

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANA AT KAMPALA

CIVIL SUIT NO 517 OF 191

YOSEPH LUBEGA & OTHERS ::: PLAINTIFFS

VERSUS

INTERNATIONAL VENTURES LTD ::: DEFENDANT

BEFORE: HONOURABLE JUSTICE I. MUKANZA

JUDGMENT

The plaintiffs in this case brought an action against the defendant a limited liability company incorporated and carrying on business in Uganda for general and special damages arising out of a motor accident involving their vehicle UXE 872 and UPI 066 in which the plaintiffs sustained injuries.

According to the plaint on or about the 26th day of may 1991 at or about midday the plaintiffs who were passengers in Peugeot registration number UXE 872 sustained serious injuries when the said motor vehicle collided with the defendant land rover No UPI 066 at 7 miles Masaka-Kampala road by reason of negligence of one Ibingira the defendants driver/servant/agent who was driving the motor vehicle in the course of his duties.

The plaintiffs averred that the said accident was caused solely by the negligence of the defendant Driver/servant/agent and holds the defendant vicariously liable thereof.

The plaintiffs gave the particulars of negligence and averred that the defendants' said driver/servant/agent was negligent in failing to maintain and keep the motor vehicle No. UPI 066 in good repair in a road worth condition as required by section 115(1) of the Traffic and Road safety Act 1970 and that cause contributed to the said accident and alternatively but without

prejudice to the foregoing pleas the plaintiffs pleaded that and will at the trial rely on the doctrine of res ipsa loquitur.

And that the plaintiffs' claim from the defendant is general damages for pain and sufferings loss of amenities of life and loss o earnings/special damages.

In their written statement of defence the defendant admitted that on the date and at the place alleged in the plaint an accident occurred involving the defendant's motor vehicle No UXE 872 but denies the said accident was caused by the negligence of the defendant servant or agent. In particulars it was denied that Mr. Grace Ibingira was at any material times driving the defendants motor vehicle or that the matter alleged in para 3 and 4 of the plaint in that the plaintiffs vehicle collided with the defendants land rover and the accident was caused solely by the negligence of the defendant said driver/servant/agent and holds the defendants vicariously liable therefore.

And in the alternative the defendant averred that the said matters were wholly caused by the negligence of the servant or agent o the owner of the motor vehicle No UXE 872. The written Statement of Defence showed the particulars of negligence on the part of the said motor vehicle UXE 872 and averred that the defendant's servant or agent was involved in the accident which he could not avoid.

Before the commencement of the hearing of this suit four issues were framed and agreed upon by both sides and they are as follows:-

- (1) Whether the defendant's servant/agent were negligent
- (2) Whether the driver of motor vehicle UXE 872 was negligent.
- (3) Was the accident inevitable?
- (4) If the defendant is found liable what is the quantum of damages.

In an endeavour to establish their case two witnesses were called that was the first and the second plaintiffs. The third plaintiff did not show up and no reason was given for his absence. In the circumstances it was safe to conclude that his claim be dismissed and it is hereby dismissed

pursuant to Order 19 Rule 19 of the civil procedure rules. On the other hand three witnesses gave evidence for the defence

In his evidence Yoseph Lubega PWI testified that he was self employed and carried on his business in the market.

On 26th May 1991 the plaintiffs were travelling in a car coming to Kampala. On the way they were involved in a motor accident at a place called Mpungwe twelve miles from Masaka. The car in which they were travelling got an accident with a land rover coming from Kampala. Before the accident their vehicle was being driven on the left hand side. The road was straight the impact was on the right hand side.

The driver tried to avoid the incoming vehicle went off the road and went on the left hand side. The land rover was coming at a high speed and the small car was trying to avoid the accident. The land rover knocked the small car and it got dented. The collision took place on the left hand side of the road. That was at the edge of the road the car in which he was being driven was knocked on the drivers side. The vehicle was a right hand driver.

Immediately after the accident he became unconscious. He gained his consciousness when he was in Masaka Hospital and that was four (4) days after the accident. He got injuries and broke his ribs He was also hit by the said vehicle on the back of his head and has a scar. He also fractured one of his legs. He had blood clots in his kidneys and they had to be removed. He was hospitalized for 11½ months and on being discharged he used to attend for treatment as an out patient. He still feels pain in the ribs and the legs. After the accident he could not do things he used to do. He was redundant. He used to lift things but he could not do that now. Before the accident he used to earn around 3,000/= shillings per months. He could not secure any employment. He tried to look for one in Kampala.

In cross examination he replied that there was a corner at the place of the accident. His vehicle was travelling at the speed of around 40 kilometers per hour. He could not tell the speed at which the land rover was travelling but it was moving at high speed. He was seated in the middle. They were 2 passengers in front. They were roughly five passengers and the driver was the sixth. When he first saw the land rover it was about 60 kilometers. The driver inside was knocked and

died. He was examined at Mulago by professor Sekambunga and was given some treatment. He told him what had happened to him that he had pains in the said legs. The accident happened on 26th may and was discharged on 4/6/91 as per the medical report. He stayed longer than that. He was not exaggerating and was not telling lies.

The second plaintiff Paulo Alideki Mulindwa as PW2 testified that on 26/5/91 while on his way to Kampala he got an accident. PW1 and PW2 were approached by a land rover from in front which knocked them. The land rover was being driven at the right hand side. The road was divided into lines and the accident happened on the left hand side of the road and their vehicle went off completely on the tarmac on the left hand side. He became unconscious after the accident and regained his consciousness when he was in Masaka Hospital and that was on the following day. He sustained some injuries as a result of the accident. He sustained a fracture on the right hand side on the ribs. He also had a chest pain. He never sustained any other injuries. The leg was plastered and had a lot of pain in chest. After being discharged from hospital he continued getting treatment as an outpatient for 2 months. The injuries were completely healed. Before the accident he used to do some digging which he could not carry on then and whenever he does some digging he gets chest pain. In cross examination he replied that there were a few passengers in the taxi in which he was travelling. He was seated in the front seat on the third seat. He was on the same row with PW1 and the driver. He could see properly from his seat. There was a corner at the place where the accident happened. When he first saw the motor vehicle it was 60 metres away. He could not tell the speed at which the land rover was travelling but their vehicle was driven at a lower speed. When he saw the land rover it was on the correct side. If PW1 said the land rover was on the wrong side that was not true but the driver of the land rover swerved and came on the wrong side. The accident happened at 1.00p.m. There were no rains at the time of the accident and it was not drizzling and the taxi did not swerve in the middle of the road and remained on its correct side. That he was examined by the doctor and who told him what had happened to him.

For the defence Grace Ibingira DW1 testified that he is a director in International Venture LTD and knew of a motor vehicle registration No UPI 066.

On 26th May 1991 he was travelling in that vehicle from Kampala going to Mbarara and was involved in an accident. He was driving that vehicle and had other passengers, his driver sitting in the driver's seat and had two others. His escort and the police and there was also a passenger. He was about 9 miles reaching Masaka at Mpungwe and they were about to negotiate a corner. And on the opposite side and because it was a long corner there came a vehicle heading straight towards them at a high speed. Though it had slightly rained the road was not slippery the speed of the vehicle was so fast that it was directly on his side of the road. That he had to take immediate evasive action to avoid a head on collision. He braked and started to avoid the vehicle which was still on his side when all over a sudden still moving at a high speed cut a cross the road in front of him on his right hand side trying to head on his side of the road where he should have been in the first place. He swerved to his left because the road was ending and the man did not mind going to his side. The man swerved on the left hand side where he should have been and that was where the impact happened.

Their vehicle was moving very slowly so when the taxi knocked, the left hand side of his car it went off and crossed the road on the opposite direction and tragically people lost their lives. He had some muscle pain and went to Kitovu for treatment. Their passengers were hospitalized. But as they were struggling to get out the victims they found that there were four passengers in the front seat of the taxi squeezed together which made it impossible for the driver to negotiate the corners.

They reported the incident to Masaka police station. The police came after they had left. His driver was not driving. He gave him time to rest. For him he was qualified driver. The driver hit him at the right side of the vehicle. He had no alternative but to switch on the man's side in order to save his passengers. I cross examination PW1 replied that if he had remained on his left hand side the accident might not have happened. He was not the one driving on the wrong side. He was knocked on the right hand side of the land rover (Two photographs were tendered and exhibited). They saw the tax. It was 30 meters in front of him and visibility was clear.

The second witness called by the defence was John Semwanga DW2 who testified that in 1991 he was driving for DW1. He was driving motor vehicle No UPI 066.

On 26th May 1991 he was in the vehicle. They were travelling from Kampala to Mbarara and on the way they had an accident. The vehicle was being driven by DW1. As they left Mpungwe the vehicle emerged at their side and it was raining. The vehicle came at high speed and it was on their side. DW1 tried to slow down/ reduce the speed but the opposite vehicle abruptly saw their vehicle. By the time the other tried to avoid them and go back to his aide it was too late and he had already knocked them. Their car 504 went off the road and fell into the plantation. For their vehicle it remained standing across the road. The other vehicle approached them at high speed. They were driving between 50 and 60 KPH whereas the other vehicle the taxi was driving at 90 KPH. The taxi was full of passengers. There was a trench (a ditch) on the left hand side facing Masaka. After the accident the vehicle rested in the banana plantation. It rested 30 yards from the road to the Banana plantation.

After the accident they approached the vehicle which had just turned and there were four passengers in front including the driver. Even behind there were passengers but were concerned about those who were Yelling. The driver died and they were looking for the axe to cut the door and get him out. In cross-examination DW2 replied that as one faced Masaka the banana plantation was on the right and there were some slopes around. The trench hedge was 30 metres from them. The corner they were negotiating was carved on the left hand side. There were traffic markings dividing the road into two. The collision /accident on the left half part on the road. After the taxi had hit their vehicle the latter remained in the road and across the line marked on the road. The opposite vehicle fell away in the banana plantation. That he was no longer working for Ibingira. He left him and got a new job.

Whereas No.01702 Detective corpora1 Waioi David as DW3 testified that on the fatal date he was escorting Ibingira DW1. At 9.00 Am they set off for Mbarara with motor vehc1e No.UPI 066. It was raining and they got involved an accident. There was a corner in that place and the driver on the opposite side was driving on their side and driving at 89KPH. He was sitting in the middle seat and could see clearly what was coming in front of him.

He saw the car coming and their driver applied the brakes and their driver tried to avoid the taxi went and knocked them on their side. The collision took place in the middle of the road. Their

side was closer to the ditch they would not have avoided the accident by going left because there was a ditch.

When cross examined DW3 replied that they swerved when the vehicle was just a metre away from their vehicle. It was raining when the accident occurred. Though it was raining they could see a head. It was just drizzling. He could see at least 200 metres a head of him.

After the collision part of the body of the vehicle was on the tarmac and part of it on the grass. As one faces Masaka the vehicle was on the left hand side. The learned counsel appearing for the defendant submitted that according to the evidence of Mr. Ibingira this place of the accident, the road was curving. There was a bend and according to the evidence of PW2, this bend was curving on the left. The taxi UXE 872 was coming from the direction of Masaka going towards Kampala. It came approaching Ibingira on the wrong side. It was speeding and in an effort to avoid a head on collision DW1 swerved to the right and the taxi also swerved to regain its right position. In the process a collision occurred and the taxi was pushed off the road to the plantation. DW1 was asked he tried to avoid the accident by swerving on the right side. That when faced with the agony of the moment one would also do anything to avoid the accident. Ibingira in the circumstances was faced with emergency. If he swerved on the left would have been very dangerous.

When asked by what side of the landrover was damaged in the accident Ibingira replied that it was the right hand side. The implication was that he was in the wrong because in the normal circumstances it would have been his left and not the right. It depends how the collision happened if he had hit the rear of Peugeot or the left hand side of the landrover. He believed the evidence of DW1, DW2 and DW3 consistent as to what had happened. He saw no reason why they could tell lies. That from the evidence of people the other vehicle UXE 872 had three passengers and the fourth person was in the cabin in the circumstances the driver could not manage to control the vehicle. There was overloading and the speeding that would constitute evidence of negligence. At the impact the Peugeot was pushed 30 yards away from the road. The force by which the taxi hit the landrover which was stationary shows that the taxi came very on a high speed. That the evidence of the prosecution witness should be looked at with some suspect.

Lubega PW1 said after the accident he became unconscious. He said blood clots were moved from the kidneys but the report did not say so.

PW2 said that he could not dig properly but the report did not say so. Those people should be treated with some suspicion. They were in fact testifying for their own benefit. There were not independent witnesses whereas DW2 and DW3 had no interest whether the defendant company pays damages or not. One was wondering why they were suing Ibingira because the owner of the car in which they were travelling died. It has been the practice if one is testifying in one cause to call an independent witness who would give independent evidence. He prayed that their evidence about how the accident happened be rejected. He submitted that when assessing damages should look at the medical report for PW1 and PW2. In the case of Lubega of the case had not been dismissed he could not get more than 30,000/= shs. The learned counsel prayed the court to dismiss his evidence that he was unconscious.

As regards the second plaintiff if the suit was not dismissed he would get about 100,000/= shs.

On the other hand Mr. Mugabi submitted that the defendants be held liable and pay damages to the plaintiff. The plaintiffs testified they were passengers in a Peugeot and it was being driven on its proper side of the road and that it was the defendant's landrover which collided with the Peugeot and the court should accept their version being more reasonable and proper one. It is pertinent to ask ourselves why this accident happened in the first place. It happened because Mr. Ibingira took the wrong decision. He swerved on the right side instead of the left. If he had swerved on the left he would not have been here because the accident would not have taken place. They accept he might have taken a decision in the agony of the moment nevertheless if one takes a wrong decision he would still be liable.

Then DW3 testified that there was a good three metres from the hedge of the tarmac. If Ibingira would have been driving slowly as he claimed to be he would have been negotiated the corner but did not do so. Again if the court was to scrutinize the defence case it was full of contradictions why they were there in the first place for example Mr. Ibingira testified that he swerved on the right and that was where the accident occurred. DW2 claimed it was the left hand side of the road facing Masaka. DW3 claimed it was in the middle in the road and that was the

same accident. Secondly Mr. Ibingira claimed that after the collision the vehicle went off the road side facing Kampala. DW2 claimed it went into a plantation 30 metres away DW3 said it was just on the Murram grass Path on the road. The conclusion was that those witnesses who were not telling the truth infact it was their testimony which is suspect rather than the p1aintiffs'. They just came in support of their boss who might even have paid their allowance to come and give evidence here. That Ibingira said the road was clear and could see very well a head DW3 said he could see a head about 200 metres but DW2 said could only see 20 metres. They were only trying to deceive. If Mr. Ibingira had been taking a proper lookout on the road he could have avoided the accident. He contended that Mr. Ibingira was a man of 61 years old may be with failing eyesight. He employed a driver because he could not drive this long distance to Mbarara, when asked why he was driven he replied that he was only assisting the driver. He submitted that he employed the driver because he knew he was incapable of driving. If the photographs were looked at the damage to the vehicles were consistence with the plaintiffs' version how the accident occurred. That Ibingira was driving and he was hit on the right side. If the accident happened as the defence had testified the damage would not have been outside the landrover even DW3 testified that Ibingira turned to avoid the accident when he was only one metre from the Peugeot when there was clear visibility all along the road. He finally submitted that the court finds the defendant liable.

As for damage for the first plaintiff had raptured 2 ribs and never had any permanent disability according to the authority in Wilkinson the plaintiff ought to be awarded a sum of 100,000/= shs. As regards the 2nd plaintiff he sustained serious injuries resulting into the shortening of the right leg by an inch. That was a permanent disability and according "Wilkinson on damages" the man ought to be awarded a sum of 2 million shillings because the man will limp for the rest of his life and prayed that the court awards costs of this suit. I now turn to consider the first issue whether the defendants agents were negligent.

First of all negligence as a tor is the breach of legal duty to take care which results in damage undesired by the defendant to the plaintiff. Thus its ingredients are (a) A legal duty on the part of A towards B to exercise care in such conduct of as falls within the scope of the duty, (b) Breach of that duty (c) and consequential damage to B See **Winfield on Tort Eight Edition Page 42 And in Blyth Vs Birmingham water works 1856 11 EX P. Page 784** Negligence was defined

as the omission to do something which a reasonable man guided upon the consideration which ordinarily regulates the conduct of human affairs would or do something which a prudent and reasonable man would not do. The concept of duty breach and damage as introduced in **Donogue Steven Son 1932 At 562** is the neighbour principle according to which a duty is placed upon a person to take reasonable care to acts or omissions which he can reasonably foresee as likely to injure his neighbour and neighbour in this context means persons so closely and directly affected by the acts of another that the other ought reasonably to have them in contemplation as being so affected when doing or making the acts or omissions complained of see **Donogue Vs Stevenson Supra quoted with approval in Frederick Senyonga Vs Construction Engineer and Builders Pakwach Arua Road (1979) HCB Page 232 .**

In the instant case it is common knowledge that the accident happened and that there was a corner. There were accusations and counter accusations as to which of the two vehicles was responsible for the accident which culminated into the death of the taxi driver UXE 872 and the injuries sustained by the plaintiffs PW1 and PW2. DW1 testified that he swerved on the right hand side in order to save his passengers and that the opposite vehicle was at a high speed and driving on his side. The plaintiffs also on the other hand testified that the landrover was driven at a very high speed and the accident took place at the left hand side of the road. That the driver of the landrover failed to negotiate a corner.

In the case of **Adrea Sinzumisi Vs Gomba Bus service CA No.1289 of1975.** Where cattle Strayed in the road the driver cruised on and the appellant got injured the court held that what a prudent man could have done in the circumstances quoting with approval **Rowlat J in Tart Vs chilty and co 1931 AER Pages 828 — 829** had this to say.

“It seems to me that if a man drives a motor car along the road he is bound to anticipate that there may be in things and people and animals in the way at any moment and he is bound to go not faster than will permit his stopping or deflecting his course at any time to avoid any thing he sees after he has seen it.”

I am of the View that the above quoted authority is relevant to the instant case in that both drivers of UXE 872 and UPI 066 ought to have driven their vehicles carefully, each taking into account that they would be ready at any time to avoid the accidents.

Moreover in the same case it was stated that it is well established law the fact that if a motor vehicle turns to the wrong side of the road is not itself negligence but if a vehicle on the wrong side collided in this respect with a pedestrian the driver must explain.

In the instant case the driver of the landrover turned on the wrong side in order to ward off the accident in this case but was not driving on the wrong side all the time and though it was a pedestrian who was injured in Zinzimisi's case, I am of the view that it was relevant whether there was some kind of negligence. I was opportuned to hear the two visions. The defence is preferable to that of the plaintiff. The driver of UXE 872 the plaintiffs for the matter failed to explain how the Positioning of his vehicle was consistent with the exercise of reasonable care of the part of the driver. Besides that there is authority to the effect that vehicles do not normally collide or hit other vehicles without some negligence on the part of the driver when driven at high speed. See **Catherine Kiwanuka VS AG HCC No 69 of the 1982 unreported.**

In the instant case each side accused each other of being negligent and responsible for the accident and having driven at every high speed but the unfortunate side of the plaintiffs side was that no police man ever visited the scene of the accident and as such no sketch plan was drawn leave alone filing an accident report. This could have assisted the court in locating the place of the impact and the positioning of the vehicles after the accident and if need be the court would be informed whether any vehicles were in dangerous mechanical conditions.

In addition the plaintiffs testified that they became unconscious and gained their consciousness when in Hospital where they were being treated. Besides the two plaintiffs there was no independent evidence to show that either the vehicle overturned or collided with another vehicle and therefore the plaintiffs had not proved their case on the balance of probabilities as to whether the accident did occur and if so how it occurred See **Kizito Vs Libyan Arab Bank for foreign Trade Development (1982) HCB P 126 at P 127**

The counsels had submitted very strongly about the contradictions in the evidence adduced on both sides. I considered all this and I was of the view that those on the plaintiffs' case were major ones and hence independent eyewitness to correct these anomalies before the plaintiffs' case could be accepted. However those contradictions on the defence case were minor ones and did not lead to deliberate untruthfulness. In the pleadings the plaintiffs averred that at the trial they would rely on the doctrine of res ipsa loquitur. I was not addressed on this point by the learned counsel appearing for the plaintiff. The maxim is not a principle of liability but a rule of evidence, it possesses no major qualities nor has it any added virtue, other than the brevity merely because it is expressed in Latin, when used on behalf of a plaintiff it is generally a short way of saying I submit that the facts and circumstances which I have proved establish a prima facie case of negligence against the defendant. There are certain things that do not normally occur in the absence of negligence and upon proof of these a court will probably hold that there is a case to answer See Hoe Vs Ministry of Health 1954 Pages 66, 87- 88 Morris LJ.

Where the maxim applies therefore it entitles the plaintiff to rely as evidence of negligence upon the mere happening of the accident. He need not allege or prove any specific act or omission of the defendant. If the result which he does prove, of some unspecified act or omission makes it more probable than that the damages was caused by the negligence of the defendant see **Clerks and Lindsell on Torts 12th Edition P 441.**

The essential of the claim is that the thing complained of must have been under the control of the defendant or of someone whose negligence is responsible the second ingredient is that the accident must be such as could in the ordinary course of things would have happened without negligence and finally absence of explanation on the part of the defendant. See **Embu Public Road Services Vs. Rumi 1968 EA P.22, Nsiri Mulidani vs Vs Nazzar Bin 1960 EA 20, Barkely Vs. South water Transport Co Ltd 1950 1 ALLER 392.**

In the instant case the defendants driver DWI had shown how the accident happened and his explanation is inconsistent with some kind of negligence on his part and if I am mistaken that he could not explain the accident which is denied the defendant was able to show that there was no lack of reasonable care on his part. So from what has transpired above the first issue is in the negative. The maxim res ipsa loquitur is not applicable to the instant case. The second issue is

whether the driver of motor vehicle UXE 872 was negligent, PW1 and PW2 informed this court that the driver of UPI 066 was driving too fast and that the accident happened on their left hand side and from that moment they became unconscious and were hospitalized for sometime and that was when they gained their consciousness. The case for the defence was that the vehicle UXE 872 was thrown 30 metres away from the place of impact and ended up in the banana plantation. There were four passengers in the driver's seat and according to the defence that interfered with the safe negotiating of the said corner as the driver could not negotiate the corner. The driver of UXE 872 died at the spot and they had to get an axe to remove the body from the vehicle and in order to save the lives of other passengers. The evidence of DW1, DW2 and DW3 though had some contradictions here and there but was consistent as to what had happened. The plaintiffs on other hand failed call an independent witness to corroborate their story as to how the accident happened. In that vein I am of the view that the plaintiffs' driver was negligent. The second issue therefore is in the affirmative.

The third issue was whether the accident was inevitable. In his evidence DW1 testified that he had to swerve his vehicle on the right and save his passengers, but I have already held that he was not negligent and as such was not to blame for the accident. I was not addressed at all on this issue and in the light of evidence on record the same did not merit consideration by the court. The last issue is the quantum damages. I was not assisted on his issue at all by the learned counsels by citing some authorities. The learned counsel appearing for the plaintiff referred me to Wilkinson on the quantum of damages. He submitted that the 1st plaintiff who had ruptured ribs and never had any permanent injury should be awarded Ug.shs.100,000/= . Where as the second plaintiff who had his right leg shortened by an inch should be awarded 2 million shillings as damages that was a permanent disability.

The learned counsel appearing for the defendant on the other hand submitted that PW1 and PW2 should be awarded as general damages Ug.shs.30,000/= and 100,000/= Shs respectively.

Dr Sekabuya medically examined Joseph Lubega on 29th March 1993. The X-ray examination showed fracture of the third and fourth ribs on the right chest side associated haemothoraxis. He made satisfactory progress and was discharged on 4th June 1991. On examination of the evidence.... it was clear. He had no permanent injury.

The evidence by PW1 he could not lift things as he used to do was not supported by the doctor's findings. Also not supported by medical examination was his testimony that he still felt pain the ribs and legs.

In Nsumbe Vs. Kitembe Mines (1975) HCB Page 152. There the plaintiff was injured in an accident in which a motor vehicle overturned. He sustained the following injuries, injury to the chest cut wound on the dorsum on the left wrist bruising of the left leg and cut wound on the left side of the nose. The most serious injuries was the fracture of the 7th and 8th ribs and the plaintiff could not resume his employment Shs 10,000/= were awarded as general damages.

Well taking into account the inflation in the country, the injuries suffered by the 1st plaintiff. If he had proved his claim on a balance of probability an award of shs. 200,000/= shillings would have been justifiable in the circumstances.

With regard to the second plaintiff PW2, He sustained a fracture of the leg and also had a chest pain. According to him the leg was plastered and had a lot of pain in the chest. The learned counsel appearing for him submitted that an award of Shs 2 million would meet the ends of justice, where as counsel for the defendant was of the view that he should be award damages to the tune of Shs.100,000/=.

According to the medical report Exp2 the X-ray examination showed a fracture of the lower tibia and fibula. The leg was immobilized in plaster. He was given analgesics for the pain. He made satisfactory progress was discharged, after one and a half months. He told the doctor that he went back to his job as a fish trader on examination he walked with a slight limp. The right leg was left half an inch shorter than the left leg but the fracture was well united.

In Nabulya Vs Kalibala (1975) HCB P.386 The plaintiff aged 8 years old sustained a closed fracture of the left femur which resulted in pain at the fracture side and...intermittent headaches and dizziness and unable to walk long distances. The doctor testified that the plaintiff still continued suffer pain due to development Osteothritis, Permanent physical capacity was assessed at 10-15% Shs.40,000/= as general damages were warded._

In the case of **Vicent Njuba Mugweri Vs Bus service Co and Kafuko Waiswa (1972) HCB P.158.** The plaintiff was a passenger on a bus owned by the first defendant and driven by the second defendant was injured when a Bus over turned. Medical report showed a compound fracture of both bones in leg and the plaintiff suffered maximum pain that necessitated the administration of high doses of sedatives and analgesics. This sort of pain lasted about 2 weeks giving away later to moderate pain. The doctor concluded that the fracture had healed well but there was an angular deformity slight shortening of leg and ugly scar and that pain and limping were likely to be permanent.

The plaintiff was awarded 40,000/- shillings damages, with the above two authorities in mind and taking into account the trend of inflation in this county which is almost 200 percent. If the plaintiff had proved his case on a balance of probability I would have awarded him Ug.Shs.800,000,/= as general damages. Otherwise the case is dismissed with costs.

I. Mukanza
JUDGE.
3/12/1993.