THE REPBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO.680 OF 1992

1. STEPHEN KASOZI
2. JOHN LUBEGA
***3.* KAVUMA**
4. CHRISTOPHER ALIAS JOHN } **::::::::::::::::::::::::PLAINTIFFS**

VERSUS

PEOPLES TPANSPORT SERVICE LIMITED::::::::::::::::::DEFENDANT

BEFORE: — The Honourable Mr. Justice I. Mukanza

J UDGMENT

This suit was filed by the four plaintiffs namely Stephan Kasozi, John Lubega, Kavuma and Christopher alias John again the defendant as scheduled corporation seeking general and special damages for injuries sustained by them when the motor vehicle which they were travelling in driven by the defendant's servant or agent overturned on 19th January 1992. When the matter came before court for hearing the third plaintiff did not attend. This judgment therefore is in respect of the three plaintiffs. The claim by the third plaintiff against the defendant was in opinion thereby dismissed pursuant to Order 9 Rule 9 of the Civil Procedure Rules. According to the plaint at all material times the defendant was the registered owners of motor vehicle Registration Number UPN 117. On or about 10.00a.m the plaintiffs were passengers in the defendants motor vehicle which overturned at Bwesira on Mubende Fort Portal road (near Nabingole). That was so by area of the negligence of the defendant's servant/agent who was driving the motor vehicle in the course of his duties. The plaintiff further alleged that the said accident was caused solely by the negligence of the defendant's driver.

In their written Statement of Defence the defendant denied that the said accident was caused by the negligence of defendant's driver/agent and that the plaintiffs shall be put strict proof thereof.

At the commencement of the trial the following issues were framed;

(1) Whether the accident happened as alleged.

(2) Whether the plaintiffs were involved in the accident as alleged.

(3) Whether the plaintiffs were injured as pleaded.

(4) Whether the defendant's driver was negligent.

(5) Whether the plaintiffs were entitled to the reliefs claimed.

(6) And what is the quantum of damages to be awarded to the plaintiffs.

All the plaintiffs gave evidence. The first plaintiff (PW1) Stephen Kasozi, testified that on 20th January 1992 he boarded peoples Bus at the UTC (Uganda Transport Company) Headquarters Kampala when proceeding home. He was seated on the third chair from the driver's seat. On the way at a place called Mugwanika they met a lorry coming from Fort Portal going to Kampala. The two met at a corner. Before the lorry was overtaken the bus in which he was travelling tilted and went on itself only to find that it had overturned. He did not know what followed. He was unconscious and found himself in the Hospital. As a driver he knew the Bus was speeding up and the two vehicles made the accident. At first he was taken to Mubende Hospital. Later his relatives transferred him to Dr. Lwanga's Clinic at Mubende. He sustained injuries in the ribs and had a plaster rolled over his trunk for two weeks. He also sustained injuries on the elbow. His injuries got healed except that he felt some pains in his ribs. He did not report the incident to the police but did inform his advocate about it. He paid a lot of money for treatment. He spent 122,000/= shillings but could not produce the receipts because he had forgotten the same behind.

In cross examination he replied that he was employed by the Uganda Transport Company and drives small vehicles. The driver was driving a bit fast but not too fast. He was driving reasonably well.

The evidence of 2nd plaintiff John Lubega was to the effect that he was seated in the middle chairs and was astounded when the bus in which he was travelling overturned. It tilted as it met the lorry which was coming from the opposite direction. The bus fell on the right hand side as one faces Fort Portal. He fractured his right leg which was trapped in the seats. The ankle of the same leg also got fractured. He was assisted and was brought in a track to Nsambya Hospital where he was admitted. He had his leg stitched and plastered. He was admitted in the hospital for some days. And when discharged he kept on attending hospital as an out patient. The plaster was removed after three months. He reiterated that his wounds heals off and now moves with clutches on and hopes of facing another operation.

Because of the accident he had a chest pain and his earning capacity was affected. As a butcher he used to travel extensively and used to earn about 50,000/= Shillings per week in his work but because of the accident his earnings had diminished 20,000/= Shillings per week. Nsambya Hospital he paid 35,000/= for his treatment.

When cross examined he replied that his injury had completely healed by December but still felt some pain. On 16th February, 1993 he went to see Dr. Sekabunga. He did not tell the Doctor that he was travelling in a car which overturned.

The fourth plaintiff Christopher alias John (PW3) testified that he was travelling to Nabingole to pay salaries to the workers. On the way they met a lorry which was coming from infront. As the bus negotiated a corner the boxes which were staked inside fell on him. The bus overturned and fell down. The boxes fell on his head and chest He sustained injuries. He bled from his ears and nose. He got an injection and tablets but whenever he moves in the sun he bleeds from his ears and nose. He was advised to wear either hat or umbrella whenever he moves in the sun otherwise he would be mentally affected. He still felt pain and could not lift heavy objects. That he got treatment from Mulago Hospital and paid about 250,000/=.

In cross examination he replied that he contacted a doctor to examine him in respect of this case. He was issued, with a medical report but did not know where he put it. He told the doctor about the blood in the nose and ears.

After the close of the plaintiffs' case the defence called no evidence to rebut the plaintiffs' allegation. Mr. Mugenyi informed the court that they bad agreed with his colleagues that the defendant admits liability to the extent of *75%* and they tendered in evidence the medical reports as exhibits by consent and that the court proceeds to asses the quantum of damages. I must point out that so long as counsel acting for the party in a case and his instructions have not been terminated, he had full control over the conduct, of the trial and has apparent authority to compromise all matters connected with the action Nankya & Another .V. Konde [1979] HCB 239 See also Micormel & Another .V. Kimani [1967] EA. page 702 Welsh Vs. Roe [1918] EAR Rep. Page 620. From what has transpired above I am of the view that though Mr. Mugenyi had admitted liability on behalf, of the defendant to the tune of 75% still I had to go ahead and consider the issues as framed in the in light of the evidence on record. The court could not have ignored all that evidence on record and straight way proceed to consider the quantum of damage. Justice required that I should evaluate the evidence in order to satisfy myself that the claim had been prayed on a balance of probabilities. The first issue was whether the accident happened as alleged. The three plaintiffs' testified to that effect that the accident happened at that particular place and time. In their Written Statement of Defence the defendant averred that the accident did not happen. As already earlier state the defendant did not adduce evidence to counteract the allegation in the plaintiff's claim. In the premises it is safe to answer the first issue in the affirmative.

The second issue was whether the plaintiffs were involved in the accident as alleged. Just like in the first issue there was no evidence to controvert their assertions that they were involved in the accident. In the end the second issue is in the affirmative.

The third issue was whether the plaintiffs were injured as pleaded.

According to the evidence the three plaintiffs claimed to have been passengers on the defendant's vehicle. However none of them produced any receipts to prove that they were fare paying passengers. In the absence of that piece of evidence there appears to have been no contractual relation between the plaintiffs and the defendant company. The plaintiffs would then appear to have been trespassers. I say so because it is not in common for people to fluke and travel on some vehicle unnoticed without paying fares. And another disturbing feature of this claim was

that the plaintiffs testified that they sustained injuries as a result of the accident and that they were even hospitalized and attended clinics as out patients but they could not produce any medical form to that effect. Everyone claimed to have forgotten the medical forms behind. That was rather strange. In addition none of then bothered to report the accident to the nearest police station or to any police station at all. If the accident was reported to the police the latter would have visited the scene, interviewed the victims, looked at their injuries and even would have drawn a sketch plan of the scene showing the positioning of the vehicles or vehicle involved in the accident. The policeman then would have been called as a witness but this vital piece of evidence was lacking.

Besides that the first plaintiff informed the court that he sustained injury as a result of the accident. He had a plaster on his trunk_for 2 weeks the injuries got healed except that he felt some pains in his ribs. He had but wounds on the elbow. The doctor's report was to the effect that he had cut wounds on both elbows and had scars on them but had no permanent disability. The doctor's report contradicted PW1's evidence about the number of wounds on the elbow and that he felt pains in the ribs, on examination DW1 he found that the chest was normal.

As regards the 2nd plaintiff (PW2) he too testified that he fractured his right leg and ankle. He could not move without clutches and anticipated of an early operation soon and he had a compound rights Potts fracture which was confirmed on X ray. That he made satisfactory progress and was discharged after three weeks arid the plaster was removed three months after the accident but due to his injury to the right ankle his action was partial because he could riot speak for a long time. That medical report further showed that the main sustained Potts fracture of the right ankle which had resulted leaving him with permanent swelling and assessed the permanent disability on 10%. I am of the opinion that the doctor would have clarified more on these vital points had he to have been called as a witness. The doctor's report in my opinion was not helpful only dispensed with proving he report but not admission of the contents. The doctor should have been called as a witness. **See Attorney General Vs. Barrange & another *[1976]* HCB Page *45.***

As for the 4th plaintiff (PW3), He testified that the boxes fell on him at the time of the accident. He bled from his ears and nose. When he moves in the sun he bleeds from his ears and nose. He

was advised to wear a hat and umbrella otherwise he could be mentally affected and could not lift heavy object.

The doctor who is alleged to have examined him found him with wounds on the head and chest and that the wound were stitched. He had a scar on the chest and had no permanent disability. The report is at variance with what the plaintiff testified to in court. There was nothing in the report to show that the plaintiff bled from his nose and ears that he had a permanent disability which necessitated him putting on the hat or umbrellas wherever he moved in sunshine and there was also nothing in the report to show that he had any permanent disability like lifting of heavy object. My impression of this witness was that he was not truthful. He was jumpy and avoided answering questions in cross examination.

From what has been explained above and in light of the evidence adduced the third issue is in the negative.

The fourth issue was whether the defendant's driver was negligent. The proposition is that it is not every careless act that man may be held responsible in law, or even for every careless act that causes damage. He will only be liable in negligence if he is under a legal duty to take care. See **Wenfield on tort 8th Edition Page 42** and so the plaintiffs have to prove that the driver owed them a legal duty to exercise care in driving the vehicle as fell within the scope of his duty and the plaintiffs must show further that there was a breach of that duty and the consequential damage.

In the instant case the plaintiffs as I have already found were trespassers on the said vehicle, the driver therefore owed them no duty of care, if they sustained injuries as pleaded by them. There was no breach of that duty and would not be held for the consequent injuries. In fact no explanation was given by the defendant as to how the incident occurred. Here the plaintiffs could have relied on the doctrine of res ipso loquitor. The principal requirements which are that the mere fact that the accident having happened should tell is own story and raise the inference of negligence so as to establish a prima facie case against the defendant. The essentials of this doctrine are that the defendant must have been in control of the object which caused the accident, and the second ingredient is that the accident must be such as would not in the ordinary course of

things have happened without negligence and finally the absence of explanation on the part of the defendant. In fact this is a mere rule of evidence to help the plaintiff prove facts of the accident to establish breach of the duty on the part of the defendant without proving any particulars of negligence. See **Moya Nanziri & Egulansi Nankya .Vs. Joseph Kambazo [1978] HCB Page 304 See also; Wenfield Tort 8th Ed. Page 68. Barkway South Wales Transport Ltd. [1950] AER page 392.**

In the instant case the vehicle was under the control of the defendant's servant. In the ordinary course of things the accident could not have happened without negligence on the part of the defendant and the defendant did not offer any explanation. The burden would have been on the defendant to rebut all that because of what I have already explained above. The doctrine was not available to the plaintiffs. The plaintiffs were trespassers. In the end to fourth issue is in the negative.

The fifth issue was whether the plaintiffs were entitled to the reliefs claimed. The first plaintiff claimed special damages of Ug.Shs.122,000/= as being expenses incurred when he was treated for the injuries he sustained as a result of the accident. He forgot his receipts behind. Whereas the 2nd plaintiff testified that he paid 35,000/= for his treatment in Nsambya Hospital. He too did not produce any receipt. The fourth plaintiff (Pw3) on the other hand informed the court that he paid Ug.Shs.250,000/= for his treatment. He too could not produce any receipt. The principle is that special damages must both be specifically proved and pleaded. See Husse Hussein Vs. Hunt [1964] EA Page 210, Kampala City Council .V. Nakaye [1972] EA page 446.

In the instant case the plaintiffs did not specifically prove their special damages say by producing receipts in connection with the expenses they incurred when they were treated at the various Hospitals and or clinics. Also those claims were not pleaded. They did not feature at all in the pleadings. The claim for special damages should have failed and I would agree with Mr. Mugenyi that the claim for special damages was not proved.

From what has been explained above the fifth issue is in the negative.

The sixth and last issue was about the quantum of damages to be awarded to the plaintiffs. The basic principle underlying on the award of damages in the Aquillion action (i.e. on action by

bodily injury founded upon negligence) is that the compensation must be assessed so as to place the plaintiff on as far as possible in the position he would have occupied had the wrongful act causing him injury not been committed See **Quantum on damages in bodily and fatal injury cases Vol.1 by Carbect and Buchnab.** I was addressed extensively on this issue and a number of authorities were cited Mr. Mugabi submitted that the first plaintiff still suffers discomfort and that those injuries deserve compensatory amount of damages. He referred me to the case of C.M. Thyson Vs. Watisi Ltd. HCCS No. 986/60 where the plaintiff was awarded general damages of 600,000/= Shillings.

As for the second plaintiff I was referred to the case of Alibhai Qulamshein .Vs. Pyaral, Rajabeli .Vs. Another HLD 57/69 HCCS No.169/68 where the learned counsel was awarded damages of Ug.Shs.30.000/= which the learned counsel said was the equivalent of 5 Million Shillings. He prayed that the second plaintiff be awarded that figure.

With regard to 4th plaintiff PW3 Mr. Mugabi submitted that though the injuries were artificial the plaintiff was likely to undergo continuous medical treatment. He referred me to case No. 139 (found in decision of the High Court of Uganda on quantum of damages for personal injuries 3rd Ed.)

i.e. Hardi Viwani h another HLD 42/67 HCCS No.318/65 where Sharidan J. as he them was awarded damages totalling to 3,000/= Shilling which Mr. Mugabi submitted was the equivalent of 60,000/ Shillings. He prayed that his client he awarded special damages.

Mr. Mugenyi on the other hand submitted that the claim the third plaintiff who did not turn up on the hearing date should be dismissed which was done as explained above. He then submitted that the first plaintiff was a straight forward witness. His evidence was never discredited. He had completely healed and got his job as a driver. He should he awarded Ug.Shs.50,000/= as general damages.

As for both PW2 and PW3 he submitted that those were not credible witness they were reluctant to answer questions and at times they could not answer questions at all. They were liars. He invited the court to rely exclusively on medical evidence which had been tendered by consent and ignore the evidence as testified to by the witnesses in court. That PW2 who sustained Potts

fracture and whose injuries were minor could be awarded a figure of Shillings 100,000/=. Whereas PW3 who had only a scar which he had showed to the doctor that he was a man of less intelligence and that did call for an award of Ug.Shs.30,000/= and the court should ignore his evidence and rely on the doctor's report. However taking into account the case cited supra and the award of damages granted therein coupled with the high infletion prevailing in the country. If the plaintiff proved their claim on a balance of probabilities I would have awarded the first plaintiff Ug.Shs.100,000/= as general damages. Then the second plaintiff would have been awarded 150,000/= Shillings and the third would have been awarded only Shillings 30,000/=. Otherwise the suit stand dismissed with costs.

I. MUKANZA
JUD G E
18/5/1993