

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA KAMPALA
(CIVIL DIVISION)

CIVIL SUIT NO. 237 OF 2019

- 1. MUGISHA FELIX**
- 2. OUCHI IMMACULATE &-----PLAINTIFFS**
- 3. KAGINDA FRED [Suing as Administrators of the estate of Kaginda John]**

VERSUS

ATTORNEY GENERAL-----DEFENDANT

BEFORE: HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The plaintiffs brought this suit jointly and severally against the defendant for damages for arising out of injuries sustained by the 1st plaintiff and general damages for loss of dependency arising out of the negligent cause of death in an accident caused by the defendant's Uganda police patrol motor vehicle on 26th day of May 2016.

The said motor vehicle was driven along Queensway road-Katwe when the deceased Kaginda John and Mugisha Felix while riding a motor cycle were knocked down by the police patrol car which resulted in serious injuries to the 1st plaintiff and instant death of Kaginda John. The plaintiffs contend that the police patrol was driven negligently and the driver was in execution of his duties when he knocked the 1st plaintiff and the deceased recklessly and failing to brake in time to avoid the accident.

The defendant filed a defence with no specific answer to the plaint and the same was merely general denial.

The parties filed a joint scheduling memorandum which contained meaningfully only agreed issues.

AGREED ISSUES.

1. *Whether the 1st plaintiff and the late Kaginda John were negligently knocked?*
2. *If so, whether the defendant is liable?*
3. *Whether the plaintiffs' are entitled to remedies sought?*

The plaintiff was represented by *Counsel Nakomya Stella* while the Attorney General was represented by *Natuhwera Johnson (SA)*

At the trial the plaintiffs presented two witnesses and defendant presented one witness who testified through witness statements that were admitted as the evidence in chief and all the documents were exhibited as plaintiffs' exhibits and they were cross examined by the respective counsel.

Whether the 1st plaintiff and the Late Kaginda John were negligently knocked?

The plaintiffs' counsel submitted that the 1st plaintiff and the late Kaginda John were negligently knocked by a police patrol car which led to the death of Kaginda John and the 1st plaintiff sustained grievance harm. Citing the case of *Donoghue v Stevenson* on negligence counsel stated that there existed a duty of care owed to the plaintiff by the defendant, the defendant breached that duty and the plaintiff injury or damage resulted out of breach of that duty.

It was the submission of counsel for the plaintiff that the police patrol vehicle driver ought to have had regard to the rights of other road users like the 1st plaintiff and the late John Kaginda. PW1 in his testimony stated that the driver of Uganda Police patrol Car was driving and moving in a zig zag manner on the road at a terrific speed. The driver of the defendant's vehicle ought to have used used reasonable speed to avoid any accident or injury to the 1st plaintiff and death of Kaginda John.

The plaintiffs' counsel finally submitted that as a result of the said accident the 1st plaintiff was injured while his colleague Kaginda was killed in the accident. Therefore the negligent driving resulted in damages and death for which the defendant is liable.

The defence counsel submitted that there was no cause of action against the defendant since in his view the defendant was not liable for the injury of the 1st plaintiff and death of Kaginda John. He contended that the allegations against the defendant are fictitious and full of falsehoods.

The defence counsel basis for the denial of liability is premised on the fact that the vehicle that knocked the 1st plaintiff and the late Kaginda John was never identified. The defence witness who made the sketch plan stated that when he reached the scene doferent people were giving different versions of which car knocked the 1st plaintiff and deceased person.

Analysis

Negligence is the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. *Black's law Dictionary 11th Edition 2019* defines Negligence as follows;

The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregarding of others' rights; the doing of what a reasonable and prudent person would not do under the particular circumstances, or the failure to do what such a person would do under the circumstances.

Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or property.

Before the liability of a Defendant to pay damages for the tort of negligence can be established, it must be proved that;

- a) *The defendant owed to the injured man a duty to exercise due care;*
- b) *The Defendant failed to exercise the due care and*
- c) *The defendant's failure was the cause of the injury or damage suffered by that man. (See H.KATERALWIRE vs PAUL LWANGA [1989-90] HCB 56)*

“Negligence is conduct, not state of mind- conduct which involves an unreasonably great risk of causing damage.....negligence is the omission to do something much a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something, which a prudent and reasonable man would not do”. See Salmond and Heuston on The Law of Torts (19th Edition)

The law governing negligence in respect of cause of death as provided under the **section 5 of the Law Reform (Miscellaneous Provisions) Act** which provides;

“If the death of any person is caused by any wrongful act, neglect, or default of any person, and the act, neglect or default would, if the death had not ensued, have entitled the person injured by it to maintain an action and recover damages in respect of it, the person who would have been liable if death had not ensued shall be liable to an action in damages, notwithstanding the death of the person injured, and although the death was caused under such circumstances as to amount in law to a felony”

Negligence is essentially a question of fact and it must depend upon the circumstances of each case.

STANDARD OF CARE

The standard is reasonableness. But in considering what a reasonable man would realize or do in a particular situation, we must have regard to human nature as we know it, and if one thinks that in a particular situation the great majority would have behaved in one way, it would not be right to say that a reasonable man would or should have behaved in a different way. A reasonable man does not mean a paragon of circumspection. The duty being a general duty to use reasonable care, reasonableness is the test of the steps to be taken.

The standard of care expected is that a reasonable person proving breach of a duty is usually achieved by adducing evidence of unreasonable conduct in light of foreseeable risks.

The burden of proof of negligence falls upon the plaintiff who alleges it. This is because negligence is a question of fact not law, and it is the duty on whom asserts to prove it.

The negligent cause of the accident seems not to be in issue apart from the contention as to whether the accident was indeed caused by the police patrol vehicle as contended by the plaintiffs.

The police accident report-PEX 4 clearly shows that the motor vehicle was unknown but suspected to be a Police Patrol car blue in colour. The 1st plaintiff (PW1) identified the vehicle that caused the accident...he testified “ *Shortly, a Uganda Police Patrol car which part of the said convoy started driving zigzag on the road at a terrific speed....We were knocked by the back of the police patrol car*”.

In light of this unchallenged evidence of 1st plaintiff, the defendant’s evasive denial collapses and falls by the wayside. The defendant’s vehicle was responsible for the cause of accident and the same has been proved on the balance of probabilities.

The defendant’s agent or driver of the police patrol vehicle was negligent in execution of his duties as a driver and was thus wholly liable for the cause of the accident which resulted in the death of the deceased Kaginda John and injury to Mugisha Felix.

The driver of the police patrol vehicle is not denied as being the person authorised to driver the said vehicle in the course of his employment. His actions bind the employer since he was acting for the employer in the cause of his employment. The defence never denied any existence of the employer-employee relationship. The fact that he was driving this police vehicle, it would definitely imply that he was an employee in the course of his employment. See *Muwonge vs Attorney General [1967] EA 67*

Whether the Plaintiff is entitled to the reliefs sought?

General damages

In awarding general damages, the court would simply be guided by the opinion and judgment of a reasonable man. It is the duty of the court to calculate what sum of money will be reasonably awarded in the circumstances of the case.

General damages are such as the law will presume to be direct natural probable consequence of the act complained of. In quantification of damages, the court must bear in mind the fact that the plaintiff must be put in the position he would have been had he not suffered the wrong. The basic measure of damage is restitution. See *Dr. Denis Lwamafa vs Attorney General HCCS No. 79 of 1983 [1992] 1 KALR 21*

The character of the acts themselves, which produce the damage, the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable, having regard to the circumstance and nature of the acts themselves by which the damage is done. See *Ouma vs Nairobi City Council [1976] KLR 298*.

In personal injury cases, once there is evidence of injury, pains and permanent incapacitation, the victim or plaintiff is entitled to be awarded reasonable general damages. Such an award should be based on some circumstances since the injury cannot be quantified in monetary term. In making such award, the court could be swayed in considering the following factors:

- a) The bodily pain, that is whether the pains will be permanent so that the plaintiff will be with it for life;
- b) Status of the injured person, his occupation, profession or calling;
- c) Whether the injury is permanent or transient;
- d) Loss of earnings caused by the disability;
- e) Length of time spent in receiving treatment before the wound healed;
- f) Loss of amenities
- g) Age and expectation of life

In the present case, the plaintiffs have sought general damages. Considering the circumstances of the case, the 1st plaintiff is awarded a sum of 20,500,000/= as damages for accident occasioned, injuries and continues pain in the head.

The 2nd & 3rd plaintiffs are awarded general damages for the loss of dependence of the children only is a sum of 35,000,000/=.

Interest

Section 26 provides for an award of interest that is just and reasonable. In the case of *Kakubhai Mohanlal vs Warid Telecom Uganda HCCS No. 224 of 2011*, Court held that;

“ A just and reasonable interest rate, in my view, is one that would keep the awarded interest rate, in my view, is one that would keep the awarded amount cushioned against the ever rising inflation and drastic depreciation of the currency. A plaintiff ought to be entitled to such a rate of interest as would not neglect the prevailing economic value of money, but at the same time one which would insulate him or her against any economic vagaries and the inflation and depreciation of the currency in the event that the money awarded is not promptly paid when it falls due”

General damages shall attract an interest of 20% from the date of judgment until payment in full.

Costs

The plaintiffs are awarded costs of the suit.

It is so ordered.

SSEKAANA MUSA

JUDGE

16th/06/2023