IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 13

CASE NUMBER : SUIT NO: CV/1696/2019

DATE: : WEDNESDAY 16TH JULY, 2025

BETWEEN:

CHRISTIAN ODOH ..... CLAIMANT

AND

1. YOUNG SHALL GROW MOTORS LTD.
2. MR. EDOH (07038452396) } **DEFENDANTS**

JUDGMENT

The Claimant vides a writ of summon and statement of claim dated and filed on the 23rd April, 2019 approach this Honourable Court for the following:-

1. A Declaration of the Court that the 2nd Defendant while driving one of the 1st Defendant's bus with body number 999 in the course of his usual duties/employment as a driver under the employment of the 1st Defendant, at Shedah, along Abuja-Lokoja Highway, Kwali Area Council, Abuja-FCT on 15th December, 2018 owes the Claimant a duty of care.

2. A Declaration of the Court that the 2nd Defendant while driving one of the 1st Defendant's bus with body number 999 in the course of his usual duties/employment as a driver under the employment of the 1st Defendant, at Shedah, along Abuja-Lokoja Highway, Kwali Area Council, Abuja - FCT on 15th December, 2018 was negligent and reckless when he ran into the Claimant knocking the Claimant into the bush side and as a result of the said negligence and recklessness, the Claimant sustained and suffered serious injuries and damages.

3. A Declaration of the Court that the 2nd Defendant while driving one of the 1st Defendant's bus with body number 999 in the course of his usual duties/employment as a driver under the employment of the 1st Defendant, breached the duty of care owed to the Claimant on 15th December, 2018 when he negligently and recklessly ran into the Claimant at Shedah, along Abuja - Lokoja Highway, Kwali Area Council, Abuja-FCT knocking the Claimant into the bush side and as a result of the said breach, the Claimant sustained and suffered serious injuries and damages.

4. An Order of the Court directing the Defendants jointly and severally to pay the Claimant the sum of **N341,500.00 (Three Hundred and Forty One Thousand, Five Hundred Naira)** being the total amount of expenses incurred by the Claimant so far in his effort to treat himself of the injuries sustained as a result of the negligent and reckless act of the 2nd Defendant done in the course of his usual duties/employment as a driver under the employment of the 1st Defendant.

5. An Order of the Court directing the Defendants jointly and severally to pay the Claimant the sum of **N10,000,000.00**

(Ten Million Naira) as general damage on the footing of inconveniences, loss of earnings, frustration, mental torture, injuries, damage and hardship suffered by the Claimant as a result of the negligent and reckless act of the 2nd Defendant done in the course of his usual duties/employment as a driver under the employment of the 1st Defendant.

6. An Order of the Court directing the Defendants jointly and severally to pay the Claimant the sum of **N250,000.00 (Two Hundred and Fifty Thousand Naira)** as cost of this action.

7. An Order of the Court directing the Defendants jointly and severally to pay the Claimant 10% interest on the entire judgment sum monthly from the date of judgment till final liquidation of the judgment debt.

Upon service of the writ on the Defendants and after pleadings were exchanged, the suit was set down for hearing.

The case of the Claimant as distilled from the statement of claim is that, the 2nd Defendant is a driver under the employment of the 1st Defendant, driving one of the 1st Defendant's Buses with body Number 999 at the 1st Defendant's Mararaba Bus Terminal,

Mararaba, Karu, Nasarawa State, outside the jurisdiction of this Honourable Court.

The Claimant avers that the facts leading to this suit began on 15th December, 2018 when he visited his fiancé, one Miracle Edmund at her family House located at Shedah, Kwali Area Council Abuja-FCT, on his way back, while trying to board a cab from Shedah to Gwagwalada, along Abuja Lokoja Highway, a bus belonging to the 1st Defendant with body number 999 skidded off the High way and ran into the Claimant and on that fateful day he was together with his fiancé, Miracle Edmund who witnessed all that transpired.

The Claimant avers that the said bus knocked him into the bush side and as a result of which he lost consciousness and sustained serious injuries of broken hand (hand fracture) and severe bruise all aver his body.

The Claimant further avers that on that fateful day, it was actually two buses belonging to the 1st Defendant following each other, heading towards Gwagwalada and while the one with body number 999, driven by the 2nd Defendant skidded off the high way and ran into the Claimant knocking him into the bush side,

the other bus with body number 1011 quickly stopped to render assistance.

That the driver to Bus number 1011 identified himself as Ebuka with mobile number 08134358101.

The Claimant states that when the incident occurred, his fiancé approached the 2nd Defendant to know the way forward given the fact that the Claimant has lost consciousness and was lying lifeless, but the 2nd Defendant could not give her attention. However, the 2nd Defendant pleaded with Ebuka to assist and take the Claimant to the Hospital.

The Claimant states further that with the assistance of Ebuka, the Claimant was rushed to the Casualty Department of Kwali General Hospital but the Hospital could not attend to the condition of the Claimant due to the gravity of injuries sustained and the fact that the Claimant was still unconscious. As a result of which, the Hospital referred the Claimant to University of Abuja Teaching Hospital.

That upon being referred to University of Abuja Teaching Hospital, his fiancé with the assistance of Ebuka arranged a taxi which conveyed the Claimant to University of Abuja Teaching Hospital. However, before departing the Kwali General Hospital, Ebuka told

the Claimant's fiancé that he will not join them to University of Abuja Teaching Hospital as the passengers he was conveying to Abuja has started complaining.

The Claimant avers that Ebuka however gave some phone numbers to the Claimant's fiancé and advised her to call when they get University of Abuja Teaching Hospital. Ebuka also promised to report the situation at the 1st Defendant's bus Terminal at Wuse Zone 5 on his arrival.

That the Particulars of the phone numbers Ebuka gave to his fiancé are 08034066992, 08137099088, 08023873559 which Ebuka said respectively belongs to the Managers of the 1st Defendant. Others are 08134358101 which belongs to Ebuka and 07038452396 which belongs to the 2nd Defendant.

That on getting to the University of Abuja Teaching Hospital, the Hospital recommended three different tests to be conducted on the Claimant and payment of an initial deposit of **N180,000.00 (One Hundred and Eighty Thousand Naira)** but same could not be executed due to lack of finance.

The Claimant avers that at this point, his fiancé began to put up calls to the respective phone numbers given to her by Ebuka but

all proved abortive as none of the holders of the respective phone numbers could pick up nor even return her calls.

The Claimant avers that at about 5am, the following day being the 16th December, 2018, he regained his consciousness and discovered himself lying on the Hospital bed with severe pains and bruises all over his body. Subsequently, two Doctors came to check him and recommended that X-Ray be conducted on him.

The Claimant further avers that he had to borrow the sum of **N20, 000.00 (Twenty Thousand Naira)** from a friend, one Isaiah Okparaibea which he used to pay for the X-Ray and also settled other preliminary first aid treatments earlier carried out on him before he regained consciousness.

That the X-Ray was conducted and the result showed that the Claimant sustained complete borne fracture by his left hand. The Claimant was further referred to the orthopedic ward for treatment. However, the Hospital could not carry on further treatment because of the Claimant's inability to pay the initial deposit **of N180,000.00 (One Hundred and Eighty Thousand Naira)** earlier demanded by the Hospital.

That the following persons called from the office of the Defendant through the phone of the Claimant's fiancé viz Austin

(08023873559), Olisa (0815709988) Obianika (08034666992) and Ebuka (08134358101).

That the first three (3) persons Austin, Olisa and Obianika introduced themselves as managers of the 1st Defendant, while the 4th person Ebuka, re-introduced himself as a driver of the Defendant.

That these individuals Austin, Olis Obianika and Ebuka only called to find out the condition of the Claimant and immediately they confirmed that the Claimant has regained consciousness and that the Hospital is demanding an initial deposit of **N180,000.00 (One Hundred and Eighty Thousand Naira)** to commence treatment on the Claimant, these individuals began to avoid further calls from the Claimant.

The Claimant avers that all effort to reach the 2nd Defendant through his phone number (07038452396) proved abortive, and when the Claimant could not raise the said initial deposit, the Hospital was left with no option but to discharge the Claimant without further treatment.

The Claimant avers further that upon being discharged, he was taken to one Divine Favour Traditional Fracture/Dislocation Treatment Home, a local orthopedic clinic located at Gwagwalada,

where the Claimant began to receive treatment at a lesser initial deposit/consultation fee of **N30,000.00 (Thirty Thousand Naira)** which sum the Claimant borrowed from his friend, Isaiah Okparaibea.

That the total bill charged for his treatment at the said local orthopedic clinic is **N450,000.00 (Four Hundred and Fifty Thousand Naira)** out of which the Claimant has been able to borrow money from his friends and well-wishers to make part payment of **N250,000.00 (Two Hundred and Fifty Thousand Naira)** leaving the balance of **N200,000.00 (Two Hundred Thousand Naira)** unpaid till date.

That apart from the expenses averred, he made other expenses, which includes, buying of Bandages, Shea Butter, Red Oil, Wooden Protector, Fire Wood and Traditional Herbs. All of which cost about **N41,500.00 (Forty-One Thousand Five Hundred Naira).**

The Claimant further states the breakdown of particulars of expenses he has incurred to treat himself and were boldly stated in paragraph 28 of the Claimant's Statement of Claim.

The Claimant avers that as a businessman engaged in laundry service, the negligent act of the 2nd Defendant in the course of his

employment that fateful day has since kept the Claimant away from business which is the Claimant's only source of income and means of survival and this has caused the Claimant serious hardship and mental torture.

That he suffered all the injuries and expenses averred above as a result of the negligent and reckless driving of the 2nd Defendant acting in the course of his usual duty/employment under the employment of the 1st Defendant.

That when it became obvious that he has been abandoned by the Defendants, he engaged the services of the Law Firm of Magen Attorneys who wrote a demand letter to the 1st Defendant giving it seven (7) days within which to take steps to visit the Claimant and settle all Medical/Treatment Bills incurred by the Claimant.

That having waited without hearing from the Defendants, he decided to approach this Court for Justice.

PW1 tendered the following and admitted in evidence;

1. Two Hospital Card
2. Two cash receipts
3. Referral form

4. Payment receipts

5. Three tests sheets

6. X-ray film Board

7. Two cash receipts

8. Report (medical)

9. Acknowledgment of a Demand Letter

10. Two slips of Royal Express Mail11.

11. Picture photography with certificate of compliance

PW1 was cross-examined and subsequently discharged.

On their part, 1st and 2nd Defendants jointly filed their Statement of Defence. The case of the Defendants as testified by DW1 (Ebuka Ezeadikwa) is that he was at the scene of the accident and he saw how it occurred as he was following his colleague driving the 1st Defendant's bus involved in the accident closely behind, with his own bus filled with passengers and heading in the same direction with the 2nd Defendant.

The Defendants deny paragraphs 4, 30 & 31 of the Claim and every other paragraph wherein negligence and recklessness were

alleged or inferred and say instead that the accident occurred as a result of the Claimant's inexplicable and illegal attempt to cross a dual carriage High Way in a reckless manner.

Further to Paragraph above, the Defendants say that the Claimant stepped onto the road in apparent attempt to cross the dual carriage High Way on the fateful day, then inexplicably hesitated, moving back and forth, then suddenly began to backtrack, at which time the 2nd Defendant was already a few meters away from the Claimant whose indecision/vacillation precipitated a spur of the moment decision by the 2nd Defendant to instinctively swerve his vehicle in order to avoid hitting the Claimant, but instead collided with him as he was moving backwards.

The Defendants deny the allegation in Paragraph 6 of the Claim that the 2nd Defendant's bus skidded off the High Way and ran into the Claimant and maintain that the 2nd Defendant spontaneously swerved the vehicle upon sighting the Claimant on the High Way attempting to cross same to avoid knocking him down but ended up colliding with him.

The Defendants avers that there was no Zebra Crossing on the particular spot where the Claimant attempted to cross the High Way on the fateful day.

That with reference to Paragraphs 10, 11, 12 & 13 of the Claim, the Defendants avers that the 2nd Defendant as well as Mr. Ebuka, with a bus full load of passengers, was obliged to stop and assist in conveying the Claimant to the General Hospital at Kwali and upon arrival at the Hospital, the Claimant was immediately given pain-relief injections and intravenous fluids (drip) amounting to **N8,000.00 (Eight Thousand Naira only)** which Ebuka paid for and thereafter the Claimant was referred to the University of Abuja Teaching Hospital for further treatment and again Ebuka paid **N2,000.00 (Two Thousand Naira only)** for a taxi to carry the Claimant to the Teaching Hospital, before continuing his journey with his passengers.

That the help/assistance rendered or offered by both 2nd Defendant and Ebuka to the Claimant especially in paying for the Claimant's first aid treatment and taxi fare was purely on sympathy and compassionate grounds, which any other person could have done in the circumstances, and not an admission of the Defendants' liability whatsoever.

The Defendants specifically deny Paragraphs 14, 15 & 17 and say that Ebuka never volunteered the 1st Defendant's Managers' phone number(s) to Claimant or to the lady who accompanied the Claimant to the Hospital as alleged or at all. Instead the Claimant or the lady in question obviously got the number(s) from the body of one of the 1st Defendant's buses where they are always inscribed.

That Ebuka only gave his phone number to the lady who accompanied the Claimant to the Hospital at the lady's request, and thereupon the lady expressed her gratitude to Ebuka for his assistance to the Claimant and promised to call Ebuka later, and that the lady also requested for and collected the 2nd Defendant's number at the accident scene before the Claimant was taken to the Hospital.

That in response to Paragraphs 32 & 33 of the Claim, the 1st Defendant says that it was rather shocked by the letter as it was not the cause of the Claimant's accident and thus did not bother to reply same.

The Defendants specifically deny Paragraph 35 (1), (2), (3), (4), (5), & (6) of the Claim and say that the Claimant is not entitled to any of reliefs sought therein.

Save and excerpt as hereinbefore expressly admitted, the Defendants deny each and every allegation of fact contained in the claim as though same were herein set out and traversed seriatim.

Wherefore the Defendants say that the Claimant's claim is unfounded and frivolous and should be dismissed with substantial cost to the Defendants.

Parties closed their respective cases to pave way for filing and adoption of final written addresses.

Learned counsel for the 1st and 2nd Defendants filed their final written address wherein four issues were raised for determination to wit:

1. ***Whether the Claimant has made out a case for the Court to grant the declaratory reliefs he is claiming in this Suit?***

2. ***Whether the Claimant can claim in negligence without giving particulars of the negligence he is alleging.***

3. ***Whether the Claimant can rely on a document he prepared in anticipation of a law Suit in proof of his case.***

4. ***Whether the Defendant is entitled to any of his claims in this Suit.***

On issue one, ***Whether the Claimant has made out a case for the Court to grant the declaratory reliefs he is claiming in this Suit?***

It is the argument of the learned counsel, that the Claimant in his statement of claim alleged that the Court should make some declarations in his favour and the onus of proving his entitlement to those claims' rests with him. He cited Section 131 of the Evidence Act 2011.

Learned counsel submits, that the person who makes allegations in a pleading is by the ordinary rules of pleading, bound to produce evidence to substantiate them as part of his case and it is not sufficient for him to rely upon the emergence of evidence from allegation in his own pleading. The burden of proof is on the party who takes another to Court seeking a relief or a right to prove his claim. ***UTC (NIG.) PLC. VS. DANIEL PHILLIPS***

(2012) 6, NWLR (Pt. 1295) 136, 169, Paragraphs A-D was cited.

Learned counsel therefore maintains that the Claimant has not discharge the burden of proof on him to ask for any relief from this Court.

Learned counsel further submits, that the Supreme Court held that "a declaratory relief is only granted in consequence of a finding of fact made by the Court in the absence of sufficient evidence to make the finding of the fact that must precede its grant of the relief; the Court would not exercise its discretion to grant the relief. Similarly, in an action in which declaratory reliefs are sought, admission on the part of a Defendant will not, by itself and independent of the case made out by the Claimant, entitle the latter to judgment. Being a discretionary remedy, it is granted only where the Court is satisfied that from his statement of claim and the evidence adduced in support, the Claimant has a very strong and cogent case. The Claimant must, therefore, satisfy the Court that on his own, he is fully entitled to the grant of the reliefs. He succeeds wholly on the strength of his case and not on the weakness of the case proffered in defense to his claim.

He cited the case of ***ETIM VS. AKPAN (2019) 1 NWLR (Pt. 1654) 451, 467 paragraphs BD.***

On issue Two, ***Whether the Claimant can claim in negligence without giving particulars of the negligence he is alleging.***

It is the submission of the learned counsel, that a Plaintiff in an action in negligence, is required to state or give particulars of the negligence pleaded in those particulars. It is not sufficient for a Plaintiff to make a blanket allegation of negligence against a Defendant in a claim of negligence without giving full particulars of the items of negligence relied on as well as the duty of care owed him by the Defendant. He cited ***DIAMOND BANK LTD. VS. PARTNERSHIP INVESTMENT CO. LTD. (2009) 18, NWLR (Pt. 1172) 67, 103, Paragraphs D-E.***

Learned counsel submits, that hearsay evidence is not admissible. Where a witness in his evidence narrates what he was told, the evidence is hearsay evidence. Such evidence has no probative value under cross-examination. ***ONOVO VS. MBA (2014) 14, NWLR (Pt. 1427) 319, 417, Paragraphs C-E was cited.***

The Claimant stated that all he said to the Court in his witness statement on Oath is what he was told by his fiancée who did not

come to Court to state what she saw. The Court is therefore urge not to admit the evidence of the PW1 in this Suit as it goes to no issue and is inadmissible under Section ***38 of the Evidence Act 2011.***

Learned counsel further maintains, that the Claimant has not discharge the burden of proof on him to ask for any relief from this Court.

On issue Three, ***Whether the Claimant can rely on a document he prepared in anticipation of a law Suit in proof of his case.***

It is the argument of the learned counsel, that Claimant under cross-examination stated that he made Exhibit "K", while preparing to institute this action. This is an admission against interest because by virtue of Section. 83(3) of the Evidence Act 2011, a document prepared to assist a party at a time when there is an anticipation of likely litigation over a dispute has no value. ***OTTI VS. EFCC (2020) 4, NWLR (Pt. 1743) 48, 100, Paragraphs A-C was cited.***

Learned counsel further argued, that the Exhibit which the Claimant wants to use to prove the amount of money he spent in treating himself gives an insight into the inner workings of his

mind which is intended to hoodwink the Court and extort money from the Defendants. The Court is urge to refuse this subterfuge.

Learned counsel urge the Court not to give any probative value to Exhibit K and resolve this issue in favour of the Defendant.

On issue Four, ***Whether the Claimant has proved his entitlement to any of his claims in this Suit.***

It is the contention of the learned counsel, that Claimant has not given any shred of evidence in proving his entitlement to his claims. It is clearly stated that the position of the law to the effect that the burden of proving a claim rests squarely with the Claimant. The Court's attention was to the case of ***UTC (NIG.) PLC. VS. DANIEL PHILLIPS*** (***Supra***) to that effect.

Learned counsel further contends, that the Claimant did not prove that the Defendants were negligent in any way the DW1 stated that two (2) people were crossing the road; one completely crossed the road while the other one who is the Claimant ran back and collided with the bus. This piece of evidence was not contradicted through cross-examination or by providing alternative Facts. The Court is called upon to rely on this piece of evidence and dismiss the claim of the Claimant.

In conclusion, learned counsel submits that the Claimant has been unable to prove any of the legs of his claims and cannot be assisted by the Court in any way as the Court is an impartial arbiter in the matter. It was held by the Supreme Court in the case of ***AYORINDE VS. KUFORIJI (SUPRA)*** that ***"it is not for the Court to provide explanation for inconsistencies in a party's case. That burden falls squarely on the party who will fail without explanation in the circumstances".***

The Court is urge to dismiss this Suit with substantial cost as same is frivolous and lacking in merit.

On their part, learned counsel for the Claimant filed their final written address wherein two issues were formulated for determination to wit:-

1. ***Whether the Claimant's case before this Honourable Court is not that of Res Ipsa Loquitur for which the Court can safely infer negligence on the part of the Defendants in this suit.***

2. ***If issue one (1) above is resolved in the affirmative, whether the Claimant is not entitled to all the reliefs sought in this suit based on the principle of Ubi Jus Ibi Remedium.***

On issue One, ***Whether the Claimant's case before this Honourable Court is not that of Res Ipsa Loquitur for which the Court can safely infer negligence on the part of the Defendants in this suit.***

It is the contention of the learned counsel, that the case as presented before this Honourable Court is nothing more than one established by the application of the doctrine of Res Ipsa Loquitur. By relying on the application of the doctrine of Res Ipsa Loquitur, the facts and circumstances, as well as documentary evidence presented before this Honourable Court upon which the Claimant alleges negligence on the part of the Defendants are clear and speak for themselves. He cited the case of ***ROYAL ADE VS. NOCM (2004) 8 NWLR (Pt. 874) Page 206.***

Learned counsel argued that for the doctrine of res ipsa Loquitur to apply, three conditions must exist viz;

a. There must be an absence of explanation of the occurrence by the Claimant.

b. The thing that caused the injury/harm must have been (or must be) under the management or control of the Defendant or his servant.

c. The accident or harm must be one which in the ordinary course of things, does not happen without negligence on the part of the Defendant.

The case of ***CHUDI VERDICAL CO. LTD. VS. IFESINACHI INDUSTRIES NIGERIA LTD & ANOTHER (2020) All FWLR (Pt. 1048) Page. 233 (SC) was cited.***

It is the contention of the learned counsel with respect to condition (a) above, which is an absence of explanation of the occurrence by the Claimant, counsel refer this Court to the Claimant's Witness Statement on Oath adopted as his testimonies before this Court, the Claimant could not sufficiently explain what transpired when the accident occurred. He was only able to narrate in Paragraphs 6, 7 and 8 thereof that he was trying to board a cab to Gwagwalada that fateful day when the 2nd Defendant ran into him, and that was all he could remember until about 5:00am the following day when he regained consciousness and found himself lying on the hospital bed at the University of Abuja Teaching Hospital with pains and several injuries all over his body as well as a broken hand. Even under cross examination, the Claimant repeated that it was his fiancé that told him all that transpired upon the occurrence of the accident because he was

unconscious and could not tell the particular vehicle that hit him. That on that fateful day, he was standing with his fiancé who suddenly started running, and that was all he could remember.

Learned counsel further contends with respect to condition (b) above, which requires that the thing that caused the accident must be under the control or management of the defendant. Counsel refers the Court to Paragraphs 3, 5 and 9 of the Statement of Claim which were clearly admitted by the Defendants under paragraphs 3, 6 and 8 of their Statement of Defence, that there was no dispute as to the fact that the thing that caused the harm/accident (which in the instant case was the 1st Defendant's vehicle driven by the 2nd Defendant) was under the management or control of the Defendants (in this case the 2nd Defendant) at the time of the accident.

Learned counsel submits that the trite position of the law in the circumstance is that facts admitted in pleadings need no further proof and parties are bound by their pleadings. ***JOLASUN VS. BAMGBOYE (2011) 16 WRN 1 at Page 6 Ratio 5;***

ABUBAKAR VS. JOSEPH (2008) 6 SCNJ 226 were cited.

Learned counsel contends further as regards condition (c) above, that the accident/harm must be one which in the ordinary course

of thing, does not happen without negligence on the part of the defendant, it is the learned counsel's view that what the law seeks to establish here is that the accident/harm or injury must be one that does not ordinarily happen if proper care was taken by the defendant. In other words, in the instant case, the accident could not have occurred if the 2nd Defendant was careful or had taken proper care to avoid running into the Claimant. The case of ***IBEKANDU VS. IKE (1992) 6 NWLR (Pt. 299) Page 287 was cited***.

It is the learned counsel's submission, that the above instances identified by the Courts are materially the same with the facts and circumstances in the instant case where the Claimant herein accounted that the 2nd Defendant skidded off the highway and ran into him. Even the Defendants pleaded in paragraph 6 of their Statement of Defence which was established in paragraph 9 of Defendants' Witness Statement on Oath that the 2nd Defendant spontaneously swerved the vehicle upon sighting the Claimant on the high way attempting to cross same to avoid knocking him down but ended up colliding with him.

In the light of the above circumstances, learned counsel submits that the Claimant has satisfied all the three (3) conditions for a

successful application of the doctrine of Res Ipsa Loquitur and the Court is urge to so hold and resolve issue one (1) in the affirmative.

On issue Two, ***If issue one (1) above is resolved in the affirmative, whether the Claimant is not entitled to all the reliefs sought in this suit based on the principle of Ubi Jus Ibi Remedium.***

Arguing on the above, learned counsel answered this issue two in the affirmative by reasons of:

i. The Defendant is under a duty to the Plaintiff.

ii. That there was a breach of that duty.

iii. That the Plaintiff suffered legal injury and that.

iv. The injury was not too remote. ***BELLO & 13 ORS. VS. A.G. OYO STATE (1986) 5 NWLR (Pt. 45) Page 890 was cited.***

Learned counsel contends, that the effect of a finding that the case of the Claimant is established on the principle of Res Ipsa loquitur simply implies firstly; that prima facie case of negligence has been made out against the Defendants, and secondly, that

the burden of proof has been shifted to the Defendants to disprove negligence by credible evidence. Learned counsel submits that the implication of a prima facie case of negligence being made out against the Defendants is that it is established that:

a. That the Defendants owed a duty of care to the Claimant;

b. That the Defendants has breached the duty of care owed to the Claimant, and

c. That the Claimant has suffered damages as a result of the breach.

The question now begging for answer is whether the Defendants in their defence before this Honourable Court were able to discharge the burden of disproving negligence on the part of the 2nd Defendant in the circumstances of the accident. Counsel answered this question in the negative.

It is the submission of the learned counsel, that an accident does not ordinarily occur (in the act of driving) without some sort of negligence on the part of the driver who is in control of the vehicle involved in the accident. Therefore, for the driver to be excused from liability, he must prove the absence of negligence.

In other words, in the instance case, the Defendants must prove that the driver being the 2nd Defendant took proper care to avoid colliding (according to them) with the Claimant. He cited ***ODEBUNMI & ANOR. VS. ABDULLAHI (1997) LPELR - 2201 (SC).***

Learned counsel argued that the 2nd Defendant in question, who was directly involved in the accident was not even called as a witness to explain or to show how much care he took and/or what other measure he employed which eventually resulted to the so called collision with the Claimant.

It is learned counsel's submission, that the testimonies of DW1 who was driving behind the 2nd Defendant on that fateful day attempting to explain and/or narrate the purported efforts made by the 2nd Defendant to avoid the running into the Claimant before the so called collision with the Claimant is not credible and cogent enough to prove absence of negligence on the part of the Defendants.

Learned counsel submits, that in the absence of a direct evidence of the 2nd Defendant, who was in direct control and management of the vehicle and was directly involved in the accident to disprove negligence, any explanation from any other person,

including that of DW1, will only amount to speculation and Courts do not deal with, and/or rely on speculative evidence. He cited the case of ***IBN LTD VS. A.G RIVERS STATE (2008) All FWLR (Pt. 417) Page 1.***

Flowing from the above circumstances, learned counsel submits that a prima facie case of negligence having been made out against the Defendants and the Defendants having failed to disprove negligence by credible evidence, the Claimant is naturally entitled to all the reliefs sought in this suit based on the principle of Ubi Jus Ibi Remedium. This more so, when the Claimant has shown with material documentary evidence, the several injuries, both physically and otherwise, he suffered as a result of the negligence of the Defendants.

In the light of the above position, learned counsel urge the Court to also resolve issue two (2) in the affirmative.

In conclusion, the Court is urge to grant all the reliefs sought by the Claimant in this suit.

In turn, learned counsel for the Defendants filed Reply on Points of Law to the Claimant's final Written Address.

Learned counsel contends that the crux of the Claimant's case is that the principle of Res Ipsa Loquitor applies to his case is not necessary. ***NGILARI VS. MOTHERCAT LTD. (1999) 13 NWLR 626 was cited.***

It is also inapplicable where there is direct evidence of the cause of the injury, and where there is no exclusive control of the environment by the Defendant. ***ELIAS VS. ETTU (1955) WACA 20 was cited.***

Learned counsel submits that the doctrine is not necessary where injury could have occurred without negligence and also where Plaintiff contributed to the harm. He cited ***OLATUNBOSUN VS. STATE (2013) LPELR-21386 (CA).***

Learned counsel argued that in the instant case, the Plaintiff did not plead Res Ipsa Loquitor in his Statement of Claim and cannot rely on it at this 11th hour.

That DW1 gave evidence as to how PW1 ran back on seeing the bus coming while his fiancée ran across the road without being hurt. This piece of evidence was not challenged by PW1. The Claimant did not contradict the evidence either by way of cross-examination or tendering contrary evidence.

Learned counsel submits, that it is trite law that evidence that is not contradicted is deemed admitted by the party who ought to contradict same.

Learned counsel urge the Court to dismiss the case of the Claimant for lacking in merit and that the doctrine of Res Ipsa Loquitor is not applicable to this case.

COURT:-

I have gone through the respective cases of the parties before me; I shall be brief but succinctly in considering the issues before me for the interest of justice and posterity.

To resolve the legal conundrum in this matter, the issues raised for determination by Claimant's counsel which to my mind seem to have covered all the issues formulated by the learned counsel for the Defendants, have been adopted by the Court as its issues for determination.

The issues are;

1. ***Whether the Claimant's case before this Honourable Court is not that of Res Ipsa Loquitur for which the Court can safely infer negligence on the part of the Defendants in this suit.***

2. ***<u>If issue one (1) above is resolved in the affirmative, whether the Claimant is not entitled to all the reliefs sought in this suit based on the principle of Ubi Jus Ibi Remedium.</u>***

"Negligence has been defined in Oxford Advanced Learner's Dictionary 5th Edition as "lack of proper care and attention, careless behavior."

Above definition was contained in the judgment delivered by Supreme Court in ***U.T.B. NIGERIA VS. OZOEMENA (2007) 1 SC (Pt. 11).***

By way of prefatory remarks, aimed at appreciating the purport and attributes of negligence, negligence generally in law connotes an omission or failure to do something which a reasonable man, under some circumstance, would do or doing something which a reasonable and prudent would not do.

Negligence is a question of fact, not law, so that each case has to be decided/viewed from its peculiar facts.

The locus classics case here is that of ***MALISTER (OR DONOGHUE) (PAMPER) VS. STEVENSON (1932) AC 562*** where the erstwhile House of Lords invented three ingredients of

negligence which a Plaintiff must prove, to include duty of care, breach of the duty of care and the resultant injuring or damage.

It must be born in mind that the Claimant's relief 1, 2 and 3 are declaratory in nature thereby predicating the success of reliefs 3, 4, 5 and 6 on their success.

A party who seeks judgment in his favour is required by law to produce evidence to support his pleadings.

It is an established position of law that in cases where declaratory reliefs are claimed as in the present case, the Plaintiff must satisfy the court by cogent and reliable proof of evidence in support of his claim ***AGBAJE VS. FASHOLA & ORS. (2008) 6 NWLR (Pt. 1082).***

Indeed judicial pronouncement is ad-idem that declaratory reliefs are never granted base on admission or on default of filing Defence.

Where the court is called upon to make a declaration of a right, it is incumbent on the party claiming to be entitled to the said declaration to satisfy the court by evidence and not the admission in pleading. ***SAMESI VS. IGBE & ORS. (2011) LPELR 4412.***

The court has a duty to satisfy itself that the Claimant's evidence upon assessment is credible and sufficient to sustain the claim.

To arrive at justice in this case, it is pertinent to state here that the kernel of the Claimant's case is predicated on negligence and the 2nd Defendant's breach of duty of care which he owes the Claimant.

For a Claimant to succeed in his claim for negligence, he must establish the following essential elements:-

1. That the Defendant owed the Claimant a duty of care in respect of the subject matter.
2. That the Defendant breaches that duty.
3. That the breach resulted in or caused the injury suffered by the Claimant.
4. That the Claimant suffered monetary losses.

BRAWAL SHIPPING NIG. LTD. VS. OMETRACO INTERNATIONAL LTD. (2011) LPELR 9258 (CA).

Having established the four elements of negligence above, I shall beam my search light on the evidence before the court to

ascertain whether the Defendants owes the Claimant a duty of care.

The issue of duty of care is synonymous with a claim in negligence. It is one of the constituent elements to be established in a case predicated on negligence. ***UBA PLC. VS. COMRIADE CYCLE LTD. & ANOR (2013) LPELR (20737) CA.***

What amounts to a duty of care and when it can be presumed can never be exhausted. It can be remote or proximate. It depends on the circumstance of the case but it must always be reasonably inferred. In some cases, the court have even held that a Defendant may still owe a duty of care to the Plaintiff even when there is no direct relationship or contract between them. ***AGBONMAGBE BANK NIG. LTD. VS. C.FA.O (1966) ANLR SC 130.***

In the instant case therefore, it is the case of the Claimant that on the 15th December, 2018, he visited his fiancé at her family house located at Shedah, Kwali Area Council, Abuja FCT, on his way back while trying to board a car from Shedah to Gwagwalada, along Abuja –Lokoja Highway, the 2nd Defendant, driving one of the 1st Defendant's Buses with body number 999 under the employment of the 1st Defendant skidded off the high way and

ran into the Claimant. The said bus knocked Claimant into the bush side and as a result of which he lost consciousness and sustained serious injuries of broken hand (hand fracture) and severe bruise all over his body.

It is the case of the Claimant that the 2nd Defendant pleaded with one Ebuka, i.e the driver to bus 1011 to assist and take the Claimant to the Hospital. The Claimant was then rushed to Kwali general Hospital and that the Hospital could not attend to Claimant due to gravity of the injuries he sustained. They then referred the Claimant to University of Abuja Teaching Hospital.

Claimant further deposed that the Hospital is demanding an initial deposit of **N180,000 (One Hundred and Eighty Thousand Naira)** to commence treatment on the Claimant. Three persons by names Austin, Olisa and Obianika introduced themselves as managers of the 1st Defendant, called to find out the condition of the Claimant and when they confirmed that he regained consciousness but the Hospital is demanding **N180,000.00** as initial deposit, these individuals began to avoid calls from the Claimant. The Hospital was left with no option but to discharge the Claimant without further treatment.

It is further the case of the Claimant that he was taken to Divine Favour Traditional Fracture/Dislocation Treatment Home, a local Orthopedic Clinic located at Gwagwalada whereby **N450,000 (Four Hundred and Fifty Thousand Naira)** was charged for his treatment out of which the Claimant has been able to borrow money from his friends to make part payment of **N250,000.00** leaving the balance of **N200,000.00** unpaid till date.

It is further the case of the Claimant that apart from the expenses above, he made other expenses all of which cost about **N41,500.00 (Forty One Thousand Five Hundred Thousand Five Hundred Naira)** and that the break-down of the above expenses except the X-ray Preliminary Treatment are contained in a report titled "To whom it may concerns" issued to the Claimant by the said Divine Favour Traditional Fracture/Dislocation Treatment Home dated the 4th April, 2019.

Testifying further, Claimant avers that being a business man engaged in laundry services, the negligent act of the 2nd Defendant in the course of his employment with the 1st Defendant that fateful day has since kept him away from business which is his source of income and means of survival and this has caused him serious hardship and mental torture.

On their part, Defendants however denied every other paragraph wherein negligence and recklessness were alleged or inferred and say instead that the accident occurred as a result of the Claimant's inexplicable and illegal attempt to cross a dual High way in a reckless manner.

That 2nd Defendant as well as Mr. Ebuka, with a bus full load of passengers, was obliged to stop and assist in conveying the Claimant to the General Hospital at Kwali and upon arrival at the Hospital, the Claimant was immediately given pain-relief injections and intravenous fluids (drip) amounting to Eight Thousand Naira only **N8,000.00** which Ebuka paid for and thereafter the Claimant was referred to the University of Abuja Teaching Hospital for further treatment and again Ebuka paid Two Thousand Naira only **N2,000.00** for a taxi to carry the Claimant to the Teaching Hospital, before continuing his journey with his passengers.

It is the case of the Defendant that Ebuka (2nd Defendant) never volunteered the 1st Defendant's Managers' phone number(s) to Claimant or to the lady who accompanied the Claimant to the Hospital as alleged at all, instead the Claimant or the lady in question obviously got the number(s) from the body of one of the

1st Defendant's buses where they are always inscribed and that Ebuka only gave his phone number to the lady who accompanied the Claimant to the Hospital at the lady's request.

It is further the case of the Defendant that it was rather shocked by the letter as it was not the cause of the Claimant's accident and thus did not bother to reply same.

The Claimant in proof of this allegation tendered various documents in evidence.

Indeed, a document tendered in court is the best proof of the contents of such document and no oral evidence will be allowed to discredit or contradict the content thereof except in case where fraud is pleaded. ***DODO VS. SOLANKE (2007) ALL FWLR (Pt. 346) 576 at 596 (CA).***

On whether the 2nd Defendant breached the duty of care, in establishing this essentials element of negligence, the Claimant stated in paragraph 8, 12 and 20 of his statement of claim as thus:

Paragraph 8 "***The Claimant avers that the said bus knocked him into the bush side and as a result of which he lost***

consciousness and sustained serious injuries of broken hand (hand fracture) and severe bruise all over his body."

Paragraph 12

"***The Claimant avers that with the assistance of Ebuka, the Claimant was rushed to the casualty Department of Kwali General Hospital but the Hospital could not attend to the condition of the Claimant due to the gravity of injuries sustained and the fact that the Claimant was still unconscious. As a result of which, the Hospital referred the Claimant to University of Abuja Teaching Hospital.***

Paragraph 20

The Claimant avers that the X-Ray was conducted and the result showed that the Claimant sustained complete bone fracture by his left hand. The Claimant was further referred to the orthopedic ward for treatment. However, the Hospital could not carry on further treatment because of the Claimant's inability to pay the initial deposit of N180, 000.00 (One Hundred and Eighty Thousand Naira) earlier demanded by the Hospital.

Claimant tendered various documents in evidence during trial to establish that there was indeed a breach of duty of care.

Exhibit "6" is an X-ray Film Board dated the 16th day of December, 2016.

The Claimant tendered Exhibit "K" i.e 5 pictures photographs which provide visual documentation of the bodily injuries he sustained.

These obvious facts were not controverted by the Defendants.

It is the law that for an action in Negligent to succeed, the Claimant must be able to link the breach of duty of care, which occasioned the injury to the Defendant. Where there is a failure to establish a connection, an action in negligent will not lie, for negligent is a matter of facts and not law. ***OKWEJIMONOR VS. GBAKEJI (2008) 5 NWLR (Pt. 1079) page 172.***

In establishing the above position of the law, Claimant tendered Exhibits "A", "F" and "K".

Exhibit "A" is a Hospital Cards of the Claimant from University of Abuja Teaching Hospital.

Exhibit "F" is an X-ray Film Board from University of Abuja Teaching Hospitals.

Exhibit "K" is a series of pictures photographs of the Claimant depicting visual documentation of the bodily injuries sustained.

The contents of the above documents were not denied or challenged by the Defendants but only contended Exhibit K is made in anticipation of a law suit.

I make bold to say that it is the standard practice and protocol of our healthcare facility that any service, treatment or procedure requiring payment by the patient, a corresponding document, receipt or report shall be generated, maintained and provided to the patient.

It is settled law that he who asserts a fact, must lead evidence to establish same else such a fact alleged shall remain un-established.

Simplicita, the onus of proof in civil matters rests on the party who asserts.

See ***OSAKWE VS. UBN PLC. (2009) LPELR – 8205 (CA).***

In the circumstance, what is captured and depicted by those picture photographs could only have been caused by the accident.

Indeed, document tendered in court is the best proof of the contents of such document and no oral evidence will be allowed to discredit or contradict the content thereof except in case where fraud is pleaded. ***DODO VS. SOLANKE (Supra).***

It is instructive to state here that during cross – examination of the Defendants' witness (DW1) the following ensued:-

XXX:- I put it to you that your evidence in paragraphs 7, 8 and 9 could not have been well narrated since you were driving.

Ans:- I saw everything.

I must observe here that Defendants through DW1 in paragraph 9 of his witness Statement on Oath attempted to justify their admission, and stated that the 2nd Defendant collided with the Claimant as he was moving backwards while attempting to cross the dual carriage High way.

I hold the view, as a result of the evidence before me that since the bus was under the exclusive control of the 2nd Defendant, the 2nd Defendant owed a duty of care in such a way that no harm is done to the Claimant.

Supreme Court also went further to hold:

"***The most fundamental ingredient of the tort of negligence is the breach of the duty of care which must be actionable in law and not a moral liability.***

And until a Plaintiff can prove by evidence the actual breach of the duty of care against the Defendant, the action must fail.. BENSON VS. UTABOR (1975) 3 SC;

OKOLI VS. NWAGU (1960) SC NLR 48;

NIGERIAN AIRWAYS LTD. VS. ABE (1988) 4 NWLR;

STRABAG CONSTRUCTION NIGERIA LTD. VS. OGAREUPE (1991) 1 NWLR (Pt. 170) 733.."

It is imperative to state further that Dw1 admitted in his witness Statement on Oath that the 2nd Defendant he was obliged to stop and assist in conveying the Claimant to the General Hospital Kwali and even paid for the Claimant's first aid treatment.

It is clear from the above that Defendant's evidence through DW1 shows the direct or positive link between the Defendants and the alleged injuries sustained by the Claimant.

Supreme Court held in ***ANYAH VS. IMO CONCORDE HOTEL LTD. & 2ORS (2002) 12 SC (Pt. 11) 77 that;***

"For the Defendant to be liable for negligence, there must be either an admission by him or sufficient evidence adduced to support a finding of negligence on his part."

On whether the doctrine of Res Ipsa Liquitor can be relied upon by the Claimant?

It is instructive to state that the principle is invoked on the basis of an event which in the ordinary course of things would not have occurred except same was caused by negligence for which there is no explanation. The event on the basis of which the Plaintiff invokes the doctrine must speak eloquently for itself that negligence of the Defendant had brought it about and state of things complained of have remained unexplained. See ***OJO VS. GHORORO & ORS. (2006) 10 NWLR (Pt. 987) 173.***

In the case at hand, I make bold to say that since the bus was under the exclusive control of the 2nd Defendant, the accident could not have occurred if the 2nd Defendant had complied with the duty of care imposed upon him and as such occurred to 2nd Defendant's negligence, the doctrine of Res Ipsa Loquitor applies in this case.

Therefore it is my firm believe that the 2nd Defendant as the driver of the 1st Defendant in issue, owes a duty of care to the Claimant or any other persons within the alleged highway. I so hold.

From the totality of whole, I am very convinced that all the ingredients required to establish the tort of negligence have been safely established by Claimant against the Defendants. I so hold.

Claimant's claims therefore, succeeds on the preponderance of the led evidence before the court.

In summation, the following declarations are made, as follows:-

Consequently judgment is hereby entered for the Claimant as follows:-

1. A Declaration of the Court that the 2nd Defendant while driving one of the 1st Defendant's bus with body number 999 in the course of his usual duties/employment as a driver under the employment of the 1st Defendant, at Shedah, along Abuja-Lokoja Highway, Kwali Area Council, Abuja - FCT on 15th December, 2018 owes the Claimant a duty of care is **hereby granted.**

2. A Declaration of the Court that the 2nd Defendant while driving one of the 1st Defendant's bus with body number 999 in the course of his usual duties/employment as a driver under the employment of the 1st Defendant, at Shedah, along Abuja-Lokoja Highway, Kwali Area Council, Abuja - FCT on 15th December, 2018 was negligent and reckless when he ran into the Claimant knocking the Claimant into the bush side and as a result of the said negligence and recklessness, the Claimant sustained and suffered serious injuries and damages is **hereby granted.**

3. A Declaration of the Court that the 2nd Defendant while driving one of the 1st Defendant's bus with body number 999 in the course of his usual duties/employment as a driver under the employment of the 1st Defendant, breached the duty of care owed to the Claimant on 15th December, 2018 when he negligently and recklessly ran into the Claimant at Shedah, along Abuja-Lokoja Highway, Kwali Area Council, Abuja-FCT knocking the Claimant into the bush side and as a result of the said breach, the Claimant sustained and suffered serious injuries and damages is **hereby granted.**

4. **An Order** of the Court directing the Defendants jointly and severally to pay the Claimant the sum of **N341,500.00 (Three Hundred and Forty-One Thousand, Five Hundred Naira)** being the total amount of expenses incurred by the Claimant so far in his effort to treat himself of the injuries sustained as a result of the negligent and reckless act of the 2nd Defendant done in the course of his usual duties/employment as a driver under the employment of the 1st Defendant is **hereby granted**.

5. **An Order** of the Court directing the Defendants jointly and severally to pay the Claimant the sum of **N5,000,000.00 (Five Million Naira)** as general damage on the footing of inconveniences, loss of earnings, frustration, mental torture, injuries, damage and hardship suffered by the Claimant as a result of the negligent and reckless act of the 2nd Defendant done in the course of his usual duties/employment as a driver under the employment of the 1st Defendant is **hereby granted.**

7. **An Order** of the Court directing the Defendants jointly and severally to pay the Claimant 10% interest on the entire judgment sum monthly from the date of judgment till final liquidation of the judgment debt is **hereby granted.**

Justice Y. Halilu
Hon. Judge
16th July, 2025