



**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF**



SUIT NO: FCT/HC/CV/1866/2018.

BETWEEN:

SUCCESS ABANG ASUKWO.....PLAINTIFF

AND

DANGOTE GROUP PLC.....DEFENDANT

JUDGMENT

The Plaintiff is an Abuja based Clergyman. On the 21st August, 2012, he set out in his Opel Senator car with members of his family from Abuja to Achina in Agwuata Local Government Area of Anambra State. In the course of the journey along Abuja to Lokoja highway at a Village known at Yangoji, a Truck belonging to the Defendant's Company loaded with about 900 Bags of Cement and traveling from Obajana toward Abuja embarked on a dangerous overtaking, left its lane and collided with the Plaintiff's car. The Defendant's Driver ran away from the accident scene without extending any helping hand to the victims who were in pool of their blood. As a result of the accident, Plaintiff's daughter, Katherine Abang died on the spot,

while other injured occupants were rushed to the University of Abuja Teaching Hospital Gwagwalada. The Plaintiff's wife, Mrs. Blessing Abang, later died in the Hospital while his son Master Wigglesworth Abang who sustained severe head injury was initially referred to the National Hospital Abuja and later to Artemis Hospital in India for further medical intervention. The Plaintiff's car was damaged beyond repair. Plaintiff forwarded a letter to the Defendant and requested that the Company take responsibility for the accident in issue, but the letter did not yield any positive result. Plaintiff's meeting with officers of the Defendant in Lagos for the amicable resolution of this matter also failed to yield any fruitful result. The Plaintiff who is aggrieved filed this action to seek redress. Paragraph 70 of the Statement of Claim captured the reliefs sought by the Plaintiff and is reproduced hereunder:

A. Special damages as follows:

- 1. a) The mortuary daily charges is N500.00 from 22nd August, 2012 to the last day in December, 2012 (Sixty Five Thousand Five Hundred Naira) only =N65, 500.00.**
- b) From 1st January, 2013 to Tuesday 31st December 2013 (One Hundred & Eighty Two Thousand, Five Hundred Naira) only = N182,500.00.**

c) From Wednesday 1st January, 2014 to Wednesday 31st December 2014 (One Hundred & Eighty Two Thousand, Five Hundred Naira) only =182,500.00.

d) The mortuary daily charges charged from N500.00 to N1000. 00 from Thursday 1st January, 2015 to Thursday 20th August 2015 in the sum of (Two Hundred and Thirty Two Thousand Naira) only = N232,000.00

The sum total of the mortuary bills from 23rd August 2012 to 20th August 2015 is the sum of (Six Hundred and Sixty Two Thousand Five Hundred Naira) only = N662,500.00 .

Daily mortuary charges in Oron is N500.00 for ten days (Five Thousand Naira) only

Dressing the corpse (Ten Thousand Naira) only =N10,000.00

Dressing clothes (Twenty Five Thousand Naira) only = N25,000.00

Mortuary bill for the Plaintiff's dear daughter (Twelve Thousand, Four Hundred Naira) only = N12,400.00

II. Burial Programme

a. Posters (One Hundred Thousand Naira) only =N100,000.00

b. Renting of Chairs & Canopies (One Hundred and Ninety Thousand Naira) only=N195,500.00

c. Musical Entertainment (Two Hundred Thousand Naira) only= N200,000.00

Sub Total=N1,200,000.00

III. Burial Rituals

- i. Drinks for in-law (One Hundred and Twenty Thousand Naira) only = N120,000.00**
- ii. Food for guest, mourners and well-wishers (Sixty Four Thousand) only =N64,000.00**
- iii. Two she goats for in-laws N25,000.00 each = N50,000.00**
- iv. One cow (One Hundred Thousand Naira) only =N100,000.00**

1V. Hospital Bills:

- i. Wigglesworth Abang's Hospital bill in Nigeria (One Hundred and Forty Two Thousand, One Hundred & Eighty Naira) only.**
 - * Gwagwalada University Teaching Hospital = N9,180.00**
 - * National Hospital = N105,000.00**
 - * National War College Abuja = N28,000.00**
- ii. Wigglesworth Abang's Hospital bill in India**
(One Million, Seven Hundred & Thirty Nine Thousand, Eight Hundred & Fifty Naira only
(Artemis Hospital) =N 1,739,850.00

iii. The Hospital bill of the Plaintiff = N 2,600.00

iv. The Hospital bill of the Plaintiff's wife = N72, 550.00

V. Travelling Bills:

1. Flight ticket to & from Lagos to India (Three Hundred & Thirty Six Thousand, Eight Hundred and Twenty Three Naira) only =N336,823.00

2. Aero Contractors ticket from Abuja to Lagos with son (Forty Thousand Naira) only = N40,000.00

3. Aero Contractors return ticket to Abuja from Lagos, with son (fifty one thousand, ninety naira) only= N51,090.00

4. Two Akwa Ibom Transport Buses that conveyed mourners & well-wishers from Abuja to Oron= N320,000.00

5. Examination for Wigglesworth before travelling to India (Twenty Five Thousand Naira) = N25,000.00

6. Chattered Ambulance (Two Hundred & Thirty Five Thousand Naira) only = NN235,000.00

7. The travelling expenses for the Plaintiff's meeting with the staff of the Defendant in Lagos =N100, 000.00

V1. Damaged vehicle (One Opel Senator) = N1,200,000.00

VII. The Casket for the Plaintiff's wife = N150,000.00

Sub Total- N4,749,093.000

Total of special damages=N5,959,493.00

B. Other Damages

- i. Thirty Million Naira only for causing the untimely death of the Plaintiff's dear daughter = N30, 000, 000.00**
- ii. Fifty Million Naira for causing the untimely death of the Plaintiff's lovely wife =N50,000,000.00**
- iii. Twenty Million for exemplary damages= N20, 000, 000.00**
- iv. Punitive damages of (Twenty Million Naira) only =N20, 000, 000.00**

C. General damages of Thirty Million naira only= N30, 000, 000.00

Grand Total=155,959,493.00

The Defendant was duly served with the Writ of Summons and all requisite hearing notices throughout the pendency of this action. However, the Defendant elected not to defend this action as no process was filed in opposition, and there was no appearance whatsoever on its behalf. The approach adopted by the Defendant in my view is within the Constitutional right of the Defendant not to defend this action.

At plenary, the Plaintiff personally testified as PW1 and tendered series of documents admitted and marked as Exhibits SAA1 to

SAA21. The Defendant was given ample opportunity to cross-examine the PW1, but failed to take advantage of this window of opportunity. At the end of the day, learned counsel to the Plaintiff on 02/12/2019 applied to foreclose the Defendant from cross-examining the PW1. The Court in reaction Ruled as follows:

“Defendant has not appeared to cross-examine the PW1. They are accordingly foreclosed as prayed as the PW1 is discharged.”

In a related development, the Defendant failed and/or neglected to take advantage of the opportunity to defend Plaintiff’s claim after the action was adjourned for defence. Again, learned counsel to the Plaintiff applied for a foreclosure Order and the Court in its Ruling rendered on 17/09/2020 noted:

“The Defendant is absent and no excuse has been obtained. I foreclose the defence on the application of counsel to the Plaintiff and I adjourn the case to 10/11/2020 for parties to file final written addresses. Notice shall issue.”

In the final written address filed on behalf of the Plaintiff, Mr. Maxwell C. Okpara Esq, identified three issues as arising for the resolution of this matter. The issues are:

- 1. Whether the actions of the Defendant’s Driver on the 21st of August, 2012, when he carelessly attempted to**

overtake another truck with so much speed and left his lane and veered into the Claimant's lane whereof the Defendant's Driver collided with the Claimant's car that was approaching in the opposite direction and a fatal accident occurred which gave rise to damages, amounts to negligence.

- 2. Whether the Defendant's Driver's action, if declared to be negligent by this Court, gave rise to special damages and whether same was proved.**
- 3. Whether the Defendant is vicariously liable for the negligent actions of their Driver, who is at large, in the course of his duty.**

I have carefully considered the state of pleading and the evidence led by the Plaintiff, and I form the view that the sole issue for determination ought to be as set down below:

Whether the Plaintiff has been able to prove his claim of negligence and damages against the Defendant?

In the formulation of the issue for determination, I reckon with the fact that Plaintiff's issue 3 is of no moment as the Defendant has not disown its Driver that is at the centre of this case. If that be the case, it would amount to a baseless academic exercise to dwell on a

matter that is not a live issue in the litigation process. For this reason, Plaintiff's issue 3 must be ignored and I so hold.

It is now settled law that the Plaintiff has the onus or burden to lead credible evidence to justify his legal entitlement to the reliefs sought in this case. On this point of law, see Section 131 to 133 of the Evidence Act, 2011 and the case of **ELIAS Vs DISU (1962) 1 SCNLR 361; and UNIVERSITY PRESS LTD Vs I. K. MARTINS NIG. LTD (2004) 4 NWLR (PT.654) 584.**

Taking into account the point that Plaintiff's action is founded on negligence, I take the liberty to refer to the case of **OKWEJIMINOR Vs IGABKEJI (2008) 5 NWLR (PT.1079) 172** where negligence was explained by Muhammad, JSC, thus:

“Negligence is the omission to do something, which a reasonable man guided upon those considerations that ordinarily regulate the conduct of human affairs, would do, or doing something, which a prudent and reasonable man would not do.”

Now it is settled on a long line of decided cases, that for the Plaintiff to succeed in an action founded on negligence, it must be shown that the Defendant owed the Plaintiff a duty of care and that the duty was breached with consequential legal injury to the Plaintiff. See **NGILARI Vs MOTHERCAT LTD (1999) 13 NWLR (PT.636) 626** where Karibi-Whyte, JSC captured the Law as follows:

“It is well established that for a claim in negligence to succeed, Plaintiff must prove that Defendant owes him a duty of care and was in breach of that duty. See OYIDIOBU Vs OKECHUKWU (1972) 5 SC 191.”

Where the alleged negligence of the Defendant is in respect of accident cases, the Supreme Court explained the nature of prove expected of the Plaintiff in the case of **ABUBAKAR & ANOR Vs JOSEPH & ANOR (2008) 34 NSCQR (PT.II) 1195** thus:

“It needs to be emphasized and this is also settled, that the mere occurrence of an accident is not proof of negligence. Thus, in order to succeed in a claim of negligence, it is not enough to prove that there was an accident (as the Appellant's case shows or portrays). The Plaintiff must prove that the accident was as a result of the negligence of the Defendant. Therefore, the circumstances, nature and extent of the accident, must be pleaded and evidence adduced thereon. Then, the Court would be able to determine whether partially or wholly, either the Plaintiff or the Defendant, caused the accident. See the cases of R. Vs TATIMU (1952) 20 NLR 60 REFERRED TO BY ONU, JSC IN THE NGILARI'S CASE (SUPRA) AT 643 AND PER

IGUH, JSC AT (PT .661) OF THE NWLR. In other words, evidence of collision is not necessary proof of negligence. See also the cases of R. Vs GORSNEY (1971)2 Q.B. 674 C.A. AND ADESANYA Vs THE STATE (1978) 3 FCA 185 @189."

Now I have stated above that the Defendant did not file any process, neither did it take part in the trial, despite the fact that it was served with the Writ of Summons in this Suit, alongside hearing notices. Thus, the Plaintiff's case as presented by the evidence before me is undisputed by the Defendant, and I will rely on same.

See **ARABAMBI Vs ADVANCE BEVERAGES IND. LTD (2005) 19 NWLR (PT. 959) 1**, where the Supreme Court (per Mukhtar, JSC) has this to say:

"Now, having failed to debunk the evidence given by the (PW2), the learned trial Judge had no choice other than to rely on the evidence, and asses it as credible evidence which he ought to use for the just determination of the case before him. The cardinal principle of law is that evidence that is related to a matter in controversy that is neither successfully debunked, nor controverted at all for that matter is good and credible evidence that ought to be relied upon by a trial Judge."

His Lordship Kalgo, JSC in his contributory Judgment also noted that:

“With due respect to the learned counsel and from what I have said above, I think it is now well settled that a Court can properly accept and rely upon any evidence before it which is unchallenged and uncontroverted, provided that it is relevant to the issues before it. In this case, the evidence of Mr. Oke was unchallenged and uncontroverted and so the lower Courts are entitled to rely on it on the issue of special damages claimed. See for example, WEST AFRICA SHIPPING AGENCY (NIG.) LTD. & ANOR. Vs KALLA (1978) 3 SC 21.”

The law is that where evidence is uncontradicted, the onus of proof is satisfied on minimal proof, since there is nothing to place on the other side of the imaginary scale

To my mind, the most central issue in this case is whether the Plaintiff has been able to establish that the Defendant was negligent or careless in the management of it's vehicle on the day and time in question? A finding on this issue will resolve this matter one way or another. In keeping with the principle that says he who asserts must prove, I expect the Plaintiff to lead evidence to support the averments contained in the statement of claim. It should be noted

right from the beginning that the best form of evidence of these kind of matter (i.e. collision cases) is that of people who were either involved or witnessed the accident. In that regard, the Plaintiff himself testified in the following manner in his witness statement on Oath, thus:

"3. That sometime on the 21st day of August, 2012 at about 0900 hours while I was travelling with my family from Jikwoyi Abuja to Achina, Agwuta Local Government Area of Anambra State in my private car, an Opel Senator with Registration No. HW 533 KGA, a Trailer loaded with Cement, belonging to the Defendant Company embarked on the dangerous overtaking of another Truck, and was side by side with the other Truck, thus occupying my side of the road, while coming from the opposite direction.

4. That I suddenly came into the view of Defendant's Trailer, I swerved my vehicle off the road in an attempt to avoid a head on collision with the Defendant's Trailer but the said Trailer hit my car causing very serious damage to it and fatal injury to some occupants."

The above stated testimony of the Plaintiff who testified as PW1 effectively clothed the averments in paragraphs 3 and 4 of the statement of claim.

The law is trite that he who asserts must prove same. In order to prove that the Defendant was negligent, the Plaintiff has done so in his testimony referred to above.

It is now my duty to assess the Plaintiff's evidence from the uncontroverted evidence of the Plaintiff. It is common ground that the accident occurred on 21st August, 2012. According to the Plaintiff, the accident occurred because the Driver of the Defendant's Trailer approaching from the opposite direction had lost control in the course of over taking a Truck and therefore crossed over into the Plaintiff's lane and collided with his vehicle, despite the fact that the Plaintiff tried to avoid a head on collision with the Defendant's Trailer on his own side of the road, the Defendant's Trailer still hit him. This story of the Plaintiff is in conformity with the Plaintiff's pleading. See paragraphs 3 and 4 of the statement of claim. Throughout the trial, the Defendant did not file a statement of defence or lead a single iota of evidence denying the facts as stated by the Plaintiff.

On the state of the pleading and the evidence led by the Plaintiff in this matter, I hold that the Plaintiff has established or proved that the Defendant's Driver negligently drove his Trailer on the day in question when the Defendant's vehicle left its lane for the lane of the Plaintiff and hit the Plaintiff's vehicle off the road on the Plaintiff

side of the road. The Police report, Exhibit SAA8 clearly shows that the vehicles involved in the accident impacted or hit each other at a point well within the lane of the Plaintiff's vehicle, while the Defendant's Trailer with Reg. No HW 533 KJA had completely left its lane and had almost totally blocked the road sprawling into the lane and proper route of the Plaintiff's vehicle.

On the statement of claim and evidence led in support thereof relating to the cause of the accident, I accept the Plaintiff's evidence that the accident was caused when the Defendant's Trailer left its lane and collided with the Plaintiff's vehicle. Ordinarily, under normal circumstances, a properly controlled and managed vehicle does not leave its own lane to go crashing into other vehicle or people using the highway. If that happens, something must have gone wrong or someone must have failed to exercise due care and attention in the control and management of that vehicle. On the issue of taking care, which is one of the ingredients the Plaintiff is required to establish to show that the Defendant was negligent, I must say I find it difficult to accept that someone who drove a Trailer that left its own lane to collide with another vehicle can be said to have used reasonable care in the control and management of that vehicle. It is statutorily provided in our Traffic Laws and Regulations that persons using the high way or driving vehicles on the highway must operate such vehicles in such a way that they do

not constitute a source of danger to other persons using the highway. See Section 28 of the Road Traffic Act.

In the case of **UBA Vs ACHORU (1990) 3 N.S.C.C. 357 at 365** the Supreme Court held:

"Negligence being the failure to take reasonable care, where there is a duty, is attributed to the person whose failure to take such reasonable care has resulted in damage to another."

In the light of the above findings, it must be held that the Defendant is responsible for any damage that might have been occasioned to the Plaintiff. This does not mean that I should accept the evidence presented by the Plaintiff hook line and sinker as contended by the Plaintiff's counsel in his final written address, since the Plaintiff is also claiming damages.

The Supreme Court in the case of **OKE Vs AYEDUN (1986) 2 NWLR PT. 23 548 at 565** held:

"It is a principle of pleadings, that which is not denied is deemed to have been admitted and if a Plaintiff filed a statement of claim and the Defendant failed or refuse to file a statement of defence in answer thereto, he clearly, will be deemed to have admitted the statement of claim leaving the trial Court with the

authority to peremptorily enter Judgment for the Plaintiff without hearing evidence. An exception to that would obviously be in respect of a claim for damages, for damages are always said to requiring the Plaintiff to prove them."

Also in the case of **ONYIORAH Vs ONYIORAH (2020) 15 NWLR (PT.1995) 227 at 245** the Supreme Court stated the correct position of the law thus:

"In such a case, the Plaintiff would have discharged the standard of proof required for proof of special damages. A Court would act on unchallenged evidence and award special damages except the evidence is moonshine. This is premised on the position of the law that when evidence led by the Plaintiff is unchallenged, the Plaintiff is entitled to Judgment."

See also the decision of the Supreme Court in the case of **WEST AFRICA SHIPPING AGENCY (NIG) LTD & ANOTHER Vs KALLA (1978) 3 SC 21 at 22** where it was held:

"In this case, Plaintiff's evidence in regard to the purchase of beans is uncontroverted. He paid for them and he would know what it cost him. He has that peculiar knowledge. As evidence of what he paid for

the beans is uncontroverted as it were, is sufficient proof of his claim for special damages and the learned trial Judge is perfectly justified in this award."

In applying the decision of the Supreme Court in KALLA's case **(Supra)**, I am mindful of the testimony of the Plaintiff in his evidence in chief where he testified that he paid for all the expenses he incurred as a result of the accident and was issued receipts. This fact are pleaded in the statement of claim and averred to in paragraphs 12, 13, 14, 15, 16, 17, 20 and 33 of the Plaintiff's only witness on Oath. The Plaintiff also tendered receipts, Exhibits SAA 3, SAA4, SAA9 (a), SAA10, SAA10(a) SAA10(b), SA 10(c), SAA10(d), and SAA11 to support this assertion. The defence has not suggested a contrary figure.

In the case of **OANDO (NIG) PLC Vs ADIJERE (W/A) LTD (2013) 15 NWLR PT 1377 374 at 403** the Supreme Court in a circumstance similar to this case held:

"Although the evidence of the value of the burnt down Truck is based on the ipse dixit of PW5, since the claim was not specifically denied and the defence did not suggest a contrary figure, minimal evidence is needed to sustain this head of claim... Furthermore, since the evidence of PW5 on the value of the Tanker

was not contradicted, it is valid and sufficient to satisfy the requirement of strict proof."

In awarding damages for the Plaintiff, I must bear in mind that the general principle in awarding damages is that the injured party, that is the Plaintiff herein, as far as an award of money compensation will allow, should be placed in the same position as he would have been if he had not sustained the injury. The principle is *Restitutio in integrum*.

Under items 1(a), (b), (c) and (d) of the first head of claim, the Plaintiff claims a cumulative mortuary bills of N662, 500. 00 (Six Hundred and Sixty-Two Thousand, Five Hundred Naira).

In paragraph 70 of the statement of claim, the Plaintiff pleaded that he incurred mortuary expenses/charges as a result of the accident which led to the death of his wife and daughter. Exhibits SAA1 and SAA2 shows that the Plaintiff's daughter and wife died. The Plaintiff gave particulars of these expenses in paragraph 70 of the statement of claim. Paragraphs 8 and 13 of the Plaintiff's witness statement on Oath support this averment in the statement of claim. The reason why the Plaintiff did not tender the mortuary receipts was explained in Exhibit SAA10. In the said exhibit, the Plaintiff deposed to an affidavit that he lost the said receipts. Necessary particulars were

thus given so there was no room for speculation. The Plaintiff is entitled to this head of claim, and it is accordingly granted.

The Plaintiff claims the sum of N5000. 00 for mortuary charges in Oron for 10 days at N500 daily. N10, 000. 00 for dressing of corpse and N25,000.00 for dressing clothes, all totaling N40,000.00. See paragraphs 59, 60, 67 and 70A of the Plaintiff's statement on Oath. The Plaintiff is also entitled to this sum since damages flow from the negligence of the Defendant.

The Plaintiff claims N12, 400. 00 for mortuary charges for his daughter, Katherine Abang. Am of the view that the Plaintiff is entitled to this relief since there is no dispute that the Plaintiff daughter died as a result of the accident caused by the Defendant. See Exhibit SAA2.

Under the Sub-heading "Burial programme" the Plaintiff sought for certain reliefs, the breakdown of which he gave as N100, 000.00 for printing of posters for his wife's burial. In order to prove this claim, the Plaintiff tendered Exhibit SAA10(b), which is a receipt issued to the Plaintiff in the sum of N100,000.00 for printing of posters. The Plaintiff also claims the sum of N195, 500. 00 for renting of chairs and canopies. In order to sustain this head of claim, the Plaintiff tendered in evidence Exhibit SAA10(c), which is a receipt issued to the Plaintiff in the sum of N195, 500. 00 for renting of chairs and

canopies. The Plaintiff claims for the sum of N200, 000. 00 for musical entertainment and tendered Exhibit SAA10(a) to prove this item of claim. Since there is no evidence from the Defendant rebutting this head of claim, I have no option but to award same.

The Plaintiff also sought some reliefs in paragraph 70A(iii) under the Subhead "Burial Rituals". Under this Subhead, the Plaintiff claims the sum of N120,000.00 for drinks for in-law, N64,000.00 for food for mourners and well-wishers, N50,000.00 for two she goats for in-laws and N100,000.00 for one cow. Since there is no evidence disputing the fact that the Plaintiff incurred these expenses, I have no option but to award same.

In paragraph 70A(IV) of the statement of claim, the Plaintiff claims the sum of N1,957,180. 00 being money he spent at Gwagwalada University Hospital Abuja, National Hospital Abuja, National War College Abuja and in India in treating his son and wife. Paragraphs 9, 11 and 12 of the witness statement on Oath show that the Plaintiff's wife and son were rushed to Gwagwalada Hospital Abuja for treatment immediately after the accident. Paragraph 14 of the witness statement on Oath show that when Plaintiff's son could not be treated at Gwagwalada Hospital, the Plaintiff's son was taken to National Hospital Abuja for further treatment, from there, the Plaintiff's son was referred to India. Paragraphs 15, 16, 17, 18, 19,

20, 21 and 22 of the Plaintiff's witness statement on Oath stated the treatment the Plaintiff's son went through in India. Exhibit SAA3 are receipts from University of Abuja Teaching Hospital, Gwagwalada for the treatment the Plaintiff's son received at the said Hospital. Exhibit SAA4 are receipts issued from National Hospital Abuja for the treatment the Plaintiff's son received at the said Hospital. Exhibits SAA5 and SAA5(a) are letters confirming that the Plaintiff's son received treatment at the University of Abuja Teaching Hospital Gwagwalada and National Hospital Abuja respectively. Exhibit SAA7 shows that the Plaintiff's son received treatment at Artemis Hospital India. Based on this evidence, the Plaintiff is no doubt entitled to this claim.

Under the Sub-heading "Travelling Bills" in paragraph 70V of the statement of claim, the Plaintiff claims the sum of N1,107,913.00 as money he spent on transport, as consequence of the accident caused by the Defendant. The breakdown of the said expenses was given in the statement of claim. The reason why no air ticket was tendered to support this item of claim is that the air ticket to support this item of claim is missing. See Exhibit SAA12. From the evidence contained in paragraphs 17, 18, 19, 20, 22, 42, 43, 44, 45, 51, 58, 64, 65 and 66, I have no doubt in my mind that the Plaintiff undertook the trips itemized in paragraph 70(V) of the statement of claim. Exhibit SAA

10(d) is a receipt for the sum of N320,000.00 issued to the Plaintiff for 2 chartered Buses by Akwa Ibom Transport Agency Ltd. This exhibit is proof of item 4. On the whole, I am of the opinion that the Plaintiff has proved this head of claim.

The Plaintiff claims the sum of N1, 800, 000. 00 being the cost of his damaged Opel Senator car. The Plaintiff said he bought the said vehicle at the sum of N1, 800, 000. 00 in the year 2009. The Plaintiff in order to prove this item of special damages tendered the receipt for the purchase of the car, Exhibits SAA9, SAA9(a) and Exhibit SAA10. The Defendant failed to adduce any evidence to contradict the Plaintiff's evidence on this vital piece of evidence. In the absence of anything to the contrary, I am left with only the evidence of the Plaintiff on the market value of the car. I therefore hold that the Plaintiff has proved that head of claim. I accordingly award the sum of N1, 800, 000. 00 for the total loss of the Plaintiff's car.

The Plaintiff claims the sum of N150, 000. 00 expended on Casket for the Plaintiff's wife. This is evidenced in Exhibit SAA10. The Plaintiff is also entitled to this sum since damages flow from the negligence of the Defendant.

For avoidance of doubt, the sum total of special damages awarded in favour of the Plaintiff and against the Defendant is N6, 559, 493. 00

(Six Million, Five Hundred and Fifty-Nine Thousand, Four Hundred Ninety Three Naira) only.

The Plaintiff claims for damages in the sum of N30, 000, 000.00 and N50,000,000.00 for the death of his daughter and wife respectively, as a result of the negligence of the Defendant. It should be assumed or deduced that damages for the loss of the Plaintiff's daughter and wife would be subsumed in the claim for general damages for the injury. It cannot be independently claimed.

The Plaintiff also claims for the sum of N20, 000,000.00 as exemplary damages. In awarding exemplary damages, I am enjoined by the law to take into consideration the behaviour of the Defendant in inflicting harm on the Plaintiff.

See the decision of the Supreme Court in **ELIOCHIN (NIGERIA) LTD Vs VICTOR MBADIWE (1986) 1 NWLR PT 14 47 at 65** where Obaseki JSC in his contributory Judgment held:

"The primary object of an award of damages is to compensate the Plaintiff for the harm done to him or a possible secondary object is to punish the Defendant for his conduct in inflicting that harm. Such a secondary object can be achieved by awarding, in addition to normal compensatory damages, damages which go by various names to: exemplary

damages, punitive damages, vindictive damages, even contributory damages and comes into play whenever the Defendant's conduct is sufficiently outrageous to merit punishment as where it discloses malice, fraud, cruelty, insolence, flagrant disregard of the law and the like."

See also the case of **ODIBA Vs AZEGE (1998) 7SC (PT 1) 59 at 87** where Mohammed JSC held:

"The behaviour of the Appellant falls within the first category of the cases listed by Lord Devlin in the case of Rookes Vs Barnard (1964) .C. 1129, in which exemplary damages could be awarded against oppressive, arbitrary and unconstitutional action by servants of Government."

The behaviour of the Defendant in recklessly driving its trailer on the Plaintiff's lane which led to the accident and resulted in the death of the Plaintiff's wife and daughter is outrageous. The Defendant's Driver after causing the said accident ran away without rendering any help to the accident victims. See paragraph 46 of the witness statement on Oath. The Defendant rather than settle this matter without the Plaintiff instituting this Suit, invited the Plaintiff to its head office in Lagos and its office at Abuja without any useful settlement. See paragraphs 36, 37, 38, 42, 43 and 44 of the Plaintiff's

witness statement on Oath. The failure of the Defendant to enter appearance in this matter shows the disdain which the Defendant is treating this serious matter in which two lives were lost due to the negligence of its Driver. In view of this, I will award to the Plaintiff the sum of N10, 000, 000.00 (Ten Million Naira) as exemplary damages.

No doubt the Plaintiff suffered a lot of inconvenience. Which one can I mention? Is it the death of his wife or daughter, as a result of the negligence of the Defendant which are irreplaceable. I award the sum of N15, 000, 000.00 (Fifteen Million Naira) as general damages.

Finally, I am satisfied that the Plaintiff has on the preponderance of evidence proved his case and he must be entitled to Judgment in terms of his claim, and I accordingly enter Judgment in favour of the Plaintiff in the sum of N31, 559, 493. 00 against the Defendant. And this shall be the Judgment of the Court.

The Defendant is also to pay the Plaintiff the sum of N250, 000. 00 (Two Hundred and Fifty Thousand Naira) as cost.

Signed
Hon. Justice H. B. Yusuf
(Presiding Judge)
18/12/2020

