

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL
TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE I. M. BUKAR**

SUIT NO. FCT/HC/CV/95/2012

Date of delivery: 27th February, 2013

BETWEEN:

SUNNY BRIGHT MOTORS LTD.....PLAINTIFF

AND

YEIGBA JOSEPH.....DEFENDANT

Mr. J. A. Aluman – holding the brief of
Mr. Ayuba Abdul.....for the Plaintiff

JUDGMENT

On the 26th day of September 2012, the plaintiff came to court by way of a writ of summons claiming against the defendant as follows:

- (a) A declaration that the defendant is liable in tort to the Plaintiff Company resulting from the defendant's act of dangerous driving.
- (b) The sum of ₦2,000,000.00 (Two million Naira) being the total amount expended on the passengers as compensation arising from the accident caused by the defendant's act of dangerous driving.

- (c) The sum of ~~₦~~3,500,000.00 (Three million, five hundred thousand Naira) being the cost of the Plaintiff's vehicle which is presently beyond repairs.
- (d) General damages arising from the Plaintiff's lost of revenue accruing to the bus assessed at the sum of ~~₦~~10,000,000.00 (Ten million Naira).
- (e) Exemplary damages to the tune of ~~₦~~2,000,000.00 (Two million Naira).
- (f) Interest on the judgment sum at the conservative rate of 28% per annum from the date of judgment until final liquidation of the judgment.
- (g) Such further reliefs as this Hon. court may deem fit to make in the circumstance of this case.
- (h) Cost of this action.

In his final written address, the learned Plaintiff's counsel formulated one issue for the determination of the court, thus: "Whether the Plaintiff has proved his case and is entitled to all the reliefs sought."

Advancing his argument on the issue, he submitted that the evidence led by the Plaintiff is left unchallenged and therefore, it should be deemed admitted. He placed reliance on the cases of *Uzundu v. Uzindu* (1997)9 NWLR (pt. 521) 466 at 481; *Odogwu v. Odogwu* (1992)7 NWLR (pt.253) 344 and *Mirchandani v. Pinheiro* (2001)3 NWLR (pt.269) 573. Appreciating his claim to be that of negligence, the learned counsel drew the court's attention to the Supreme Court's decision in the case of *Hamza v. Kure* (2010) All FWLR (pt.539) 1070 at p.1085. He argued that since the defendant

has not filed a defence, the Plaintiff needs only a minimal of evidence to establish its claim. He contended that this has been met. The learned counsel therefore urged the court to grant their prayers as sought.

The Plaintiff's claim is structured mainly on paragraphs 4 – 10 of its statement of claim which runs thus:

Paragraph 4:

The Plaintiff avers that on the 14th day of July, 2011, they received news that one of their buses was involved in a fatal accident."

Paragraph 5:

On getting to the scene of the accident, it was discovered that one of the 18 seater buses in her fleet with registration no. XF 617 GWA had been crushed by a Honda Civic car with registration number BC 336 GWA.

Paragraph 6:

The Plaintiff further avers that as at the time they got to the scene of the accident, the driver of the Honda Civic car was nowhere in sight and had even removed his number plate before taking to his heels.

Paragraph 7:

The scene of the accident was a gory sight; the bus was in a terrible state. Prima facie it was beyond repairs. Five passengers died on the spot while the remaining thirteen had various degrees of injuries.

Paragraph 8:

The driver of the vehicle also sustained a deep head injury.

Paragraph 9:

The Plaintiff avers that they promptly lodged a complaint with the police and men from the Road Traffic Department came and took measurement of the scene of the accident. Pictures of the scene of the accident as well as the present state of the Plaintiff's vehicle were also taken. The Plaintiff pleads and shall rely on the photographs at the hearing of this trial.

Paragraph 10:

The Plaintiff further avers that from the measurement taken, it was discovered that the defendant who was coming from the Zuba axis left his lane and jumped into the Plaintiff's vehicle lane which was coming from Gwagwalada. Consequently, the defendant's vehicle ran into the Plaintiff's vehicle.

The law is settled that the tort of negligence arises when a legal duty owed by the defendant to the Plaintiff is breached. To succeed in an action for negligence therefore, the Plaintiff must prove by preponderance of evidence or the balance of probabilities that:

- (a) The defendant owed him a duty of care
- (b) The duty was breached
- (c) The Plaintiff suffered damages arising from the breach.

See *Anyah v. Imo Concords Hotels Ltd* (2002)12 S.C. (pt.11) 77.

Negligence is therefore a question of fact to be established by evidence and not law. In an action for negligence, a Plaintiff can only succeed if in addition to pleading it and particulars thereof, he or she must also show the duty of care owed him or her by the defendant and the breach of that duty by the defendant. It is not enough to allege all these in pleading without establishing them by

credible and reliable evidence at the trial. See *Universal Trust Bank of Nigeria v. Fidelia Ozoemena* (2007)1 S.C. (pt.11) 211; (2007) All FWLR (pt.358) 1014. Mere accident without more, cannot on its own ground found an action in negligence but it must be proved that the defendant's negligence caused or resulted in the accident and not just accident occurred. In accident cases, the Plaintiff must state and prove all material facts of the accident describing what each party was alleged to have attempted to do, done or not done, describing clearly what led to the accident. The particulars of the negligence must be fully pleaded and proved. See *Joseph & Anor. v. Alhaji Abubakar & Anor.* (2002) FWLR (pt.91) 1525.

In this case, the Plaintiff's pleading in paragraph 4 which I reproduced earlier was to the effect that on the 14th of July, 2011 they received news that one of their buses was involved in a fatal accident. The averment in paragraph 5 was to the effect that when they got to the scene of the accident, they discovered that one of their buses had been crushed by a Honda Civic car. In paragraph 10 they averred that from the measurements taken it was discovered that the defendant who was coming from a particular lane jumped to the lane of the Plaintiff's vehicle thus resulting in the accident.

The law is settled that pleadings do not constitute evidence. See *N. I. M. V. Ltd v. F. B. N. Plc* (2009)16 NWLR (pt.1167) 411. In the instant case, in addition to the brevity of the pleading, there is no admissible evidence at all. The lone witness, Mr. Sunday Nnadi adopted his witness statement on oath dated 26th September, 2012 and filed the same date. In it, he stated that he was the general Manager of the Plaintiff Company. That on the 14th of July, 2012

they received the news that one of their buses was involved in an accident. They went to the scene and saw what had happened. He was not there when the accident took place. What he stated regarding the circumstance of the accident were information he derived from other people not what he saw. It is therefore, a hearsay as it is not a testimony of a witness who relates what he knows personally. By section 38 of the Evidence Act, 2011 such evidence is not admissible. See also *Buhari v. Obasanjo* (2005)7 NWLR (pt.910) 241 at 435.

It is a fundamental requirement in a claim for negligence for the Plaintiff to prove by evidence the actual breach of the legal duty of care owed by the defendant otherwise the action must fail. I have in mind the case of *Benson v. Otubor* (1975)3 S. C. 9. The driver of the bus is not called as a witness. The officers of the Police Traffic Division where the complaint was made were not called as witnesses. Those who took the measurement at the scene of the accident and apportioned blame were not called as witnesses. A blanket allegation of negligence in the pleading is not sufficient and quite apart from giving explicit evidence of negligence, for the Plaintiff to succeed, he must also show the duty of care owed to him and its breach by the defendant. These, the Plaintiff did not do. The claim therefore, must fail. The action is therefore hereby dismissed

SGD

JUDGE

27th February, 2013

