

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
CIVIL SUIT NO. 364 OF 2012

1.MELIDAH NAMUTEBI

2.ROSEMARY NAKACHWA=====PLAINTIFFS

VERSUS

GAAGA ENTERPRISES LTD=====DEFENDANT

BEFORE: HON. MR. JUSTICE PHILLIP ODOKI

JUDGMENT

Introduction:

[1] The 1st Plaintiff - Melidah Namutebi is the mother of the late Godfrey Mutumba, while the 2nd Plaintiff - Rosemary Nakachwa is the widow of the late Godfrey Mutumba. The Plaintiffs instituted this suit against Gaaga Enterprises Ltd (hereinafter referred to as “the Defendant”) under the Law Reform (Miscellaneous Provisions) Act Cap 79, on behalf of the estate the late Godfrey Mutumba. They sought for special and general damages arising from an alleged negligence of the driver of the Defendant bus that caused the death of Godfrey Mutumba.

[2] On the 4th September 2019, the court was informed that the 2nd Plaintiff had died. Counsel for the Plaintiff chose not to substitute the 2nd Plaintiff and informed that court that they were only proceeding with the 1st Plaintiff. This suit thus only proceeded at the instance of the surviving Plaintiff in accordance with Order 24 rule 2 of the Civil Procedure Rules SI 71- 1.

The Plaintiff’s case:

[3] The Plaintiff pleaded that on the 22nd January 2011 Godfrey Mutumba was a passenger travelling in Motor Vehicle Registration Number UAL 352F a Fuso Lorry from Kampala in the direction of Gulu. Along the way, Motor Vehicle Registration Number UAL 352F collided with Motor Vehicle Registration Number UAK 560L a



Scania bus belonging to the Defendant, which was traveling in the opposite direction. Godfrey Mutumba died instantly as a result of the accident. The Plaintiff contended that Godfrey Mutumba died solely as a result of the negligence of the driver of the Defendant who was in the course of his employment, for which the Defendant is vicariously liable.

[4] The Plaintiff further contended that the late Godfrey Mutumba was a young man aged 30 years, with 5 children. He was a commodity dealer carrying trade between Kampala and Juba and earning an average monthly income of UGX 1,700,000/=. He was the sole breadwinner of his children together with the 1st and 2nd Plaintiff. The Plaintiff sought for recover special damages of UGX 2,700,000/= being funeral expenses and UGX 98,000/= being the costs of obtaining the Sketch Plan, the Police Report and the Death Certificate. The Plaintiff also claimed for general damages for loss of a family member; grief and suffering of the family; loss of financial support and dependency; loss of expectation of life; loss of consortium and conjugal rights for the 2nd Plaintiff; and loss of prospective happiness.

The Defendant's case:

[5] The Defendant pleaded that the accident was not caused by its driver but instead was solely attributed to the negligence of the driver of Motor Vehicle Registration Number UAL 352F in which the late Godfrey Mutumba was a passenger. According to the Defendant, the 1st and 2nd Plaintiffs are not entitled to the reliefs sought.

Agreed fact:

[6] In the Joint Scheduling Memorandum, the parties agreed that;

- i. There was a collision involving Motor Vehicle Registration Number UAL 352F a Fuso Lorry and Motor Vehicle Registration Number UAK 560L a Scania bus belonging to the Defendant.
- ii. Mutumba Godfrey was a passenger on Motor Vehicle Registration Number UAL 352F a Fuso Lorry.

Issues:

[7] The parties agreed that the issues for the determination of the court should be;

- i. Whether the accident was caused by the negligence of the Defendant's bus driver.
- ii. What remedies are available to the parties.

Evidence presented:

[8] The 1st Plaintiff testified as PW1 and Busuulwa Rold – the biological son of the late Joseph Mutumba testified as PW2. The Defendant adduced Asea Emmanuel – the turn man for the Scania bus who testified as DW1. Both parties did not adduce any documents in evidence. The Plaintiff tendered in court the photocopy of a Police Report for Identification as PID1. It was never admitted in evidence as an exhibit. I have thus not considered it in this judgement.

Legal representation and submissions:

[9] At the hearing, the Plaintiff was represented by Mr. Bwanika George William. The Defendant on the other hand was represented by Mr. Ben Kalai. Upon closure of the hearing, the Court gave counsel directives to file written submission, which directives were duly complied with. I have given the submissions the requisite consideration in the determination of the issues before the Court.

Burden and standard of proof:

[10] The burden of proof in civil matters lies upon the person who asserts or alleges. Any person who, wishes the court to believe the existence of any particular fact or desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts, must prove that those facts exist. (**See section 101, 102 and 103 of the Evidence Act Cap 6 of the laws of Uganda**). The opposite part can only be called to dispute or rebut what has been proved by the other party (**See Sebuliba versus Co-operative Bank (1982) HCB 129**). The standard of proof required is on the balance of probabilities. In **Miller versus Minister of Pensions (1947)2 ALL ER 372** Lord Denning stated;

“That the degree is well settled. It must carry a reasonable degree of probability but not too high as is required in a criminal case. If the evidence is such that the tribunal can say, we think it is more probable than not, the burden of proof is discharged but if the probabilities are equal, it is not.”

Consideration and determination of the Court:

Issue 1: Whether accident was caused by the negligence of the Defendant bus driver.

[11] In order for the Plaintiff to succeed in this case which is founded on the tort of negligence, she must prove three elements. First, that the Defendant owed the late Godfrey Mutumba a duty of care. Secondly, that the Defendant breached that duty of care. Thirdly, that the late Godfrey Mutumba suffered damage as a result of the breach of duty care by the Defendant.

Whether the Defendant owed the late Godfrey Mutumba a duty of care.

[12] In the much-celebrated English case of *Donoghue v Stevenson [1932] AC 562* the House of Lords succinctly stated the duty of care required to be proved in the tort negligence. At page 580, Lord Atkinson stated that:

“You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law, is my neighbour? The answer seems to be—persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.”

[13] In the instant case, it is common ground that the late Godfrey Mutumba was a passenger on Motor Vehicle Registration Number UAL 352F a Fuso Lorry and that there was a collision involving Motor Vehicle Registration Number UAL 352F a Fuso Lorry and Motor Vehicle Registration Number UAK 560L a Scania bus belonging to the Defendant. According to DW1, the Scania bus was from Arua heading to Kampala. It was not contested that the Fuso track was heading in the opposite direction, that is

Kampala Gulu direction. In my view, since the late Godfrey Mutumba was a passenger in the Fuso truck which was using the same road at the material time with the Scania bus, the driver of the Scania bus and also the driver of the Fuso truck, owed a duty of care to all road users, including the late Godfrey Mutumba, not to do any act or to fail to do any act that they could reasonably foresee would cause them injury or death. The Defendant therefore owed the late Godfrey Mutumba a duty of care.

Whether the Defendant breached its duty of care to the late Godfrey Mutumba.

[14] A breach of duty of care occurs when one party, who owes the other a duty of care, does something or fails to do something which he or she reasonably foresee would be likely to injure the other party. In order to be deemed as breaching the duty of care, the Defendant's actions must be proven to fall below the standard of care likely to be taken by a reasonable man having regard to all the circumstances of the case.

[15] In the instant case, the particulars of the negligence were stated in the plaint to be;

- i. Failure to maintain Motor Vehicle Registration Number UAK 560L in a proper mechanical condition.
- ii. Driving Motor Vehicle Registration Number UAK 560L in a very high speed.
- iii. Failure to control and veer Motor Vehicle Registration Number UAK 560L as expected of a competent driver of a public service vehicle, to prevent swerving from its side of the road to the other side thereby knocking down Motor Vehicle Registration Number UAL 352F in which Godfrey Mutumba was traveling.

[16] In her evidence, PW1 testified that the accident was a result of the mistake/negligence of the driver of the Scania bus. PW1 was not at the scene. She was not an eye witness. According to her, the negligence of the driver of the Scania bus was explained by the Police Report. The alleged Police Report was not tendered in evidence. In cross-examination she stated that it is the police who knew who was in the wrong. However, the Plaintiff failed to adduce any of the police officers she referred to, to prove that it is the driver of the Defendant who was negligent. Therefore, the Plaintiff failed to prove all the particulars of the alleged negligence.

[17] Defendant on the other hand adduced DW1 who was an eye witness. He testified that on that day, he was the turn man of the Scania bus. On the 22nd January 2011 at around 4.00am when they approached Kafu, he saw the Fuso truck abruptly swerve from the right-hand lane to the left-hand lane where the bus was moving and subsequently collided with the bus. According to DW1, it is the driver of the Fuso truck who caused the accident and the driver of the Scania bus was not at fault. I have no reason to doubt the evidence of DW1 since the Plaintiff did not adduce any evidence of another eye witness or any document that contradicted his evidence. I therefore find that the Plaintiff failed to prove that the Defendant breached its duty of care to the late Godfrey Mutumba or that the accident was caused by the negligence of the Defendant's bus driver.

Whether the late Godfrey Mutumba suffered damage as a result of the breach of duty care by the Defendant.

[18] Having found that the Plaintiff failed to prove that the Defendant breached its duty of care to the late Godfrey Mutumba. It cannot therefore be said that the damage he suffered leading to his death was caused by the negligence of the Defendant's bus driver.

Issue 3: What remedies are available to the parties.

[19] Given that the Plaintiff failed to prove that the accident was caused by the negligence of the Defendant's bus driver, this suit is accordingly dismissed with costs to the Defendant.

I so order.

Dated and delivered by email this 6th day of September 2023.



Phillip Odoki

JUDGE



