causing injury to the Plaintiff.

213 And since the accident happened in the course of his employment with the 2nd Defendant, I hold the
214 second Defendant vicariously liable for the mischief of his employee the 1st Defendant.

215 The first issue is resolved in favour of the Plaintiff.

216

217

218 ***WHAT REMEDIES ARE AVAILABLE TO THE PARTIES?***

219 Having resolved the first issue in favor of the Plaintiff, it follows that he is entitled to the prayers made
220 upon proof and satisfaction of court.

221 The Plaintiff prayed for special damages of **Ug. Shs.12,477,000/= [Uganda Shillings Twelve Million,**
222 **Four Hundred Seventy Seven Thousand]**. His Counsel submitted that he has continued to have
223 treatment and undergoes treatment and therefore prayed for special damages of **Ug. Shs.50,000,000/=**
224 **[Uganda Shillings Fifty Million]**, Loss of income of **Ug. Shs.34,700,000/= [Thirty Four Million,**
225 **Seven Hundred Thousand]** and general damages of **Ug.Shs.200,000,000/= [Uganda Shillings Two**
226 **Hundred Million]**.

227 In cases of this nature, the party entitled to any remedy in terms of damages usually gets two types of
228 damages: ***Special damages*** that are compensatory in nature which refers to economic losses such as
229 loss of earnings, damage to property, medical expenses, and ***general damages*** for pain, suffering, and
230 emotional stress. Special damages being compensatory in nature have to be specifically pleaded and
231 proved. They must cover tangible harm that can easily be translated into monetary terms.

232 The burden of proof as mentioned earlier rests on that person who would fail if no evidence is adduced
233 to prove an alleged fact.

234 Special damages being compensatory, the Plaintiff has the burden to adduce evidence proving them. In
235 a case where medical expenses are incurred, the plaintiff has the duty to produce receipts of payment
236 for the medical services if they were not free. And if there is loss of earnings, the Plaintiff must adduce
237 evidence of the lost earnings.

238 On the other hand, general damages are non-monetary although awarded in monetary form for injuries
239 suffered such as pain, suffering, and inability to perform certain functions or for breach of contract.
240 They don't have to be specifically pleaded and proved. They are awarded at the discretion of the Judge
241 who is guided by the extent of the injury or damage done which assessment is based on the facts of the
242 case.

243 In the instant case, the Plaintiff did not call any other witness to prove his special damages.

244 In his written statement dated 2nd November 2016 from paragraphs 16 to 32, he narrates his ordeal, how
245 he was injured, how he has undergone several operations and how he continues to undergo treatment.
246 He testified that his life has been shattered by the accident which has left him impotent.

247 He tendered in court some medical documents that show the surgical operations that were done on him,
248 the tests, and medication he received.

249 He tendered in court PF 3A where he was examined on 11th June 2013. It was marked as PE1. His
250 injuries were described as dangerous harm. Exhibits PE2, PE3, were clinical notes. PE4 was a referral
251 note for him to Mulago hospital, PE5 was his drug administration record, PE6 was a note for him as
252 outpatient of Mulago and he was to go back on 25th July 2013. PE7 was his treatment sheet at Mulago
253 hospital from 25th October 2012 to 4th December 2012. PE8 was the accident report general receipt of
254 **Ug. Shs.78,000/= [Uganda Shillings Seventy Eight Thousand]**, PE9 was the consultation fees from
255 Forensic Consultation Clinic for **Ug. Shs.25,000/= [Uganda Shillings Twenty Five Thousand]**, PE10
256 was an operation report, PE11 a medical note on review visit at Mulago Hospital dated 12th June 2013,
257 PE12 a request form from La Sante Clinic, PE13 a receipt of **Ug. Shs. 25,000/= [Uganda Shillings**
258 **Twenty Five Thousand]** from Forensic Consultation Clinic dated 11th June 2013, PE14 is a receipt
259 from X-ray Care and Ultra Sound Center Ltd of **Ug. Shs.100,000/= [Uganda Shillings One Hundred**
260 **Thousand]**, PE16 a receipt of **Ug. Shs.1,000,000/= [Uganda Shillings One Million]** dated 16th April
261 2013, from a Medical Center on Plot No.8 Old Kiira road Ntinda, and PE17 a receipt of **Ug.**
262 **Shs.120,000/= [Uganda Shillings One Hundred Twenty Thousand]** from Kampala Imaging Center.

263 In his Complaint paragraph 8, he pleaded that he will produce all the relevant receipts at the trial.

264 I am afraid that apart from the PE8, PE9, PE13, PE14, and PE16 AND PE17 which total to
265 **Ug.Shs.1.348,000/= (Uganda Shillings One Million Three Hundred Fourty Eight Thousand only)**,
266 no other receipts were tendered and admitted. Other receipts that did not bear his name were rejected.

267 In his complaint he stated he was getting monthly wages and allowances in three schools namely as Head
268 teacher at Alliance Secondary School, Buikwe, where he was earning **Ug. Shs. 480,000/= [Uganda**
269 **Shillings Four Hundred and Eighty Thousand]**, as a Teacher at St. Ceasars Academy Malongwe,
270 Buikwe where he earned **Ug. Shs.240,000/= [Uganda Shillings Two Hundred and Fourty**
271 **Thousand]**, and as a DOS at Queens Way College, Bulyanteete, Lugazi where he earned **Ug. Shs.**
272 **325,000 /= [Uganda Shillings Three Hundred Twenty Five Thousand]**. Which he totaled at **Ug.**
273 **Shs.9,405,000/= [Uganda Shillings Nine Million Four Hundred and Five Thousand]** as at the time
274 of filing the suit.

275 He did not adduce any evidence about this earnings in form of appointment letters OR any payment
276 vouchers. There was no evidence showing that the schools if at all he was employed, stopped paying
277 him after the accident in his witness statement.

278 He failed to prove it completely.

279 Counsel attempted to give evidence from the bar by claiming it was an oversight in his submission.

280 I found the submission redundant because written submission are intended to support the evidence on
281 record and the law applicable, and not to fill the gaps that were left out by the parties during the hearing
282 of their testimony.

283 As regards general damages, the Plaintiff narrated to court his ordeal and the several surgeries he went
284 through.

285 The medical notes admitted in court proved that indeed he was in hospital for more than a month as per
286 exhibit PE7, the treatment sheet and that he had several tests.

287 He informed court that on reaching Mulago, he was immediately rushed to Intensive Care Unit as his
288 abdomen was almost busting. That his abdomen was perforated by Doctor Isma, inserted the Foley
289 catheter, and drained the bloody clots from the bladder.

290 He informed court blood oozed out of the bladder for three days, as several scans were being made.
291 That he sustained a fractured pelvis, dislocated spine, and a ruptured bladder.

292 In paragraph 23 and 24, he stated that:

293 ***“Various other operations were made on me including inserting liquids into my bladder until it was
294 full and as for the pelvis a small metal was inserted to join my fractured pelvis girdle.***

295 ***That because of I sustained a ruptured urethral structure, a supra public catheter was inserted in the
296 lower lobe of the abdomen to the bladder to drain out urine which I carry up to date and I am due
297 for a fourth surgical operation.....the previous three having not yielded the desired results.”***

298 He went on to say he is on routine medical assessment and he has suffered both psychological and
299 financial injury due to the reckless act of the defendants and that he lost his jobs at the schools he was
300 working.

301 Counsel for the Plaintiff relied on the case of Kabunga ***Grace versus Kisambira Sentamu Ismail HCT-***
302 ***00-CV-0112 OF 2009***, where relying on the case of ***Dr. Dennis Lwamafa VS Attorney General HCCS***

303 **NO. 79/1983, [1992] 1 KALR Lady Justice Elizabeth Musoke** held that in grant of general damages,
304 the Plaintiff must be put in the position he would have been had he not suffered the wrong and the
305 valuation would be as at the time of Judgment.

306 I agree with the principle in the above case and add that general damages are the direct probable
307 consequence of the wrongful act of the Defendant complained of and include damages for pain,
308 suffering and inconvenience and anticipated future loss.

309 When assessing general damages, the court should be guided by the value of the subject matter or in
310 the instant case the health condition of the Plaintiff and the economic inconvenience the Plaintiff may
311 have been put through as a result and the extent of the injury suffered. This was the holding in the case
312 of ***Uganda Commercial Bank versus Kigozi [2002] 1 EA 305.***

313 In cases that need interpretation of the medical conditions and assessment of the extent of the injury or
314 percentage of deformity and disability, it is only fair and ideal that the party pleading the medical
315 condition or disability relies on the evidence of a Medical Practitioner who examined him or if he
316 cannot be found, one who is conversant in that medical field.

317 The reasons given by Counsel that the attendance of Medical Personnel could not be procured because
318 of the costs involved is not tenable. In fact Counsel for the Plaintiff did a dis service to his client by not
319 asking court for witness summons for the Medical Personnel.

320 The Plaintiff alleged he has become impotent as a result of the accident. Much as there is no evidence
321 in rebuttal, in the absence of medical evidence to that effect, court has nothing to base on to draw a
322 conclusion on that.

323 Sections 101 to 103 of the Evidence Act are not in vein. The party alleging certain facts has the duty to
324 prove that those facts exist or existed. Being impotent is a fact that must be proved by medical
325 evidence as court has no other means of confirming the allegation.

326 The primary duty of court is to hear evidence from the parties and apply the law to those facts to make
327 a decision. Pleadings merely introduce the party's case to the court.

328 Unless the facts pleaded in a Plaint are admitted or are of such a nature that they don't need proof the
329 party pleading those facts has the burden and duty to prove the facts before court.

330 ***He or she must convince court with evidence to believe his or her side of the story with a very light***
331 ***standard of proof which is on the balance of probabilities.***

332 The Plaintiff alleged he continues to go for treatment and this being a court of justice would have not
333 rejected medical expenses incurred after filing of the suit because it was clearly pleaded that he was
334 still undergoing treatment. Nothing was adduced in court of his later medical bills or surgeries.

335 The same applies to his allegation of sexual impotency.

336 Sexual life to any human being more so to a young man like the Plaintiff is very important. Impotency
337 is a medical condition that must be diagnosed by a Medical Practitioner. Even if Judges are experts to
338 some extent, they can only exercise their expertise with what can be seen physically like a maimed
339 limb that can no longer hold anything or walk, or blind eyes that cannot allow one to be gainfully
340 employed or engage in any economic activities, ugly scars on the face that can make it hard for one to
341 attract a potential spouse. The court can assess things that are obvious to the naked eye like different
342 handwriting etc.

343 The Plaintiff ought to have adduced evidence to the effect that his sexual life was completely shuttered
344 with no chances of ever fathering children or having sexual pleasure.

345 He did not. Court could not discern impotency by merely looking at him or looking at the medical
346 documents that were not interpreted. Had he corroborated his evidence with an expert from the
347 medical field, court would have awarded reasonable general damages because loss of man hood is akin
348 to physical death to a man.

349 However, the above notwithstanding, it was an agreed fact that the Plaintiff suffered injuries as a result
350 of the accident that led him to be hospitalized in Mulago for some time and had some surgeries done.
351 The Defence did not dispute the accident but claimed he contributed to it without any evidence of
352 contributory negligence. They disputed the money spent on medication and during hospitalization.
353 However the witness that was brought challenging the expenses, DW2 was not found credible. His
354 evidence was hearsay that is not admissible in law.

355 This court being an expert of experts, I will limit my expertise to the fact that being hospitalized for
356 more than a month implies that the injuries were grave and the condition of the Plaintiff was life
357 threatening. It implies that he suffered pain and anguish, was traumatized and had psychological stress
358 which entitles him to general damages. In the absence of medical assessment of the extent of the
359 injuries and percentage of disability, court is awarding **Ug. Shs. 40,000,000/= [Uganda Shillings
360 Forty Million]** as general damages.

361 As regards costs, it is trite law that they follow the event. I don't have any reason to deny the Plaintiff
362 costs of the suit.

363 In conclusion and for reasons advanced above, Judgment is entered for the Plaintiff as against the 2nd
364 Defendant who is vicariously liable for the reckless conduct of the first Defendant with the following
365 awards made.

366 1. Special damages of **Ug. Shs.1, 348, 000/= [Uganda Shillings One Million Three Hundred Forty**
367 **Eight Thousand]** as proved.

368

369 2. General damages for pain, suffering, trauma and psychological stress of **Ug. Shs. 40,000,000/=**
370 **[Uganda Shillings Forty Million].**

371

372 3. Interest on (1) at the court rate from the time of filing the suit till payment in full and on (2) above
373 at court rate from the date of Judgment till payment in full.

374

375 4. Costs of the suit.

376 Dated this 17th day of **April 2019.**

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379 _____

380 Hon. Lady Justice Margaret Mutonyi

381 **RESIDENT JUDGE**