IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA, ABUJA.
ON THE 10TH DAY OF MARCH 2020.
BEFORE HIS LORDSHIP: HON. JUSTICE MARYANN E. ANENIH
(PRESIDING JUDGE)

SUIT NO: FCT/HC/CV/824/13.

BETWEEN:

MR. FREDRICK EKASA

MRS. YEMI EKASA……..PLAINTIFFS

AND

MR. ERICO OYOM

GILMOR ENGINEERING NIGERIA LIMITED ……..…DEFENDANTS

JUDGEMENT.

The plaintiffs by a statement of claim filed on 30th October, 2013 claims against the Defendants, jointly and severally as follows:

1. A Declaration that the Defendants are liable to the plaintiffs for the damage, destruction and loss of the plaintiffs' vehicle, to wit: A Peugeot 406 saloon car with registration number EQ 717 EKY, resulting from the collision caused by the 1st Defendant's recklessness and inconsiderate driving.

2. A Declaration that the Defendants are liable to the plaintiffs for injuries, pain, suffering and losses sustained by the plaintiffs resulting from the said collision caused by the 1st Defendant's recklessness and inconsiderate driving.

3. The sum of N1,850,000.00 (One Million Eight Hundred and Fifty Thousand Naira only) being the purchase price for a replacement peugeot 406 of the same specifications, grade and condition as the plaintiffs' vehicle prior to the said collision.

4. The sum of N80,000 (Eighty Thousand Naira Only) being the sum total of hospital bills and cost of medical treatment for injuries and pains sustained by the plaintiffs.

5. The sum of N556,000 (Five Hundred and Fifty Six Thousand Naira Only) being the cost of transportation for the plaintiffs and their family from the 27th day of March 2013 to the 7th day of August 2013.

6. The sum N3,000 (Three Thousand Naira only) being the daily cost of transportation for the plaintiffs and their family from the 8th day of August 2013 until judgement debt is finally liquidated.

7. The sum of N525,000 (Five Hundred and Twenty Five Thousand Naira only) being the loss of income accruing to the plaintiffs as a result of the 1st plaintiff's inability to work for 6 weeks (one month and a half).

8. The sum of N10,000,000 (Ten Million Naira only) being General Damages for the trauma, injuries, pain, suffering, anxiety, inconvenience and cruelty inflicted upon and endured by the plaintiffs and their family as a result of the said collision caused by the 1st Defendant's recklessness and inconsiderate driving.

9. Costs and cost of this action

The 2nd Defendant was served with the writ of summons and hearing notice on 27th January 2014. The Defendants filed their Notice of Conditional Appearance on 19th of February, 2014.

The 2nd defendant participated actively in this proceedings, albeit they refrained from filling any statement of defence in the course of trial. It was only after trial when the case was adjourned for adoption of final written address they filed on 4th of May, 2018 an application for extension of time within which to file and serve their joint statement of defence and witness statement on oath. The application was considered and dismissed by the Court on 5th of July 2018.

The plaintiffs in proof of their case called one witness (2nd plaintiff herself) Mrs. Yemi Ekasa who testified as PW1 and adopted her witness statement on oath filed on 30th of October, 2013.

On 26th of January, 2016 Mr. Fredrick Ekasa testified as PW2 and adopted his witness statement on oath filed on 30th of October, 2013 and tendered the following as Exhibits in this case:

Exhibit A; The Letter of Appointment from National Mathematical Centre dated 21st January, 2013.

Exhibit B; The Letter from Nick Ikachi & Company to the M.D. of 2nd Defendant dated 29th April, 2013.

Exhibit C; The Certified True Copy of record of proceeding of Magistrate Court on 18th June, 2013.

Exhibit D; The Motor Vehicle lease Agreement.

Both plaintiffs' witnesses were cross examined by the defence Counsel.

The entire testimony of plaintiffs witnesses during examination in chief and cross examination has been well set out in the records of court herein.

At the close of evidence, the plaintiffs filed and served on the defendants their final written address.

The defendants did not respond to same either by way of a written or oral address.

The plaintiffs in their final written address filed on 27th November, 2017 and adopted on the 12th of December 2019, formulated a lone issue for determination:

Whether the plaintiffs are entitled to their claims on the preponderance of evidence.

Plaintiffs made copious submissions on this issue and in conclusion, urged the Court to grant their claims.

The submissions of the plaintiff on the lone issue for determination is fully reflected in the records of the court and would be referred to herein where found necessary.

I have considered the entire case before the court, the final address and the submissions of counsel. And I am of the view that the sole issue arising for determination here is as formulated by the plaintiffs in their written address, vis:

Whether the plaintiffs have proved their entitlement to the reliefs sought in their statement of claim.

The gist of the plaintiffs' case is that on the date of the accident, the 2nd defendant's two trucks driven by the 1st defendant and another driver ran into the main road from an untarred road at the intersection without slowing down or exhibiting due regard for the on coming car of plaintiffs on the lokogoma express road. And that in order to avoid collusion with the defendants vehicles the plaintiffs' car swerved to the right. In the process of swerving to the right and because of the cloud of dust raised by the speeding trucks the plaintiffs failed to see a police car coming from the same untarred road which their car collided with. That they were injured and hospitalised and their car also suffered damage. It is as a result of the purported failure of the defendants to exercise due care during and after the accident and the resultant damage as outlined in the statement of claim that this action was instituted after efforts to get compensation from the defendants proved abortive.

The 2nd defendant was served with the originating processes on 27th January 2014, and 1st defendant by substituted means on 25th January, 2015.

The 1st defendant failed to appear while the 2nd defendant entered conditional appearance on 25th February 2014 and made several applications in the course of the proceedings. They didn't file any

defence and continued to participate in the proceedings until after close of evidence and the matter adjourned for adoption of final written addresses in 2018. Their application for extension of time to file defence was filed on 4th May 2018 after about four years, it was considered by the court and refused. The matter proceeded and the defendants failed to make any final address.

It is on this premise that the plaintiffs adopted their final written address on 12th December 2019.

The plaintiffs claim before the court is principally hinged on purported negligence of the defendants by 1st defendant and vicarious liability of 2nd defendant for which the plaintiffs have claimed declaratory reliefs and consequential damages.

The entire evidence of the plaintiffs is before the court and would be distinctly referred to where found necessary.

The evidence of the plaintiffs' is to the effect that the 1st defendant and another driver drove the trucks of the 2nd defendant recklessly to the extent that it resulted in the collision of the plaintiffs' car with the police car. The defendant's haven't denied, disputed nor controverted this piece of evidence. The legal presumption of its veracity would have to be applied in line with the well settled position of the law that facts not denied are deemed admitted. See

OKUKUJE V. AKWIDO (2001) (SC) PG. 95 Para C-D

OMORHIRHI & ORS V. ENATEVWERE(1998) LPELR-2659 (SC) PG. 22-23 Para F-A

MBA V. MBA (2018) LPELR-44295 PG. 24-25 Para F-E

ALHASSAN & ANOR V. ISHAKU & ORS(2016) LPELR-40083(SC) PG. 73 Para B-C

And furthermore it is trite that facts admitted need no further proof. In fact they are regarded as the best evidence. See

FUTMINA & ORS V. OLUTAYO (2017) LPELR-43827(SC) PG. 5 Para D-E.

OLIYIDE & SONS LTD V. OAU, ILE-IFE (2018) LPELR-43711 (SC) PG. 9 Para A-B.

In the event that the evidence of the plaintiffs is uncontested, the court is at liberty to accept the facts as true and act on it accordingly. See

ONAGORUWA v. JAMB (2000) LPELR-10317(CA) PG. 10 Para C-E.

See other authorities cited hereinbefore Supra.

In view of the fact that the evidence of plaintiffs before the court is neither denied, challenged nor contradicted, the burden placed on the plaintiffs by law to establish their case is that of minimum proof. See

SPDC LTD V. EDAMUKE & ORS (2009) LPELR-3048 (SC) PG. 41-42 Para G-C

PLATEAU STATE HEALTH SERVICES MANAGEMENT BOARD & ANOR V. GOSHWE (2012) LPELR …??..PG. 17 Para E-F

The plaintiff's counsel in his final address opines that the plaintiffs' evidence sufficiently proves negligence against the defendants.

The term 'negligence' in law has been aptly captured in BLACKS LAW DICTIONARY10th EDITION as follows:

> *" 1. 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 disregardful of others' rights. The term denotes culpable carelessness. The Roman-law equivalents are culpa and negligentia , as*

contrasted with dolus (wrongful intention). - Also termed actionable negligence; ordinary negligence; simple negligence.

2. A tort grounded in this failure, usu. expressed in terms of the following elements: duty, breach of duty, causation, and damages."

The tort classified as negligence has also received judicial interpretation in a plethora of court decisions, such as:

IYERE v. BENDEL FEED AND FLOUR MILL LTD(2008) LPELR-1578(SC) PG. 40 – 42 Para B-F

"I think I should start examining this issue by stating the basic principle of the law of negligence. It is that there can be no action in negligence unless there is damage. Negligence is only actionable if actual damage is proved. The gist of the action is damage and there is even no right of action for nominal damages. See: Munday Ltd. v. L. C. C.(1916) 2 KB 331: Hambrook v. Stokes Bros (1925)1 KB 141 at page 156. Lord Reading, C.J. observed in Munday v. London County Council (supra) that:-

"Negligence alone does not give a cause of action, the two must co-exist." This statement of law received approval of the judgment of Her Majesty's Privy Council PerViscount. Simon, L. C. in E. Suffolk Rivers Catchment Board v. Kent(1941) AC. 76 at page 86.

The burden of proof in an action for damages for negligence, certainly, rests primarily on the plaintiff, who, to maintain the action, must show that he was injured by the negligent act or omission for which the defendant is in law responsible.

This involves

(i) the proof of some of some duty owed by the defendant to the plaintiff
(ii) some breach of that duty and

(iii) an injury to the plaintiff between which and the breach of duty a casual connection must be established.
see Robinson v. Post Office (1974) 2 NLER 737; Mc Ghee v. National Coal Board (1972) 3 All ER 1008; -Keay v. British Nuclear Fuels Plc (1994) PIQR, 171. In the case of - Makwe v. Nwuko (2001) 32 WRN 1 at page 12-13 (2001) 14 NWLR (Pt. 733) 356 at 374-375, (2001) 7 SCNJ, 67 at page 1. Iguh, Jsc, summarized the ingredients necessary for the proof of negligence in the following words:
"In the second place, the essential ingredients of actionable negligence are:

i. The existence of a duty to take care owed to the complainant by the defendant.
ii. Failure to attain that standard of care prescribed by law;
iii. Damage suffered by the complainant which must be connected with the breach of duty of care. Once those requirements are satisfied, the defendant in law will be held liable in negligence ."

See also

MAKWE V. NWUKOR & ANOR (2001) LPELR-1830(SC) PG.21 Para B-E.

HAMZA V. KURE (2010) LPELR- 1351 (SC) PG. 14-15 Para E-B.

In my humble view the testimony of the witnesses has sufficiently highlighted the reckless conduct of the 1st defendant with 2nd defendants truck as pleaded that amount to negligence. They have also established the reckless conduct of 1st defendant and 2nd defendant's drivers with the resultant injury to them. I have not found any reason to disbelieve their evidence as presented before the court.

The evidence sufficiently establishes that the 1st defendant recklessly failed to exercise reasonably expected duty of care to plaintiffs as other road users.

Gross negligence or reckless negligence as in this instance, has also been defined thus in BLACKS LAW DICTIONARY 7TH EDITION as follows:

"1. A lack of even slight diligence or care.

2. A conscious voluntary act or omission in reckless disregard of a legal duty and of consequences to another party, who may typically recover exemplary damages - Also termed reckless negligence; willful negligence; willful and wanton negligence.

3. 'Negligence is gross if the precautions to be taken against harm are very simple, such as persons who are but poorly endowed with physical and mental capabilities can easily take."

The above definition of reckless negligence was cited with approval in the case of**NWABUEZE V. THE PEOPLE OF LAGOS STATE (2018) LPELR-44113(SC) PG. 35-36 Para F-G**where the supreme court per EKO JSC while expounding on the meaning and nature of recklessness expressed thus:

"A reckless conduct is much more than mere negligence. It is a gross deviation, according to Black's Law Dictionary 9th Edition at page 1385, from what a reasonable person would do. The passage from J.W. Cecil: Kenny's Outlines of Criminal Law (16th Edition, 1952) reproduced in Black's Law Dictionary says it thus: Intention cannot exist without foresight, but foresight can exist without intention for a man may foresee the possible or even probable consequences of his conduct and yet not desire them to occur, none the less if he persists on his course he knowingly runs the risk of bringing about the unwished result. To describe the state of mind the word "reckless" have been used to indicate the same attitude. The degree of fault in recklessness is much greater than that in negligence; It's though of lesser degree in terms of fault than an intentional wrong doing. It therefore lies between negligence and an intentional act or wrong doing. A reckless act goes to the level or a degree of high carelessness. Thus in

Salmond on the law of torts. 7th Edition, 1977 at page 194, recklessness "is the doing of something which intact involves a grave risk to there, whether the doer realises it or not. The test is therefore objective and not subjective." The test is also one of facts."

And the 2nd defendant being the owner of the trucks and employer of the 1st defendant have not led any evidence to deny that the 1st defendant was under their employment or working for them at the time of the incident. They are therefore also vicariously liable for the breach, loss and injury caused.

See

KUTI v. BALOGUN(1978) LPELR-1723(SC) Pg. 8 Para C-B

"The liability of the owner of a car for any damagefor which the driver of the car was found liable hasbeen clearly stated in the judgment of this Court inT. O. KUTI (TRADING AS ABUSI ODU TRANSPORT AND ANOR v. OLUDADEMU JIBOWU AND ANOR(supra). There the court, (ibidem at p. 167) after agreeing with the statement of the law by du Pareq,L. J., in Hewitt v. Gonvin (1940) 1.K.B. 188 at p.194 and by Denning, L.J., (as he then was), inOrmrod v. Crossville Motor Services Ltd . (1953) 2.All E.R. 753 at pp. 754 and 755, held that the ownership of a car cannot of itself impose anyliability on the owner. The owner, without furtherinformation is, however prima facie liable becausethe court is entitled to draw the inference that thecar was being driven by the owner, her servant oragent. See also OGUNMUYIWA v. E.A. SOLANKE (1956) 1 F.S.C. 53."

See also

MANUEL V. EDEVU (1968) LPELR-25498(SC) PG. 7-8 Para C-A.
Per Charles Olusoji Madarikan had this to say.

"*In regard to the issue of vicarious liability, we note that in Ormrod's case (supra) Denning L.J. (as he then was) said at page 754-*

"It has often been supposed that the owner of a vehicle is only liable for the negligence of the driver if that driver is his servant acting in the course of his employment. That is not correct. The owner is also liable if the driver is his agent, that is to say, if the driver is with the owner's consent, driving the car on the owner's business or for the owner's purposes .
The law puts an especial responsibility on the owner of a vehicle who allows it to go on the road in charge of someone else, no matter whether it is his servant, his friend, or anyone else. If it is being used wholly or partly on the owner's business for the owner'spurposes, the owner is liable for any negligence on the part ofthe driver".

The plaintiffs having properly pleaded the acts of negligence with specific particulars which they have established by credible undisputed evidence are entitled to their said claims. And under the circumstance they have established their entitlement to the declaratory reliefs sought. See

A.G. LEVENTIS (NIG) PLC V. AKPU (2007) LPELR-5 (SC)PP.15-16, Paras. C-E Per Ogbuagu J.S.C.

The plaintiffs have also claimed special and general damages.

The plaintiffs by their undisputed evidence before the court have successfully established both financial and personal injury and shown efforts made to mitigate their losses. In the event therefore, I am of the view that they are entitled to special and general damages as claimed.

See

ALHAJI SALAWU OKE v. DR OLADIPO MAJA(Trading under the name and style of Maja Hospital)(2013) LPELR-19908(SC) PG. 21-23 Para F-E

ONOGORUWA V. JAMB (Supra) Pg. 18-19

EHIMEN v. BENIN ELECTRICITY DISTRIBUTION CO. PLC (2016) LPELR-40814(CA) Pg. 20-21.

The law is well settled that the measure of damages in an action for negligence is founded on the principle of restititio in integrum. This means under this circumstance that for the loss of the car and injury suffered due to negligence of defendants, the plaintiffs are entitled to recover such a sum as will replace them, so far as can be done by compensation in money, in the same position as if the loss had not occurred or been inflicted on them. I find support for this position in the case of

OANDO NIGERIA PLC v. ADIJERE WEST AFRICA LTD(2013) LPELR-20591(SC) PG. 42-43 Para A-B. where the supreme court resonated on this principle thus:

> *"It is now well settled that the measure of damages in an action for negligence is founded on the principle of restititio in integrum. This means that for the loss of vessel or vehicle due to negligence, the owner of the vehicle is entitled to what is called restititio in integrum. The owner of the vehicle should recover such a sum as will replace same, so far as can be done by compensation in money, in the same position as if the loss had not been inflicted on him, subject to the rules of law as to remoteness of damages…."*

I find the claims for special damages to have been successfully made out by the plaintiffs. And under this peculiar circumstance, I am also of the view that they are entitled to compensation for their suffering and trauma as recounted by plaintiffs for which the defendants showed no sympathy or empathy. Outside the special damage therefore the court would award general damages in favour of the plaintiffs. I find guidance for award of general damages under the circumstance in a plethora of decided cases including

ZENITH BANK v. ATO PROPERTIES LTD (2019) LPELR-47783(CA) Pg. 56-60 para B-F

And

YA'U V. DIKWA (2000) LPELR-10133 CA PG.53, Paras. A-E. Per Mangaji, J.C.A.

Suffice to say that the sole issue for determination is resolved in favour of the plaintiffs.

In the light of the foregoing therefore plaintiffs have successfully proved their claims upon a preponderance of their evidence before the court. The entire claims of the plaintiff for declaratory reliefs and damages therefore succeed and it is hereby declared that:

1. The defendants are liable to the plaintiffs for the damage, destruction and loss of the plaintiffs' vehicle to wit: Peugeot 406 Saloon Car with registration No. EQ 717 EKY, resulting from the collision caused by the 1st defendant's recklessness and inconsiderate driving.

2. The defendants are liable to the plaintiffs for injuries, pains, suffering and losses sustained by the plaintiffs resulting from the said collision caused by the 1st defendant's recklessness and inconsiderate driving.

Accordingly, orders are hereby made that the defendants jointly and severally pay the plaintiffs as follows:

3. The sum of N1,850,000.00 (One Million Eight Hundred and Fifty Thousand Naira only) being the purchase price for a replacement peugeot 406 of the same specifications, grade and condition as the plaintiffs' vehicle prior to the collision.

4. The sum of N80,000 (Eighty Thousand Naira Only) being the sum total of hospital bills and cost of medical treatment for injuries and pains sustained by the plaintiffs.

5. The sum of N556,000 (Five Hundred and Fifty Six Thousand Naira Only) being the cost of transportation for the plaintiffs and their family from the 27th day of March 2013 to the 7th day of August 2013.

6. The sum N3,000 (Three Thousand Naira only) being the daily cost of transportation for the plaintiffs and their family from the 8th day of August 2013 until judgement debt is finally liquidated

7. The sum of N525,000 (Five Hundred and Twenty Five Thousand Naira only) being the loss of income accruing to the plaintiffs as a result of the 1st plaintiff's inability to work for 6 weeks (one month and a half).

8. The sum of N500,000 (Five Hundred Thousand Naira only) being General Damages for the trauma, injuries, pain, suffering, anxiety, inconvenience and cruelty inflicted upon and endured by the plaintiffs and their family as a result of the said collision caused by the 1st Defendant's recklessness and inconsiderate driving.

There shall be no further order as to cost.

Signed

Honourable Justice M.E. Anenih.

Appearances:
O.A. Ezeocha Esq with O.C. Akpee Esq, A.A. Ajah Esq for plaintiffs.
Benjamin Ogbaini Esq Defendants.