THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA KAMPALA

(CIVIL DIVISION)

CIVIL SUIT NO. 519 OF 2017

KAKOOZA SHARIF---PLAINTIFF

VERSUS

1. **ABAMWE TRANSPORTERS LIMITED**
2. **MUGISHA JOHNSON ---DEFENDANTS**

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The plaintiff On the 7th day of July 2017, while the plaintiff was riding a motor cycle No UEH O45Falong Menlo hill Road, he was involved in an accident with a motor vehicle No.UAH918/ UAF848U belonging to the 1st defendant.

The said vehicle was driven by one Mugisha Johnson who is an employee and or servant of Abamwe transporters limited the 1st defendant. As a result of the accident, the plaintiff sustained a broken structure on his right leg which was later amputated due to crush nyurils in Mulago hospital.

The plaintiff contended that he was properly riding his motorcycle when the 2nd defendant failed to control his vehicle at the Roundabout of Mengo Hill Road due to poor mechanical condition of the said vehicle.

The defendant contended that on the 7th day of June 2017 at about 5:00, the 2nd defendant was stopped at Ring Road round bout by a traffic officer who informed him that he had knocked someone along Mengo hill road.

The 2nd defendant was surprised because he had not realized that he knocked anyone since he was driving at a slow speed. The unfortunate accident was caused solely by the actions and inactions of the plaintiff who was overtaking on the left.

AGREED ISSUES.

1. Whether the 2nd Defendant acts were Negligent?

2. Whether the 1st Defendant is vicariously liable for the actions of the 2nd Defendant.

3. Whether the Plaintiff is entitled to the remedies prayed for?

At the trial the plaintiff led 3 witnesses who testified through witness statements that were admitted as his evidence in chief and the defendant failed to present his witnesses as directed by court since they were in Arua. The court proceeded under Order 17 rule 4 of the Civil Procedure rules.

ISSUE ONE

Whether the 2nd defendant acts were negligent?

The plaintiff's counsel submitted on the law governing negligence. Negligence is essentially a question of fact and it must depend upon the circumstances of each case.

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

PW 1, Mr Okurut Joseph in his evidence stated that the vehicle was not road worthy and it was not supposed to be driven on the road (EX.P1&2)

According to counsel having in mind that his vehicle was not in proper condition the driver ought to have been very careful while driving this vehicle

No evidence was produced by the 1st defendant to rebut the poor state of the vehicle neither did the defendants appear in court to give evidence despite courts orders and or

to show how the positioning of his vehicle was consistent with the exercise of reasonable care of the part of the driver.

Therefore, in the absence of evidence explaining why the trailer knocked the plaintiff's motor cycle which was being rightly driven by the plaintiff who had 10 years of experience on the road is enough to show that the accident was caused by the negligence of the 2nddefendant.

Drivers are expected to keep their car under control by maintaining it in proper condition putting in mind that there are other road users.

It's also the defendant's statement that the road was narrow and curved. This was the very reason why the 2nd defendant had to be very carefully while driving his vehicle taking into account that there are also other road users and the vehicle ought to be in good condition.

The sketch map clearly shows how both the plaintiff and the 2nd defendant were on the road, both were negotiating the corner but the 2nd defendant failed to properly negotiate the corner since the vehicle was in bad condition hence causing an accident.

Both parties were on motion on the left side of the road on this narrow road and no one had crossed the to another parties side.

The defendant's counsel submitted that the plaintiff has failed to prove the elements of negligence. The plaintiff had contended that the motor vehicle failed to break or could not break but no such evidence had been lead.

Counsel challenged the expert opinion on the status of the mechanical condition which in his view was not in good working condition. He contended that the said expertise was not shown and no qualifications or skills were adduced in court. Therefore in absence of such proof of competence in a field is a pure speculation and conjecture.

The defendant contended further that the defendant owes a duty of care to the public or other road users just like plaintiff equally owes the same duty. That it was the plaintiff who breached the duty of reasonable care to himself as motorcycle rider and other road users. He made reference to the sketch map and

the statement of the Investigating officer; the respondent took a great deal of risk by trying to overtake a long vehicle from the left and in a narrow space.

The defence counsel submitted that the plaintiff was the sole architect of his own injuries and losses suffered thus the defendants cannot be held liable for the injuries suffered.

The plaintiff's recklessness was made concrete by the fact he was not authorized to ride a motorcycle on the road since he did not have riding permit as he stated during cross examination.

It was defence counsel submission that failure to have a permit is conclusive that the plaintiff was in breach of their statutory duty of driving or operating an automobile on the road and that was a danger to their own selves and other road users.

Determination

NEGLIGENCE

Negligence is the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. Before the liability of a Defendant to pay damages for the tort of negligence can be established, it must be proved that

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

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

STANDARD OF CARE

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

FORESEEABILITY OF DANGER

It is not enough that the event should be such as can reasonably be foreseen. There must be sufficient probability to lead a reasonable man to anticipate danger or injury. The existence of some risk is an ordinary incident of life, even when all due care has been, as it must be, taken

ANTICIPATION OF GRAVITY OF INJURY

In considering whether some precaution should be taken against a foreseeable risk, there is a duty to weigh on the one hand, the magnitude of the risk, the likelihood of an accident happening, and the possible seriousness of the consequences if an accident does happen, and on the other the difficulty and expense and any other disadvantage of taking the precaution.

The gravity of possible consequences is a major factor in considering precautions. The more serious the likely damage, the greater the precaution required and this is considered in determining the level of fulfillment of the duty of care. **- Paris –v- Stepney B.C. [1951] A.C. 367.**

STANDARD OF PROOF NEGLIGENCE

If the evidence in a civil case is such that the tribunal can say: We think it more probable than not, the burden is discharged, but if the probabilities are equal, it is not. Thus the standard of proof is on a balance of probabilities.

The plaintiff’s counsel only relied on the status of the vehicle as stated by PWI that it was not in good mechanical condition. There was no evidence that the mechanical condition was the cause of the accident as stated by the PWI. It is counsel who has made those conclusions or made such evidence from the bar that based on the motor vehicle inspection report.

This court would heavily rely on the sketch map as presented to court. It clearly shows that the plaintiff tried to squeeze himself in a bend because he assumed it was big enough to allow him maneuver through. No reasonable and prudent rider or driver would try to overtake a trailer of two trucks in such a bend.

The plaintiff was very recklessness in his actions and this court is surprised that the plaintiff's counsel could make such a submission that "*both the plaintiff and the 2nd defendant were on the road, both were negotiating the corner but the 2nd defendant failed to properly negotiate the corner since the vehicle was in bad condition hence causing an accident.*

Both parties were on motion on the left side of the road on this narrow road and no one had crossed the to another parties side"

The two motor vehicles could not negotiate a corner at that spot at the same time. One of them (plaintiff) ought to have followed from behind but not to try and squeeze in the space between the trailer and pavement .

The actions of the plaintiff while on the road where indeed a danger to himself and as well as other road user. This could be explained by his lack of driving permit and not being taken through the different technical aspects of using the road.

The plaintiff in his testimony during cross examination stated that he did not have driving permit although he has been riding for the last 10 years. It is clear the plaintiff was illegally on the road contrary to **Section 35 of the Traffic and Road safety Act cap 361** which provides;
No person shall drive any class of motor vehicle, trailer or engineering plant on a road unless he or she holds a valid driving permit or valid learner driving permit endorsed in respect of that group of motor vehicle, trailer or engineering plant.

Motorcycle is defined under the Act to mean; ***A motor vehicle with less than four wheels, the laden weight of which does not exceed four hundred kilograms.***

The plaintiff was supposed to have a driving permit under section 36-Category A-Motorcycles

The lack of driving permit and failure to appreciate the rules of driving by the plaintiff was the major factor in the cause of the accident and this could be attributable to lack of driving skills attainable through driving schools due to lack of permit.

Whether there was contributory negligence?

THE LAW AND THE STANDARD

"In order to establish contributory negligence the defendant has to prove that the claimants negligence was a cause of the harm which he has suffered in consequence of the defendant's negligence. The question is not who had the last opportunity of avoiding mischief but whose act caused the harm."

Halsbury's Laws of England/NEGLIGENCE (Volume 78) (2010) 5th Edition) Paragraph 76

"The existence of contributory negligence does not depend on any duty owed by the claimant to the defendant and all that is necessary to establish a plea of contributory negligence is for the defendant to prove that the claimant did not in his own interest take reasonable care of himself and contributed by this want of care to his injury."

Halsbury's Laws of England/NEGLIGENCE (Volume 78) (2010) 5th Edition) paragraph 77

"The standard of care in contributory negligence is what is reasonable in the circumstances and this usually corresponds to the standard of care in negligence.

The standard of care depends upon foreseeability. Just as negligence requires foreseeability to harm others, contributory negligence requires the foreseeability to harm oneself."

Halsbury's Laws of England/NEGLIGENCE (Volume 78) (2010) 5th Edition) Paragraph 7

The defendant never pleaded any particulars of contributory negligence in the written statement of defence but clearly stated in 6 of the written statement of defence that " the results of the accident though unfortunate were caused solely by the actions or inactions of the plaintiff as shown in the sketch plan and police statement.

In the case of ***Gaaga Enterprises Ltd v SBI International Holdings & 2 others HCCS No. 19 of 2005 Justice Nyanzi Yasin*** held that; " *A person is guilty of contributory*

negligence if he ought reasonably to have foreseen that if he did not act as a reasonable prudent man, he might hurt himself and must take into account that others may be careless"

I entirely agree with that decision, the plaintiff was solely responsible for the accident and injuries to himself. He took an unreasonable risk by trying to overtake the trailer on left side in the round bout or bend. He was therefore very reckless in his action and solely contributed to accident in which he lost a leg.

This case is dismissed with no order as to costs.

It is so ordered.

Dated, signed and delivered by email & WhatsApp at Kampala this 15th day of May 2020

SSEKAANA MUSA
JUDGE