The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Civil Suit No. 17 of 2019

Omujul Richard :::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::: Plaintiff

Vs

Kalabuki Ibrahim and 5 Ors :::::::::::::::::::::::::::::::::::::::::::::::::::: Defendants

Before: Hon. Justice Dr Henry Peter Adonyo

Judgment

1. Background:

The plaintiff filed this suit against the defendants jointly and severally for compensation in general and specific damages arising from injuries sustained by him in an accident as well as exemplary/punitive damages for the defendant's negligent acts/omissions, interest and costs of the suit.

The plaintiff's claim is that on the 8th day of March 2017 while coming from his home Akuoro in Bukedea Sub County in Bukedea district heading towards Bukedea town, a speeding vehicle Registration No. UAL 810R Toyota Hiace which was driven by the 1st defendant enroute Bukedea emerged from behind and knocked him to the extreme left hand side of the road.

This accident resulted into a series of injuries and the right leg of the plaintiff was subsequently amputated as a result.

Investigations established that vehicle Registration No. UAL 810R Toyota Hiace which caused the accident belonged to the 2nd defendant and that the 5th and 6th defendants working in course of their employment with the

3rd and 4th defendants stated to have been responsible for the issuance of an insurance sticker that allegedly insured the vehicle.

The defendants have not responded to the plaintiff's demands for compensation and indemnity.

The 1st, 5th and 6th defendants in their joint written statement of defence denied the allegations.

The 1st defendant admitted that he drove the Registration No. UAL 810R Toyota Hiace on 8th March 2017. He denies causing the accident negligently and further averred that he was acquitted of the traffic offence against him. He further avers that the accident was due to the contributory negligence by the plaintiff.

The 1st, 5th and 6th defendants deny the fact of the plaintiff having approached them for compensation.

The 3rd defendant in its defence denied the plaintiff's allegations in total and averred that the company received a claim for compensation from the plaintiff in early 2017 and upon examination of the commercial sticker No. 3000598248 it found the same to be forged and was not issued by them with this information being confirmed by their area manager in Mbale and so it advised the plaintiff to demand compensation directly from the owner of the motor vehicle.

The 3rd defendant further averred that it appeared before the Insurance Regulatory Authority's (IRA's) complaint bureau to answer the same claim and that IRA ruled in its favour after a thorough investigation and advised the plaintiff to claim against the owner of the car as the accident causing vehicle was found to have not been insured.

The 4th defendant in its defence denied the allegations by the plaintiff and contended that the sticker in issue was never issued by itself and neither the 5th defendant was its agent at the time of the issuance of the sticker.

The 2nd defendant never filed a defence despite being dully served through even substituted service.

On 30th of August 2021, after being satisfied that proper service had been made against all the defendants some of whom did not bother to come court, this court in light of **Order 9 rule 20 (1) (a) of the Civil Procedure Rules** directed that the suit to proceed *ex parte* as against all defendants except the 1st Defendant who was in court.

2. Issues.

a) Whether the 1st defendant acted negligently in causing the accident?
b) Whether the 2nd defendant is vicariously liable for the acts of the 1st defendant?
c) Whether the 3rd,4th,5th and 6th defendants are liable to compensate the plaintiff?
d) What remedies are available to the parties?

This being a civil suit, the burden of proof lies with the plaintiff. ***(sections 101 and 102 of the Evidence Act).*** It is trite law that the standard of proof in civil cases is on a balance of probabilities. ***(Nsubuga vs. Kavuma [1978] HCB 307).***

3. Evidence:

**The plaintiff (PW1)** testified that on 8th March 2017 while coming from his village in Akouro with his wife heading towards Bukedea Town Council, a vehicle driven by the 1st defendant headed in the same direction knocked him from behind as a result of high speed and as a result of the accident he suffered injuries that resulted into the amputation of his right

leg and a fracture in his right hand. These injuries resulted into various hospital bills. During cross-examination he stated that he had been riding for a period of 31 years and at the time of the accident he was riding at a speed of around 40 kmph. That the accident took place a few meters away from the junction and it's not true that he entered the junction trying to turn at the junction. That it is not true that he entered the motor vehicle as shown in the police sketch map of the accident and that it was the motor vehicle over speeding while he stayed in his position on the left side. He admitted that he does not have an inspection report in respect of the Hiace which was involved in the accident.

**PW2 (Moniko Michael Etoori),** testified that on 8th of March 2017 while moving from the district offices towards Bukedea town council he had a loud noise and when he rushed to see what it was he found his nephew and his wife lying in a trench in a pool of blood after he had been knocked by a vehicle reg. no. UAL810R Toyota Hiace. He was informed by the people at the scene that an on rushing taxi in a bid to avoid a head on collision knocked the plaintiff and his wife from behind. He followed up the matter with police after two days in hospital with the plaintiff and was informed that upon investigation the 1st defendant was the one driving the vehicle belonging to the 2nd defendant. During cross-examination he stated that he witnessed the accident but did not see the motor vehicle knock the motorcycle.

That he reached the scene after the accident, the plaintiff and is wife were lying on the left side of the road as one comes from Mbale. That he followed up the matter with insurance but they refused to compensate stating that the road licence, drivers permit and sticker for the vehicle were forged.

**PW3, (Robert Moses Otimong)** testified that on 8th march 2017 at around 1:00pm while riding his bicycle towards the district offices where the women's day celebrations were being held he saw two on rushing vehicles coming from Mbale while the plaintiff was riding his motorcycle coming from the same direction. That the second vehicle reg. no. UAL 810R Toyota Hiace overtook the first and directly knocked the plaintiff with his wife who fell in the trench and the taxi parked on the right. During cross-examination he maintained that he saw two vehicles over speeding with the plaintiff at the front and the vehicle that overtook the other is the one that knocked the plaintiff. That the motor vehicle over took from the right hand side and swerved to the left. That he saw two speeding motor vehicles but only remembers the number plate of one. He describes how that vehicle knocked the motor cycle on the right hand side and the damage to the Toyota Hiace was on its left hand side. That that plaintiff was not turning to his right going to the district headquarters, he was knocked before he reached the junction.

**DW1,** the first defendant testified that on 8th of March 2017 when the accident happened he was driving Motor Vehicle Reg. No. UAL 810R and when he was reaching the road junction at Bukedea Town, the motor cycle rider suddenly negotiated to the right side immediately after a vehicle from Soroti had just passed. That the motorcycle rider did not indicate or look behind but just negotiated to the right. That he failed to control the vehicle because the negotiation was sudden and the motor vehicle hit the motorcycle. That he reported to the police where recorded a statement and was detained for 6 days. That during his detention he paid for the plaintiff's medical bills through his brothers. That the plaintiff was riding the motorcycle recklessly and put himself at risk and he never negligently knocked the plaintiff. That he was charged with the offence of reckless driving and was acquitted. During cross-examination he stated that he

had 32 years driving experience by the time of the accident. He confirmed that he was driving the car at the time of the accident and he knocked two people. That the distance between him and the motorcycle was about 5 meters and they were all headed to the same direction. That the motor vehicle was insured by Excel Insurance issued by the 5th defendant. That the 5th defendant who works with Nova Insurance did not have stickers that day and went to the Excel Offices and brought a sticker for the motor vehicle. That the 5th defendant said she had got the sticker from a one Fatuma who worked with Excel Insurance. That he paid the first medical bills of the plaintiff.

4. Submissions:

Both counsels for the plaintiff and the 1st defendant filed final written submissions in respect of this matter.

Counsel for the plaintiff submitted that in ***Blyth Vs Birmingham Water Works (1856) 11 EX.78,*** It was held that: -

> ***"Negligence" is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do."***

The court in the much celebrated decision of ***Donoghue V Stevenson [1932] AC 562*** provided the ingredients of negligence, as follows;

i. The defendant owed the plaintiff, a duty of care.

ii. The defendant breached that duty resulting into damage on or against the plaintiff.

iii. The defendant and no other, is liable for the breach of duty.

Counsel also submitted that it is also the position of law that in a cause of action based on negligence, the particulars of negligence must be pleaded, in ***Mukasa Vs Singh & Ors 7 [1969] EA 422.*** It is a requirement that the plaintiff in their pleadings states the facts upon which the defendant's duty to the plaintiff is founded and also show the precise breach of duty complained of, as well as particulars of the damage Sustained. This was satisfied in paragraph 9 of the plaint where the plaintiff pleaded the particulars of negligence.

Counsel submitted that the question in this suit is whether a reasonable driver in the position of the 1st defendant would foresee the possibility of colliding with the plaintiff who was a head of him and would take reasonable steps to guard against such occurrence; and whether the defendant failed to take such steps. The applicable test is how a reasonable person would have acted under the same specific conditions prevailing at the time of the accident, as experienced by the driver of the motor vehicle whose conduct is being scrutinized. Counsel submitted that the evidence shows an undisputed fact that the plaintiff and the 1st defendant were all heading to the same direction from Mbale to Bukedea town, the plaintiff was a head and that the 1st defendant knocked the plaintiff who was a head of him from behind, and yet he could see him, he could have avoided knocking the plaintiff if he was not negligent.

Counsel further noted that the 1st defendant did not plead contributory negligence and thus his denial of liability does not hold water. The defendant in the instant suit did not plead the plaintiff's alleged contributory negligence, yet it is a material fact to its defence. As a result, the plaintiff's fault in causing the accident was not put in issue. Counsel referred to ***Ojara Thomas Vs. Mewe Bus Services Limited HCCS No. 020 of 2016.***

Counsel further submitted that **Regulation 8 (1) of The Traffic and Road Safety (Rules of the Road) Regulations 2004** provides that;

> **A driver of a vehicle shall have his or her vehicle under control in all circumstances and shall adjust his or her speed in such a way that he or she can stop his or her vehicle within his or her range of forward vision and short of any foreseeable obstruction.**

Further that **Regulation 8(6) of The Traffic and Road Safety (Rules of the Road) Regulations 2004** provides that;

> **A driver of a vehicle moving behind another shall keep at a sufficient distance from the other vehicle so as to avoid collision if the vehicle in front suddenly slows down or stops.**

In expounding the provisions in the regulations above, counsel for the plaintiff cited the decision of the High Court in the case of ***Paulo Kato Vs Uganda Transport Corporation (1975) HCB*** in which it was held that:

> ***"A driver of a motor vehicle is under a duty to take reasonable care for the safety of other traffic on the road to avoid a collision. This duty involves taking all measures to avoid a Collision. Once a possibility of danger emerging is reasonably apparent, and no precautions are taken by that driver, then the driver is negligent, notwithstanding that the other driver or road user is in breach of some traffic regulations or even negligent."***

Further that in the case of ***Baali Jackson vs Mansons Ltd Civil Suit No 37 of 2012*** court noted that again once the facts of negligence are established, a defendant was duty bound to rebut them which position was also the case in the Court of Appeal in ***Embu Public Road Services Ltd Vs Riimi [1968] EA 22*** that;

> ***"Where the circumstances of the accident give rise to the inference of negligence, then the defendant in order to escape liability has to show that there was a probable cause of the accident which does not connote negligence or that the explanation for the accident was consistent only with an absence of negligence".***

In establishing the plaintiff's case, Counsel for the plaintiff pointed out that the 1st defendant on the fateful date was driving at a high speed and did not keep any distance between him and the plaintiff, he did not take any precaution by trying to brake or stop to avoid the accident. That the fact of the 1st defendant driving at a high speed and did not keep a 5-meter distance from the plaintiff as expected and could have seen the action of the plaintiff as he was branching can be established from the fact that the 1st defendant could not stop to avoid collision with the plaintiff who was a head of him which any reasonable driver in his position would have avoided the accident if he had observed the traffic and road safety rules as enshrined under regulation 8(1) and (6) stated above.

According to counsel for the plaintiff since the 1st defendant did not do so then he was in breach of his statutory duty of care to the plaintiff and therefore acted negligently in causing the accident to the plaintiff and he should be found liable.

Counsel for the 1st defendant in reply submitted that the element of foreseeability is fundamental in determining whether the 1st defendant

owed a duty of care to the plaintiff. In making this assertion, counsel cited ***Wagon Mound No. 1 [1961] AC 388*** where court noted that for the defendant to be liable, the injury caused to the plaintiff must have been reasonably foreseen by the defendant's act even though there is or no direct cause of the damage.

Counsel further cited ***Wagon Mound No. 1 and Hughes v Lord Advocate [1963] 1 ALLER 705*** where that decision was re-affirmed.

Basing on the above case law and DW1's evidence, counsel submitted that the plaintiff took an unreasonable risk by trying to overtake the 1st defendant's motor vehicle and in the process due to a sudden negotiation of the 1st defendant's vehicle from the left to the right, the accident resulted as the 1st defendant lost control. Counsel further submitted that the sketch map PEX.15 clearly shows that the prior to the accident the motor vehicle and motor cycle were on the same speed and level but the unreasonable risk taken by the plaintiff led to the accident because of the short interval within which the events happened as the short interval within which the events leading to the accident happened, every reasonable driver would have not been able to control a moving vehicle and as such the said accident happened as it was unforeseeable.

Furthermore, Counsel for the 1st defendant submitted that **Regulation 8(1) of the Traffic and Road Safety (Rules of the Road) Regulations** is inapplicable to the instant facts in context of the interval it took for the accident to happen.

Counsel then proceeded to submit on contributory negligence as a defence available to the 1st defendant. Counsel referred to ***Gaaga Enterprises Ltd. v SBI International Holdings and 2 Ors HCCS No. 19 of 2005*** where Justice Yasin Nyanzi held

***"That a person is guilty of contributory negligence if he ought reasonably to have foreseen that if he did not act as a reasonable prudent man, he might hurt himself and must take into account that others may be careless."***

Counsel submitted that the plaintiff contributed harm to himself as he suddenly negotiated to the right hand side taking into the account the proximity between him and the 1st defendant.

In rejoinder Counsel for the plaintiff submitted that the sketch plan was drawn after the accident and the 1st defendant did not bring any witnesses to corroborate the assertion or the view of the sketch plan. Counsel reiterated that the 1st defendant admitted that the plaintiff was riding ahead of him and he knocked him from behind, he was in the position to view every action of the plaintiff if any and could have acted as a reasonable man to avoid the accident.

Counsel further submitted that the defence of contributory negligence is not available to the 1st defendant as he did not plead the particulars.

5. Court's findings and decision:

a. Issue 1:

*Whether the 1st defendant acted negligently in causing the accident?*

For the tort of negligence to be properly established, it must be shown that the defendant owed a legal duty of care and that duty was breached thus causing injury to the plaintiff.

**"Negligence"** is defined as the act of doing something or an omission by a reasonable man, guided upon considerations which regulate the conduct of human affairs.

Further, in case of negligence there should be a duty of care owed, a breach of that duty and damage suffered by the person to whom the duty was owed.

The tort of negligence is well established in the *locus classicus* case of ***Donoghue vs. Stevenson*** **(*above)*** in which the test as articulated by Lord Atkin, is that a defendant had the duty to take care when relating with people who are so likely to be affected by the defendant's acts or omissions and breach of which duty gives rise to liability in negligence.

It is clear from the evidence that the accident is not disputed, what is not agreed upon is how it happened and who is to blame.

The evidence of PW1 as seen above indicates that the motor vehicle and motor cycle were headed in the same direction and he was knocked by the 1st defendant.

The testimony of PW3 is very helpful in this regard. His unchallenged testimony indicates that there were two speeding vehicles and the 1st defendant over took the 2nd vehicle and knocked the plaintiff.

I find the detailed description of the events leading to the accident by PW3 very convincing. The 1st defendant thus owed the plaintiff a duty of care as a fellow road user.

The 1st defendant's claim that the plaintiff was turning at the junction was not proved by the evidence on record.

All the plaintiff's witnesses testified that the plaintiff was not branching off at the junction and this position was maintained even in cross-examination.

The 1st defendant in his testimony also admitted that they were heading in the same direction, that is, Mbale to Soroti direction and that the distance

between them was about 5 meters though he later stated that the plaintiff was branching towards the district headquarters and the motor vehicle lights hit him. He also stated that there were two vehicles passing by his and the plaintiff was only looking at them.

The police sketch plan of the accident which was not drawn on scale, indicates that the motor vehicle and the motorcycle were headed in the same direction. It indicates that the motorcycle was turning to the right, however, the plaintiff and all his witnesses denied this and insisted that the accident happened at the side of the road. It should be noted that the sketch plan was drawn after the accident and was based on observations after the accident had taken place.

The 1st defendant testified that the left side of his car hit the motorcycle on the right. If the motorcycle had negotiated a sudden right, I would find it more believable if the front right of the motor vehicle hit the motorcycle and not the left side.

I would thus find PW2's testimony that the 1st defendant suddenly swerved to the left and hit the plaintiff more persuasive and the fact that the car got damaged on the left side as testified by the 1st defendant corroborates this fact.

From these facts alone, I would find that the 1st defendant is liable for the accident and the injuries the plaintiff suffered.

As for the defence of contributory negligence, this cannot stand as this was not specifically pleaded by the 1st defendant and only arose from the submission of counsel from the bar.

Furthermore, even if this court was to treat that fact as a technicality, there is not sufficient evidence to support the claim.

b. Issue 2.

*Whether the 2nd defendant is vicariously liable for the acts of the 1st defendant?*

Counsel for the plaintiff submitted that in ***Sekitoleko Joram Versus Kato Edward & Anor High Court Civil Suit No. 97 Of 2017*** Court held that;

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

Counsel further submitted that at paragraph 8 (vi) of the plaint the plaintiff pleaded that the 1st defendant caused the accident while acting in the course of his employment for the second defendant Ojok Moses, the 1st defendant in his testimony during cross examination confirmed to court that the Motor Vehicle No. UAL 810R Toyota Hiace belonged to Ojok Moses.

This fact was also evident from PEX8 which is a certificate of insurance which showed the vehicle was belonged to Ojok Moses.

It should also be noted that the accident happened in the course of the 1st defendant's employment who was transporting passengers from Mbale to Soroti.

It was thus the plaintiff's submission that the 2nd defendant Ojok Moses being the employer of the 1st defendant is vicariously liable.

**Black's Law Dictionary, 9th Edition, at page 998**, defines vicarious liability as the liability that a supervisory party, such as an employer bears for the actionable conduct of a subordinate or associate, such as an employee, based on the relationship between the two parties.

Therefore, for a party to be vicariously liable for the acts of another, there should exist a relationship between the party and the person who did the negligent act and the act ought to have been done in the course of the employment and not when the person who did it was acting on a frolic of his own.

In ***Paul Byekwaso vs. Attorney General, Civil Appeal No. 10 of 2002,*** court held that a master is liable for tortuous acts committed by his/her servant in the course of the servant's employment.

The evidence on record including that of the 1st defendant clearly show that the motor vehicle belonged to the 2nd defendant and no evidence has been led to show that he was not in the employment of the 2nd defendant or acting on his own frolic when the accident happened.

Accordingly, since there is nothing to the contrary, I would The 2nd defendant vicariously liable for the injuries caused by the accident.

c. <u>Issue 3.</u>

*Whether the 3rd ,4th,5th and 6th defendants are liable to compensate the plaintiff?*

The suit proceeded *ex parte* against 3rd ,4th,5th and 6th defendants.

Counsel for the plaintiff submitted that the plaintiff testified that the 5th and 6th defendants were agents of the 3rd and 4th defendants, who were

responsible for the third party insurance certificate on the motor vehicle that caused the accident and this was confirmed by the 1st defendant in cross examination.

Counsel further submitted that PEX 8 shows that the 3rd defendant issued the 2nd defendant a certificate of insurance that was effective from 26th July 2016 to 26 July 2017 which covered the period of 8th March 2018 when the accident occurred.

PW2 Moniko Michael Etoori testified that he started following up on the issue of compensation with the 3rd defendant, Excel Insurance Co. Ltd and they told him that they did not know Hawa Fatuma Salinge who is the 5th defendant and that she was an agent of Nova Insurance Co. Ltd which is the 4th defendant. Etoori further told court that the 3rd defendant, Excel Insurance Co. Ltd further told him that their stickers had stolen and that they reported the case to police and wrote to their head office in respect of the said incident.

In respect of the aspect, the issuing of a third party motor vehicle insurance, Counsel for the plaintiff submitted that **section 2 (1) the Motor Vehicle Insurance (Third Party Risks) Act 1989 (Ch214)** makes it a requirement for the vehicle on the road to attain a policy of insurance in respect of third party risks.

That **Section 3 of the said Act** provides for the scope of policy of insurance and provides in order to comply with the requirements of section 2, the policy of insurance must be a policy which;

**a) is issued by an insurer holding a licence issued by the commissioner under the Insurance Act; and**

**b) insures such a person or persons or classes of persons as may be specified in the policy in respect of liability which**

**may be incurred by him or her or them in respect of death of or bodily injury to another person caused by or arising out of the use of a vehicle on the road;**

That **Section 7. Certificate of insurance.**

(1) A certificate of insurance shall be issued by the insurer to the person by whom a policy of insurance is effected at the same time as the cover note is issued.

And that **Section 12 Insurer may settle claim.**

**(1) An insurer that is a party to a policy under this Act may at any stage undertake on behalf of the insured or any other person that the insurer is liable to indemnify under the Policy.**

**a) The settlement of any claim against the insured or other person.**

Counsel then submitted that from the evidence on record, it is not in dispute that the third party insurance certificate that was on the motor vehicle UAL 810R Toyota Hiace that caused the accident belonged to the 3rd defendant, Excel Insurance Company and that it was issued by the 6th defendant an agent for Excel Insurance Company what was clear was that the 1st defendant always got his insurance from Nova Insurance Company Ltd. and when they were out of insurance and so their agent Hawa Fatuma Salinge moved to Excel Insurance Company Ltd. to get one.

It was therefore counsel's submission that in accordance with **section 12(1) of the Motor Vehicle Insurance (Third Party Risks) Act 1989 (Ch. 214)** the 3rd defendant Excel Insurance Co. Ltd was liable to

indemnify the insured (the second defendant) against the claims of the plaintiff hence compensate the plaintiff which they did not.

PEX8, the insurance certificate indicates that the issuing company is Excel Insurance Co. Ltd.

PEX10, is a letter from Excel Insurance Co. Ltd stating that the insurance sticker was forged. The letter also states that the sticker was issued by Hawa Fatuma Salige and that it was bought from Nova Insurance offices in Mbale Taxi Park.

The letter also indicated that the forgery had been reported to police.

PEX11, is a letter to Excel Insurance Co. Ltd and Nova Insurance Co. Ltd from IRA (Insurance Regulatory Authority) about the forged sticker.

In PEX12, IRA informed NOVA Insurance Co. Ltd that Hawa Salinge was not a fit and proper person for insurance agency business and should cease to be their agent.

PEX13 is a letter from NOVA Insurance Co. Ltd to IRA in which they state that they are not liable as the alleged perpetrator was not their agent as the time of issuance of the forged sticker.

DW1 testified that the insurance certificate was issued by the 5th defendant, Hawa Fatuma Salinge who then worked with NOVA Insurance I Co. Ltd and that day they did not have stickers so she went to the Excel Insurance Co. Ltd office and got one from there. The 5th defendant informed him that she got the sticker from the 6th defendant who worked with Excel Insurance Co. Ltd.

The liability of the 3rd and 4th defendants depends on whether the 5th defendants was their agents at the time the sticker was issued.

**The Insurance Act 2017, under Section 2** defines an insurance agent as a person appointed and authorised by an insurer to solicit for applications for insurance or negotiate insurance coverage on behalf of the insurer or to perform other functions of an insurance nature that may be assigned to him or her by the insurer, and who in consideration for his or her services receives commission or other remuneration from the insurer.

NOVA Insurance Co. Ltd in its Written Statement of Defence denied that the 5th defendant as being its agent at the time the sticker was issued. They attached an agreement entered into with the 5th defendant as their agent on the 14.07.2017 and her agent licence was issued by IRA on August 3rd 2017.

They also attached proof that the 5th defendant worked with Trans Africa Assurance Co. Ltd at the time the accident happened. This is corroborated by the various correspondences between IRA and NOVA Insurance Co. Ltd.

The plaintiff did not lead any evidence to show that indeed the 5th defendant was working with NOVA Insurance Co. Ltd at the time of issuance of the insurance sticker. Arising from all these facts, I cannot find any evidence pointing a figure to NOVA Insurance Co. Ltd to make them liable for the acts of the 5th defendant.

Excel Insurance Co. Ltd on the other hand denied the sticker as its own because after scanning it, it was found that it was not their property and that it had been forged.

Excel Insurance Co. Ltd appeared before IRA on the same issue and it was cleared. The plaintiff, however, failed to adduce any evidence to the contrary.

Accordingly, the 3rd defendant cannot be held liable for a forged sticker that was on the accident commuter taxi as it was not even given by its agent.

The 5th and 6th defendants on the other hand are liable because by issuing the forged sticker they undertook responsibility that the insurance sticker was valid.

d. Issue 4.

*What remedies are available to the parties?*

The plaintiff is seeking for compensation in general and special damages arising from the injuries sustained by him in an accident, exemplary and punitive damages for the defendants' negligent acts/omissions, interest and costs of the suit.

i. General damages for inconvenience:

Counsel submitted that it is trite law that damages are the direct probable consequence of the act complained of. Such consequences may be loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering. General damages must be pleaded and proved (***Moses Kizige V Muzakawo Batolewo [1981] HCB 66***).

In ***Assist (U) Ltd V Italian Asphalt & Haulage & another HCCS 1291/1999,*** unreported, inconvenience was held to be a form of damage General damages will ordinarily include anticipated future loss as well as damages for pain and suffering and loss of amenity (see ***Uganda Commercial Bank v. Deo Kigozi [2002] 1 EA 293***).

Counsel further submitted that there was overwhelming evidence adduced by the Plaintiff to prove that he was inconvenienced by the Defendants' actions as before the accident he was employed as a clinical

officer, he was also an active agriculturalists dealing in citrus farming, and poultry, animal rearing which would raise him about 3,000,000/=, annually however as a result of the accident he lost his leg, his right hand is weak, which has greatly in convenience and incapacitated him, that he cannot do his work normally, and cannot even apply for any job opportunities due to his disability, he is not able to support his family as expected and he cannot engage in any agricultural work thus lost a lot of earnings which he will continue to lose.

I do agree with this position and would award the general damages claimed as there is sufficient proof that the act complained of was a direct consequences of the accident herein which caused physical inconvenience, mental distress, pain and suffering to the plaintiff. A general damages of UGX. 90,000,000/= is awarded.

ii. Special Damages:

Counsel submitted that the position of the law is that this is not inferred from the nature of an alleged act following ordinary course of event for they are exceptional in character meaning that they must be claimed specially and proved strictly. Because of this peculiar nature, the law requires a plaintiff to give warning in his pleadings of the items constituting his claim for special damages with sufficient specificity in order that there may be no surprise at the trial.

This position has been reiterated in several decisions of the courts such as ***Musoke v. Departed Asians Custodian Board [1990-1994] EA 219; Uganda Telecom V. Tanzanite Corporation [2005] EA 351; Mutekanga v. Equator Growers (U) Ltd [1995-1998] 2 EA 219; Uganda Breweries Ltd Uganda Railways Corporation Supreme Court Civil Appeal No. 6 of 2001 (unreported)***

Counsel submitted that the plaintiff in his pleadings at paragraph 12 particularized the special damages and went ahead to prove the same.

He testified that he was rushed to Mbale referral hospital by a police vehicle and I was referred to mount Elgon hospital Mbale for a brain CT scan to rule out any head injuries and a Doppler ultrasound scan which cost me 280,000/= (See to PEX 4), that while at Mbale regional referral hospital he was attended to by Dr Malinga and his team from orthocare rehab international, this team conducted the medical operation on his right leg and right hand, he spent 100,000/= for consultation fee, 4,200,000/= for an artificial leg, 800,000/= for gait training, 85000 for walking sticks, 1,400,000/= for Denis brown splints, ebbs palsy splints 500,000/=, arch sport supporters, calipers 500,000/= arm sling 95000, toilet seat saddle wheel chair 500,000/=all these totaling to 8,575,000/=. (See to PEX 5). That he was also charged a cost 777,900/= by Mbale regional referral hospital for a surgical operation done to clean the rotting tissue in the amputated leg. (See to PEX6). Physiotherapy which included weekly rehabilitation for a period of 12 weeks at a cost of 50,000 per week totaling to 600,000/=. (See to PEX 5) medication to a tune of 577,900/= (See PEX7) he is claiming for 10,810,800/=from medical expenses plus his motorcycle of 12,000,000 as special damages.

I find from the particularization which is not challenged and which appears truthful that the plaintiff has substantially proved the special damages.

I would award the special damages sought as above, which amount is to be collated and quantified by the registrar of this court as herein above as they have been clearly proved as resulting from the expenses resulting from the accident herein.

iii. Exemplary and punitive damages:

Counsel submitted that it is trite law that these are awarded in order not to enrich a plaintiff but to punish and deter defendant from repeating an unbecoming conduct as was pointed out by Katureebe JSC as he then was in his paper titled **Principles Governing The Award of damages in Civil Cases** at the induction of newly appointed judges at Entebbe on 18th June, 2008 with the learned justice citing the case of **Butterworth v Butterworth** noted that the expression exemplary damages meant damages for ***'example's sake'*** which makes this kind of damages clearly to be punitive or exemplary in nature for they represent a penal sum of money awarded in addition to the compensatory damages for the pecuniary or physical and mental suffering.

I am not persuaded that there was evidence proved satisfactorily for the award of exemplary and punitive damages. Accordingly, none is awarded.

iv. Costs of this Suit:

Counsel submitted that the general principle under ***Section 27 (2) of the Civil Procedure Act (supra)*** is that costs follow the event and a successful party should not be deprived of costs except for good reasons. The Plaintiff spent money in transporting himself to various places seeking for legal help and attending court proceedings from the start to the end. He transported his witnesses from Bukedea to testify in Court and was represented by advocates and the advocates spent money in drafting and filing various documents in court and attending all court proceedings; which expenses could have been avoided if the Defendants were honest and accepted to compensate the Plaintiff for the injuries sustained.

Accordingly, the cost of this suit is awarded to the plaintiff.

6. Conclusion:

I am satisfied that the plaintiff has proved his case to the required standard on a balance of probability. This suit thus succeeds accordingly as against the 1st, 2nd, 5th and 6th defendants. The 3rd and 4th defendants are exonerated.

The plaintiff did not lead any evidence to show that 5th defendant was working with either Excel Insurance Company Ltd or NOVA Insurance Company Ltd at the time of issuance of the forged insurance sticker.

Similarly, no evidence was adduced connecting the action of issuing the forged insurance sticker by the 5th defendant to the 3rd defendant whose defence clearly proved that the 5th defendant obtained a forged insurance sticker from the 6th defendant.

I therefore cannot find the 3rd nor 4th liable for the acts of the 5th or 6th defendant who clearly knew that they were issuing a forged insurance sticker and must thus, because of their greed pay for the consequences of such greed.

7. Orders:

a. The plaintiff has proved his case as against the 1st, 2nd,5th and 6th defendants with 2nd defendant being vicariously liable for the acts of the 1st defendant.

b. No case has been proved by the plaintiff as against the 3rd and 4th defendants.

c. The 1st, 2nd, 5th and 6th defendants are hereby found liable to compensate the plaintiff, accordingly.

d. A general damage in the amount of UGX. 90,000,000/= is awarded to the plaintiff, to be paid by 1st, 2nd, 5th and 6th defendants in equal

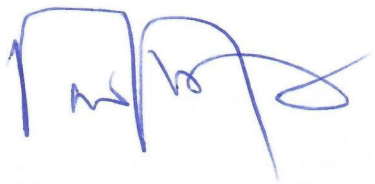
amounts and to carry an interest of 18% per annum from the date of this judgment till payment in full.

e. Special damages in the amounts as indicated in this judgment which amount is to be collated and quantified by the registrar of this court is awarded to the plaintiff and to be paid by the 2nd defendant who is vicariously for the action of the 1st defendant.

f. Similarly, as in (e) above, the 2nd defendant shall pay the costs of this suit.

g. The award in € above to similarly carry an interest of 18% per annum.

I so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

17th August 2022