

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/CV/2049/16
DATE: 11TH FEBRUARY, 2020**

BETWEEN:

CHRISTOPHER THANK GOD - PLAINTIFF

AND

C.C.E.C.C. NIGERIA LIMITED - DEFENDANT

Defendant represented by Chioma Uzoama while the Claimant is absent.

Ogobodu Cynthia for the Claimant holding the brief of D.M.B. Orji. Mutiu Akinrimade for the Defendant appearing with Alex Ozogwu Esq.

Claimant's Counsel – The matter is for judgment and we are ready to take same.

J U D G M E N T

This suit was instituted by a writ of summons dated 24/6/2016 and was subsequently amended on 22/01/2018. By the amended writ of summons and statement of claim, the Claimant claims against the Defendant as follows:

1. An Order of court directing the Defendant to pay the sum of N50,000,000.00 (Fifty Million Naira) as special damage.

2. An Order of court directing the Defendant to pay the sum of N5,000,000.00 (Five Million Naira) only as general damages.
3. An Order of court directing the Defendant to pay the sum of N3,000,000.00 as cost of this action.
4. An Order of court directing the Defendant to pay 25% interest on the judgment sum till final payment is liquidated.
5. The total claim of the Plaintiff against the Defendant is the sum of N58,000,000.00 (Fifty Eight Million Naira) only.

In prove of this case, the Claimant filed a 54-paragraph statement of claim dated 19/01/2018 and called 3 witnesses.

The Claimant himself testified as the PW1. In his evidence-in-chief, the PW1 adopted a 52-paragraph amended witness statement on oath dated 22/1/2018 as his evidence; the said PW1's statement on oath is accordingly adopted as forming part of this judgment.

The gist of the PW1's evidence is that he was employed by the Defendant on 12/1/2014 as a Technician; that after his appointment was confirmed by the defendant, the Defendant started engaging him with welding work which was outside his scope of training alongside his electrical work. The PW1 further stated that the Defendant did not provide him with protective gadget for welding works even when he requested for same.

That on the 19/1/2016 after two years of combining electrical and welding works that his filing machine he was using got scattered and pieced into his left eye and cut the inner black eyes and lacerations on the outer layer of the eyes.

That he was not taken to hospital on time by the defendant, when he discovered that the treatment the hospital he was taken to in Abuja was not giving him enough treatment, he requested to be taken to a more better hospital but the Defendant neglected his request not until his junior brother Samuel Christopher came and paid the bills of the hospital then the Defendant moved him to National Eye Centre, Kaduna.

When they arrive Kaduna, the Doctor examined him and said that he was not given urgent and adequate medical attention immediately the accident took place, that there were certain things that needed urgent attention but was not done that led to the eye being affected badly.

The witness further stated that it was his brother that paid the hospital bills. That from National Eye Centre, Kaduna, he was referred to Rachael Eye Centre, Abuja.

It is also the evidence of PW1 that his left eye had gone totally blind, and as a result he cannot do his electrical work for life.

In the course of PW1's evidence, the following documents were admitted in evidence as exhibits:

1. Two Receipts from national Eye Centre, Kaduna – Exhibit A¹ and A².
2. Two Receipts from Rachael Eye Centre, Abuja – Exhibit B¹ and B².
3. Zion Chamber's letter dated 20/4/16 – Exhibit C.
4. Patients Personal Hand Card – Exhibit D.

5. Rachael Eye Centre Individual Bill – Exhibit E.
6. Confirmation of Employment dated 27/5/14 – Exhibit F.
7. Guarantor's Form – Exhibit G.
8. Cash Receipt dated 3/2/16 – Exhibit H.
9. National Eye Centre, Kaduna Patient's Card, Federal staff Medical Centre, Jabi – Abuja Patient's Card and Rachael Eye Centre, Abuja Patient's Card – Exhibits 1¹, 1² and 1³ respectively.
10. Medical Report issued by Rachael Eye Centre, Abuja – Exhibit J.
11. Medical Report dated 1/3/16 – Exhibit K.
12. Medical Report dated 3/2/16 and Scan attached to it – Exhibit L¹ and L² respectively.
13. Diagnostic B-Scan Report dated 16/3/16 – Exhibit M.
14. Memory Card and 10 photographs – Exhibits N¹, N², N³, N⁴, N⁵, N⁶, N⁷, N⁸, N⁹, N¹⁰ and N¹¹ respectively.

Under cross-examination by the Defendant's Counsel, the PW1 stated that he sustained the injuries while working with the Defendant. That the defendant did not treat him well while he was injured. That his brother Samuel Christopher collected N50,000.00 on his behalf from the Defendant.

That on the day of the accident, he was putting iron inside Chinese Kitchen. That he complained about the work he was given verbally. When the accident occurred he was taken to the Federal Medical Centre which was near to his work place by the Defendant. He also went to Kaduna Eye Centre and Raphael Eye

Centre, Abuja. That he paid for the medical bills at Kaduna Eye Centre and Raphael Eye Centre.

The PW1 further stated that it is not true to say that the Doctor at Federal Medical Centre advised as to the treatment of his eye but he refused. That he went to Rachael Eye Centre because he believe they can treat him better. He agreed with the advice of the Doctor at Rachael Centre but he had no money for treatment as he was sacked by the Defendant.

No re-examination, PW1 was discharged.

Samuel Christopher testified as PW2. In his evidence-in-chief, he adopted a 38-paragraph Amended Witness Statement on oath dated 22/1/2018 as his evidence; the said PW2's statement on oath is further adopted as forming part of this judgment.

The gist of the PW2's evidence is that he is a brother to the Claimant/Plaintiff and that the PW1 is a trained technician who specialized in electrical works and had no knowledge of welding work. That he was surprised when the PW1 told him that he (the PW1) was compelled to combine welding works and electrical works.

It is the evidence of PW2 that on 19/1/2016 the PW1's wife called and informed him that PW1 was admitted in the hospital. On arriving at the hospital on 20/1/2016, the PW1 narrated how the accident happened to him.

The PW2 also stated that while the PW1 was at the hospital, he was not being taken care of by the Defendant as a result the hospital were not given adequate treatment to the PW1,

That at this point, the PW2 paid the bills and requested that the PW1 be taken to National Eye Centre, Kaduna. The Defendant refused and he the PW2 decided to take the PW1 to National Eye Centre, Kaduna.

The PW2 further stated that because of the condition of the Plaintiff's wife, he the PW2 had to stay with the PW1 at the hospital and that led to his sack from his place of work. That throughout his stay with the PW1, the Defendant did not come to know or ask how the PW1 was fairing.

It is the evidence of PW2 that he and the PW1 are the bread-winner in their family and since they lost their jobs because of PW1's eye problem, the family had not been the same.

Under cross-examination of PW2 by the Defendant's counsel, the PW2 stated that he work with CDC Water Recourses Abuja. That he collected the sum of N50,000.00 from the Defendant while going to National Eye Centre Kaduna and Air Force Base also in Kaduna. That he did not make any request for money from the Defendant for the treatment of the PW1. The Defendant is suppose to take good care of the PW1 when he sustained the injury. That the PW1 is not supposed to ask the Defendant for money to treat himself.

No re-examination, PW2 was discharged.

Doctor Dora Okundo testified as a subpoenaed witness. In her evidence-in-chief, she stated that the PW1 was a patient he treated in 2016 and that she issued a Medical Report already in evidence as Exhibit K and J.

The witness further stated that at the time he saw the PW1 on 23/2/16 his vision was hard movement in the eyes and the vision did not improve.

When he saw the PW1 on 16/3/16 to carry out the eye scan on that visit he discovered that the vision of eye was non perception of the light. The scan carried out show some bleeding in the vitract cavity and dislocation of lens. Based on this fact, he discovered that the PW1 will not benefit from any surgical intervention.

Under cross-examination by the Defence Counsel, the SW1 stated that on 2nd visit of the PW1, he could not see when a patient cannot see surgery cannot be helpful.

The witness further stated that he took the history of the medical condition of the patient.

No re-examination, the SW1 was discharged and that is the case for the Claimant.

In defence of this case, the Defendant filed a 29-paragraph amended statement of defence dated 21/4/2018 and called one witness.

Mr. Garba Ali testified as DW1. In his evidence-in-chief, the DW1 adopted a 29-paragraph witness statement on oath dated 21/4/2018 and filed on 25/4/18 as his evidence; the said DW1's statement on oath is accordingly adopted as forming part of this judgment.

The gist of the DW1's evidence is that the Claimant/Plaintiff was at all material times employed as an Electrician and not as Welder and the Defendant never used the Plaintiff as a Welder. That the Defendant provides for its staff inclusive the Plaintiff a safe system of work and safety gadgets and instructions are given to workers to ensure their safety at work.

The DW1 further stated that the Defendant was not under an obligation to provide the Plaintiff with safety devices for welding work since the Plaintiff was not a Welder and was never instructed by the Defendant to function in such capacity.

That the Plaintiff did not sustained the alleged injury or any injuries or damage contained in the Plaintiff's statement of claim. If the Plaintiff did sustain the alleged or any injuries or damages, they were solely caused or in the alternative were contributed to by his own negligence and or breach of statutory duty.

It is the evidence of DW1 that the injury sustained by the Plaintiff was not sustained in the course of the Plaintiff's duties as an Electrician or while carrying out the Defendant's lawful instruction. However, when the injury occurred the Defendant's paramedic immediately applied first aid treatment on the Plaintiff before he

was rushed to the Federal Staff Hospital, Abuja. The Plaintiff received immediate medical attention at the hospital and was thereafter admitted for further treatment.

The Plaintiff caused himself to be discharged from the hospital while treatment was still on-going on the Plaintiff's left eye but against medical advice.

The DW1 further stated that the injury to the Plaintiff's left eye was such that could be corrected based on the last medical examination carried out on the Plaintiff's eye at the Federal Staff Hospital before he decided to abandon his medical treatment. That the Defendant is not liable for the alleged injury, discomfort and or loss as allegedly suffered by the Plaintiff or his relatives.

In the course of DW1's evidence, the following document was admitted in evidence as exhibits:

1. Cash/Credit Sales Invoice dated 26/1/2016 – Exhibit P.
2. Payment Application dated 18/2/16 – Exhibit P.
3. Acknowledgment Receipt dated 12/6/2017 – Exhibit Q.

DW1 urged the court to dismiss the Plaintiff's claims.

Under cross-examination by the Plaintiff's counsel, the DW1 stated that he has an HND in Business Administration and Management. That Mr. Leo is the Camp Manager.

The DW1 further stated that on the 19/1/16, the machine the Plaintiff was working with got broken and injured the Plaintiff in his left eye and he was immediately rushed to the Federal Medical

Centre, Jabi. That he was aware that the Plaintiff left the Federal Medical Centre and he did not know why the Plaintiff left the said hospital. The DW1 further stated that the sum of N200,000.00 only was deposited at the Federal Medical Centre for the treatment of the Plaintiff.

That the Defendant paid the money to the DW1 to take the Plaintiff to the National Eye Centre, Kaduna for treatment. The DW1 stated that he gave the Plaintiff another N50,000.00 cash which was signed by the PW2.

The witness concluded his cross-examination by stated that he did not advise the Defendant to stop the salary of the Plaintiff. He did not know why the salary was stopped.

No re-examination, the DW1 was discharged and that is the case for the Defence.

The Defendant's Counsel filed a final written address dated 24/10/2019 wherein counsel formulated the following issues for determination:

1. Whether in the circumstances of this case, the Defendant is liable for negligence to the Plaintiff and the resultant damages being claimed in this suit.

Alternatively

Whether or not the Plaintiff is liable for contributory negligence and the resultant alleged damages to his left eye.

2. Whether the Plaintiff is entitled to the special damages in the prevailing circumstances of this case.
3. Whether the Plaintiff is entitled to damages in the sum being claimed for legal fees purportedly paid to his counsel for the conduct of this case.

On Issue 1, it is the submission of Defence counsel that the Plaintiff has failed to establish a case of negligence against the Defendant based on the evidence adduced. See ROYAL ADE NIGERIA LTD & ANOR v NATIONAL OIL & CHECMICAL MARKETING COMPANY PLC (2004) LPELR – SC 3/2000.

It is submitted that the Plaintiff was solely responsible for the act that resulted in the alleged injury. Court is referred to paragraph 4 and 5 of the Amended Statement of Defence.

It is further submitted that an employer can only be liable for damages for injury sustained by an employee where the injury occurred in the course of employment. That in the circumstance of this case, where the accident occurred while the Plaintiff was doing acts which he was not employed to do or authorized to do, the Plaintiff was on a frolic of his own and the Defendant is not liable to him in damages.

With regard to contributory negligence, it is the submission that in the unlikely event that the Defendant is found liable in negligence for the injury suffered by the Plaintiff, the Plaintiff is not wholly entitled to the sum of N50,000,000.00 being claimed as damages.

It is the contention of the Defence that the injury suffered by the Plaintiff was such that could be properly managed if the Plaintiff had adhere to the regime of treatment prescribed by the medical personnel that evaluated his condition and prescribed the treatment for his injury when the accident occurred.

It is further the contention that the Plaintiff was guilty of contributory negligence by handling the filling machine without the knowledge or instruction of the Defendant and by failing to return to the Federal Staff Hospital where he was being treated for further corrective treatment. See M.J. EVANS v S.A. BAKARE (1973) LPELR – 1176 (SC). Court is urged to resolve the above issue in favour of the Defendant.

On Issue 2, it is the submission that the Plaintiff's claim for special damages cannot be sustained having failed to plead them specifically in its pleading before the court and also for his failure to lead credible evidence in respect thereof. See HON. NZE HERBERT OSUJI & ANOR v ANTHONY ISOCHA (1989) LPELR – 2815 (SC); UBN PLC v AJABULE & ANOR (2011) LPELR – 8239 (SC).

It is submitted that since the Plaintiff have failed to fulfil the conditions for the grant of special damages this court is duty bound to refuse it. See OGBONNA v OGBONNA & ANOR (2014) LPELR – 22308 (CA).

On Issue 3, it is the submission of the Defence Counsel that it is an aberration for a Plaintiff to pass unto the Defendant the solicitor's fee which did not form part of the cause of action before the

court. See MICHAEL v ACCESS BANK (2017) LPELR 41981. Court is urged to dismiss the Plaintiff's claim for solicitor's fee and the entire claims of the Plaintiff.

The Plaintiff's Counsel filed a final written address dated 8/11/2019 wherein counsel formulated the following issues for determination:

1. Whether in total consideration of the averment in this case, the Defendant is not liable for negligence to the Plaintiff as claimed.
2. Whether the Plaintiff in his averment has not proved to be entitled to special damages and other damages claimed in this suit, and whether a receipt is a necessity in proving special damages.
3. Whether it is not trite for the Plaintiff in his claim or damages for negligence against the Defendant to ask for cost of action as one of his prayers.

On Issue 1, it is the submission of Plaintiff's counsel that negligence is the failure to exercise the standard of care that a reasonable prudent person would have exercised in a similar situation. It is also any conduct that falls below the legal standard established to protect other against unreasonable risk of harm. See DIAMOND BANK PLC v PARTNERSHIP INVESTMENT CO. LTD (2009) 18 NWLR (Pt 1172) 67.

It is submitted that the Defendant owe the Plaintiff duty of care; that the Plaintiff though an Electrician was compelled to combine electrical and that of welding work. The Plaintiff accepted same

and requested for protection to his eyes and hands but was refused. The Defendant failed to provide goggles and hand gloves to protect his eyes and hands.

It is submitted that it is the duty of an employer to take reasonable care for the safety of his workmen and other employees in the course of their employment. See *IYERE v BENDEL FEEDS & FLOUR MILLS LTD* (2008) 18 NWLR (Pt 1119).

With respect to whether the duty of care owed the Plaintiff was breached, it is the submission that in the evidence of the Plaintiff the precise breach of duty owed to the Plaintiff were pleaded to buttress the duty of care breached by the Defendant. That the Plaintiff made it known that the Defendant did not provide him with the necessary protective goggles or goggle for the welding works as required by Company Safety Rules.

It is the contention that the Defendant did not pay a dime to the Plaintiff as compensation. It was the Plaintiff that paid all his bills from Federal Medical Centre Jabi to National Eye Centre Kaduna and formally was referred to Rachael Eye Centre Abuja. There is no evidence before the court that the Defendant paid the Plaintiff's Medical Bill.

With respect to damages suffered by the Plaintiff as a result of the breach by the Defendant of the duty of care, it is submitted that the Plaintiff who was a normal person before he went to work for the Defendant cannot move freely today on his own without a help from his wife. The Plaintiff's left eye is totally blind and it has

affected the right eye because of lack of fund for treatment. The Plaintiff can never be employed in life by any organization as electrician and cannot do electrical works privately as a vocation.

It is the contention of the Plaintiff that because he lost his eye and job, the wife suffered a traumatic fever that made her to slump with pregnancy on the 30/6/16 and was rushed to Bwari General Hospital. Court is referred to the evidence of the Plaintiff.

On Issue 2, it is the submission that special damages unlike general damages must be proved. Special damage must be specifically proved to the satisfaction of the court. Although, it is most desirable to prove special damages by the production of receipts and the likes, failure to do so in certain circumstances will not defeat the claim of special damages. This is because there are certain trades of transaction that do not really give rise to the issuance of receipts and courts of law should not insist on receipts in such cases. See *OLUGBO v UMEH* (2004) 6 NWLR (Pt 870) at 621.

It is the submission that in prove of special damages all that the rule requires is that the person making a claim in special damages should establish by credible evidence of such a character as would satisfy the court that he is indeed entitled to an award under that head; otherwise the general law of evidence as to proof on balance of probabilities or by preponderance of evidence which ordinarily applies in civil case operates. See *DAVE ENGINEERING CO. LTD v NZERIBE* (1994) 8 NWLR (Pt 360) at 140.

It is submitted that unchallenged evidence of special damages can be accepted as proof of claim. See ALH. SURULERE KADIRI ARAB v SALIHU ELEGBA (1986) 1 NWLR Pt 16 at 333.

It is submitted that in the instant case, the Plaintiff pleaded receipts of the hospital bills visited. By virtue of the receipts tendered, the Plaintiff has shown the particular circumstances of the case and for which he claims compensation. See SALAU v ARAB (2004) All FWLR (Pt 204) 99.

It is further submitted that where a disability of a permanent nature is established, then the loss of ordinary facilities or enjoyment of life can be presumed so as to enable the court make a fair assessment of damages that may be reasonable compensation from the pain and suffering from the disability. See STRABAG CONST. NIG. LGTD v OGAREKPE (1991) NWLR (Pt 170) 733. Court is urged to resolve Issue 2 in Plaintiff's favour.

On Issue 3, it is the submission that cost between parties in a case are given or awarded by the law as an indemnity to the party entitled to them. See N.R.Cl. v ALFIRJIR (NIG) FSKO LTD (1991) 1 NWLR (Pt 167) 270. Court is urged to enter judgment for the Plaintiff.

The Defendant filed a Reply on Point of Law dated 5/11/2019 wherein counsel in reply to the submission of Plaintiff's counsel on special damages, submitted that special damages must be specifically pleaded and strictly proved otherwise no award will

be made. See ADEMUGBA v OKELOLA (2008) All FWLR (Pt 398) 292.

It is submitted that the case relied upon by the Plaintiff to submit that pleading and proof is not required are distinguishable and does not apply in the circumstances of this case. See G.K.F.I. NIG LTD v NITEL PLC (2009) 15 NWLR (Pt 1164) 344.

It is submitted that the issue of personal injury claim is not a matter for the court to presume, but rather the fact and the alleged loss has to be pleaded and proved before a claim can be founded on it by the court. Again, this is a matter that is considered by the court under general damages. See the case of MATRIC (W.A.) LTD v OPARA (2009) LPELR – 8419 (CA). Court is urged to refuse the claim of the Plaintiff.

I have carefully considered the processes filed, evidence of witnesses and submission of learned counsel on both sides. I do adopt the issues formulated by the Defendant's counsel as the issues for determination, thus:

- 1.** Whether in the circumstances of this case, the defendant is liable for negligence to the Plaintiff and the resultant damages being claimed in this suit.
- 2.** Whether the Plaintiff is entitled to the Special damages in the prevailing circumstances of this case.
- 3.** Whether the Plaintiff is entitled to damages in the sum being claimed for legal fees paid to his counsel for the conduct of this case.

On Issue 1, it is the contention of the Defendant that the Plaintiff has failed to establish a case of negligence against the Defendant based on the evidence adduced before the court.

Negligence is the failure to take reasonable care where there is a duty and it is attributable to the person whose failure to take reasonable care has resulted in damage to another. In other words, it is the omission or failure to do something which a reasonable man under similar circumstances would do or the doing of something which a reasonable and prudent man would not do. See *UTB (NIG) v OZOEMEKA* (2007) 3 NWLR (Pt 1022) 488 SC.

The questions that beg for answer are:

- (i) Does the Defendant owe the Plaintiff duty of care?
- (ii) Did the Defendant breach the duty of care?
- (iii) Did the Plaintiff suffered damages arising from the breach?

The Plaintiff pleaded facts and give evidence on how he was employed as an Electrician and how Mr. Leo, the Head of Department from China wants to maximize the output of the Plaintiff by compelling him with threat to combine the electrical and the welding works. The Plaintiff due to fear of being sacked, accepted doing the welding work in addition to his electrical job.

It is also the evidence of the Plaintiff that the Defendant failed to provide goggles and hand gloves to protect his eyes and hands.

It is trite law that an employer is under a duty of care, to take reasonable care to ensure that his employee is not exposed to risk of injury at his work. See CHAGAURY v YAKUBU (2006) 3 NWLR (Pt 966) 138.

It is the contention of the Defendant that safety gadgets and instructions are given to workers to ensure their safety at work. However, no worker was called as a witness to corroborate this assertion and no notice of instruction was tendered as exhibits.

It is settled law that in addition to providing tools, equipment, protective appliances or clothing etc, the law imposes a duty on the employer to ensure that such protective appliances such as goggles are used by employees when necessary. The employer must give strict order that the goggles provided must be used and if necessary supervise their use. See WESTERN NIGERIA TRADING CO. v AJAO (1965) 2 All NLR 100.

In the instant case, there was no evidence from the Defendant that strict order was given that the purported goggles provided for must be used and no evidence of supervision of same.

It is also the contention of the Defendant that the Plaintiff was never engaged to do welding work but was only employed as an electrician. The Plaintiff as PW1 testified to the effect that immediately his employment was confirmed by the Defendant, the Defendant started engaging him with welding work which was outside his scope of training.

To corroborate the above fact the DW1 under cross-examination stated to the effect that on the 19/1/16 the machine the Plaintiff was working with got broken and injured the Plaintiff in his left eye. The DW1 went on to state that the Plaintiff sustained the injury around 8:00 a.m. or thereabout and he (DW1) rushed the Plaintiff to Federal Medical Centre, Jabi immediately.

From the above, it is without doubt that the Defendant did engage the Plaintiff with welding work, I so hold.

It is also in evidence that after the accident occurred, the Plaintiff was taken to the hospital i.e. Federal Medical Centre, Jabi, Abuja; that the defendant did not make any payment for the treatment or bills contrary to the assertion of the Defendant that they deposited money at the hospital and disbursed some money to the Plaintiff and no receipts from the hospital to show that such money was ever deposited for the Plaintiff's Medical treatment.

From the evidence by the Plaintiff, all the bills at the Federal Medical Centre, Jabi, Abuja were paid by him. The Plaintiff also stated that the stitches on his left eye started smelling and as a result he left for National Eye Centre, Kaduna who knows more about eyes. The Plaintiff also said that as at the time he got to National Eye Centre, Kaduna and was examined, the Doctor said it was late to revive dead tissues because he did not come on time. The Plaintiff was referred to Rachael Eye Centre, Abuja by the National Eye Centre, Kaduna. The Plaintiff paid all the bills, cost of feeding and transportation from one hospital to the other.

Since the Plaintiff was an employee of the Defendant as at when the accident occurred, it is the duty of the Defendant to have taken the Plaintiff to hospital as quickly as possible and settle all bills and proper care should have been given to the Plaintiff.

The Defendant that they made payment at the hospital and disbursed some money to the Plaintiff. However, under cross-examination of DW1 he stated that the sum of N200,000.00 (Two Hundred Thousand Naira) only was deposited at the Federal Medical Centre Jabi for the treatment of the Plaintiff but could not provide any proof that the money was actually deposited.

The DW1 also claimed to have made disbursement of funds to the Plaintiff for all the medical treatment and receipts of which was acknowledged by the Plaintiff. However, the DW1 could not proof to this court that the money he claimed that was signed or acknowledge by the Plaintiff was actually collected by the Plaintiff.

The DW1 admitted that the money on Exhibit P N300,000.00 (Three Hundred Thousand Naira) only was released to him (DW1) to be given to the Plaintiff but he could not show how he disbursed the money to the Plaintiff or show to the court single receipt of payment by the Defendant to the hospital.

From the evidence adduced, the only money the DW II signed on behalf of the Plaintiff on the 12/6/17 as in Exhibit Q was the sum of N50,000.00 (Fifty Thousand Naira) only after an accident that occurred on 19/1/2016.

It is also in evidence that the Plaintiff's salary was stopped two months unto the accident. When asked the reason for stopping the Plaintiff's salary under cross-examination, the DW1 said that he did not know why the salary was stopped.

At this stage it is pertinent to reproduce the holding of Supreme Court in the case of *USONG v HANSEATIC INT. LTD* (2009) 38 (Pt 1) NSCQR 372 AT 382 Per J.O. Ogebe, JSC, Per Niki Tobi, JSC of blessed memory, thus:

“I must say that I do not like some aspects of the conduct of the Respondent in this matter. While I commend the Respondent paying the medical bills for the treatment, I feel bad that the Respondent refused to pay compensation and fought to this court why? That is not my understanding of fair human conduct and I condemn it. I expected the Respondent to sympathize with the Appellant in the circumstances and pay him compensation”

In the instant case, the Defendant did not pay a dime, the Plaintiff paid all his bills from Federal Medical Centre Jabi Abuja to National Eye Centre, Kaduna. There is no iota of evidence before the court that the Defendant paid Medical Bills as claimed. Every hospital issues receipts to whomever that made payment in respect of their bills.

It is not in doubt that the Plaintiff was a normal person before he went to work for the Defendant, but now cannot move freely on his own without the help from someone. From the evidence

adduced, the Plaintiff's left eye is totally blind and it has affected the right eye because of lack of fund for treatment.

In the light of the above, Issue 1 is resolved in favour of the Plaintiff.

On Issue 2, it is the contention of the Defendant that the Plaintiff's claim for special damages cannot be sustained having failed to plead them specifically in his pleading before the court and also for his failure to lead credible evidence in respect thereof.

Special damages, unlike general damages must be proved to the hilt. Special damages must be specially proved to the satisfaction of the court. Although, it is most desirable to prove special damages by the production of receipt and the likes, failure to do so in certain circumstances will not defeat the claim of special damages; this is because there are certain trades of transaction that do not really give rise to the issuance of receipts and courts of law should not insist on receipts in such cases. Where the law insists on the production of receipts in all claims of special damages, they will be unwittingly promoting the offence of forgery because a party who has no receipts will be tempted to forge one. That is not good in the administration of justice. See the case of *OLUGBO v UMEH* (2004) 6 NWLR (Pt 870) at 621.

That special damages must be proved strictly means that any one making a claim in special damages must prove strictly that he did suffer such special damages claimed. This, however does not mean that the law requires a special category of evidence to establish entitlement to special damages. It does not mean either

that an award in special damages cannot be made unless such damages established beyond reasonable doubt as in the position in criminal cases. All that the rule requires is that the person making a claim in special damages should establish by credible evidence of such a character as would satisfy the court that he is indeed entitled to an award under that head; otherwise the general law of evidence as to proof on balance of probabilities or by preponderance of evidence which ordinarily applies in civil cases operates. See the cases of DAVE ENGINEERING CO LTD v NZERIBE (*Supra*); OSHINJERIN & ORS v ALH. ELIAS & ORS (1970) 1 All NLR 193 at 156; DUMEX NIG. LTD v PATRICK OGBOLI (1972) All NLR Pt 241.

In the case ALH. SURULERE KADIRI ARAB v SALIHU ELEGBA (*Supra*), it was held that where evidence is given on items classified as special damages in line with the pleadings and such evidence is unchallenged, those items are deemed to have been duly proved. It was further held that non production of receipts to further prove the unchallenged evidence is not fatal to the Plaintiff's claim. See BOSHALL v ALLIED COMMERCIAL EXPORTERS LTD (1961) All NLR (Pt 4) 917.

It is worthy of note that this is a peculiar case on personal injury and the Plaintiff has adduced evidence that he has suffered such damages claimed. The Plaintiff a young man of 30 years now, became blind as a result of the negligence from the Defendant would it be in the interest of justice not to compensate the

Plaintiff?. The answer is in the negative, it will not be in the interest of justice.

In the personal injury cases, where a disability of a permanent nature is established, then the loss of ordinary facilities or enjoyment of life can be presumed so as to enable the court make a fair assessment of damages that may be reasonable compensation from the pain and suffering from the disability. See *NALADO v ALI* (2006) All FWLR (Pt 293) 220.

Now, in awarding of monetary damages, the court are endowed with an unfettered discretion to keep up with the times and economic trend in the country and most especially with the prevailing fluctuating and rather obvious decline of the purchasing power of the Naira. See *KALU v MBUKA* (1988) 3 NWLR (Pt 80) 86.

In the light of the above stated, this issue is also resolved in favour of the Plaintiff.

On Issue 3, I am of the considered view that it is an aberration for a Plaintiff to pass unto the Defendant the solicitor's fee which did not form part of the cause of action before the court. The cause of action before this court is tort of negligence. See the cases of *MICHAEL v ACCESS BANK* (2017) LPELR – 41981 Per OGAKWU, JCA; *GUINNESS NIGERIA PLC v NWOKE* (Supra).

In the light of the above, I hold the considered view that this leg of the Plaintiff's claim must fail. Accordingly, this issue is resolved in favour of the Defendant.

It is settled law that an employer who fails to take such steps for the safety of an employee as a reasonable employers would take in the same circumstances, renders himself liable in damages to an employee who suffers as a result of the failure. See HUDSON v RIDGE MANUFACTURING CO. LTD (1957) 2 All ER 229.

In conclusion, I am of the considered view that the Plaintiff has adduced credible and cogent evidence to warrant judgment in his favour. Accordingly, judgment is entered in favour of the Plaintiff against the Defendant as follows:

1. The Defendant is ordered to pay the sum of N20,000,000.00 (Twenty Million Naira) only to the Plaintiff as special damage.
2. The Defendant is ordered to pay the sum of N1,000,000.00 (One Million Naira) only as general damages.
3. 10% interest on the judgment sum is awarded to the Plaintiff from judgment date until same is finally liquidated.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
11/02/2020

Claimant's Counsel – We are grateful for the well-considered judgment.

Defendant's Counsel – I will also join the Claimant's counsel in thanking the court for the judgment.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
11/02/2020

