

UGANDA / JUDGMENT

Namukose v JPMAB Ltd (Civil Suit 47 of 2022) [2025] UGHC 183 (16 April 2025)

[2025] UGHC 183

COURT

High Court of Uganda

BEFORE

Tweyanze, J

CASE / FILE NUMBER

Civil Suit 47 of 2022

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HOLDEN AT
MASAKA CIVIL SUIT NO. 47. OF 2022

NAMUKOSE AMINA:.....PLAINTIFF VERSUS
JPMAB LTD:.....DEFENDANT

Before: HON JUSTICE LAWRENCE TWEYANZE.

JUDGMENT

The Plaintiff's case.

- 1. The Plaintiff's claim against the Defendant is for negligence occasioning loss of a motor vehicle, compensation, special and general damages, interest and costs. The Plaintiff averred that on the 27th day of September 2020, the Plaintiff's Driver - Muzaya Asadi Friday aka Muzaya Aggrey (now deceased) was driving Motor Vehicle Reg. No. UBG 720L Fuso Truck from Mbarara carrying Matooke. That when the Driver reached Nkoni village on Masaka-Kamala High way, the Defendant's Driver called Bahezi Amisi while driving Tractor (Tractor head) Reg. Number RAE 836 A and Tractor RL2581 negligently swerved from his side and knocked the Plaintiff's said Motor vehicle on his side of the road (from Masaka-Kampala).
- 2. That the said Plaintiff's motor vehicle was damaged to written off value and resulting into the deaths of Turyakira Mathias, Byesiga Dan, Muzaaya Asadi Friday and injuries to Tenywa Salim. A copy of the Traffic Accident Report, Vehicle Inspection Report, Abstract Report and Sketch plan of the accident were attached and marked collectively as Annexure "A". That the Plaintiff's Driver was the one driving Motor vehicle Fuso Fighter Registration number UBG 720L and the vehicle was occupied by, Turyakira Mathis and Byesiga Dan the owners of the

goods (Matooke), Muzaaya Asadi (the Driver) and Tenywa Salim (the Turn man) at the time of the accident. That as a result of the accident some of the vehicle occupants died instantly to wit; Turyakira Mathias, Byesiga Dan and Muzaaya Asadi while Tenywa Salim was fractured, unconscious and rushed to Masaka Hospital where he was given first Aid before being rushed to Mulago Hospital where he got treatment from.

- 3. The Plaintiff averred that the accident was solely caused by the negligence of the Defendant's Driver a one Bahezi Amisi who at the material time was

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driving the Tractor Truck Registration No. RAE 836A & RL 2581 in the course of his employment. A copy of the Uganda Police Form 37 of abstract particulars of accident was attached and marked B. The particulars of negligence were set out as follows;

PARTICULARS OF NEGLIGENCE

I. Failing to keep his lawful side of the road.

II. Driving the Defendant's Motor Vehicle recklessly without

caring about the safety of other road users.

III. Swerving away from his lane, colliding and severely knocking the Plaintiff's Motor Vehicle to written off value while in its lane of the road.

IV. Failure to avoid the accident by crashing Motor Vehicle Fuso Fighter Registration number UBG 720L which was being driven by the Plaintiff's.

V. Failing to stop, brake or in any way avoiding colliding with Motor Vehicle Fuso Fighter Registration number UBG 720L.

VI. Knocking the Plaintiff's vehicle to the extreme end and again finding it to the extreme end and crashing it over and over again.

VII. Driving at a speed which was reckless and excessive in the circumstances. VIII. Failing to follow the Highway Traffic Code.

- 4. The Plaintiff further averred that as a result of the accident Motor Vehicle Fuso Fighter Registration number UBG 720L was damaged beyond repair for which the Plaintiff prayed for special damages, particulars of which are as here below:

PARTICULARS OF SPECIAL DAMAGES

- *a) Value of vehicle Fuso Fighter Registration number UBG 720L. Ushs 120,000,000/=*
- *b) Towing the motor vehicle from Nkoni along Masaka-Mbarara high way to the police station. Ushs. 2,000,000/=*

- *c) Medical treatment and drugs for the turn man (Tenywa Salim) Ushs 4,000,000/=.*
- *d) Cost of the Ambulance from Iganga to Masaka and back to pick the deceased and the injured 1,000,000/=. TOTAL- 127,000,000/=*
- 5. The Plaintiff further averred that she is continuously losing income of 3,000,000/= per week as a result of the accident for which she shall seek orders of compensation from the Defendant from the date of the accident of 27th September 2020 to the date of judgment. That the Plaintiff has gone through enormous suffering, pain, stress, inconvenience, mental anguish for the

negligent actions of the Defendant for which the Defendant is liable in general damages

6. As such, the Plaintiff prayed for judgment against the Defendant for: - A declaration that the Defendant's Driver was negligent; Damages for the negligence of the Defendant's Driver; Special damages of Ushs. 127,000,000/=; Compensation for loss of business of 3,000,000/= per week from 27th September 2020 till payment in full; General damages; Interest at the rate of 25% per month and costs of the suit.

The Defence.

- 7. In the Written Statement of Defence, the Defendant averred that the claims listed in the plaint are false as the accident was caused solely by the negligence of the Plaintiff's Driver who was driving Fuso Truck Registered No. UBG 720L who drove at excessive speed and not the Defendants Driver. The Defendant denied that the Plaintiff's car was damaged to written off value. The Defendant denied that the accident was solely caused by the negligence of the Defendant's Driver a one Bahezi Amisi who at material time was driving the Traylor Truck Registration No. REA 836A & RL 2581 in the course of his employment.
- 8. That the Defendant is not responsible for the expenses and costs incurred by the Plaintiff as it was equally a victim of the accident. That even if the Defendant is to be held liable for the loss occasioned on the Plaintiff, the Defendant is entitled to indemnity having insured his car that caused the accident with Prime Insurance Ltd in Rwanda and was issued with the COMESA Yellow Card.
- 9. That National Insurance Cooperation Ltd is the National Bureau for the COMESA Yellow card and is supposed to indemnify the Defendant. The Defendant prayed that Court dismisses the suit with costs to the Defendant or in the alternative order national insurance cooperation to indemnify the Defendant.

Representation and hearing.

10. The Plaintiff was represented by M/s Luganda, Ojok & Co. Advocates. The Defendant was represented by M/s Mwasa, Nakitto & Co. Advocates. When the matter came up for hearing on the 6th day of June 2024, only Counsel for the Plaintiff appeared with two witnesses. There was no representative for the Defendant, and there was no reason given for their non-appearance. On Court record, there was an affidavit of service sworn by Kansime Suragi who deponed that she is a Process Server attached to the Law Firm of M/s Luganda, Ojok & Co. Advocates, and she explained that she served the Defendant's Counsel who acknowledged receipt. Court looked at the return copy attached to the affidavit of service and it indicates that the Defendant's Law Firm M/s Mwasa, Nakitto & Co. Advocates was served on the 4th June 2024 at 4:21pm as per the stamp and signature of the recipient. Therefore, Court was satisfied that there was service and since there was no representative of the Defendant, the matter proceeded ex-parte against the Defendant. The Plaintiff presented two witnesses to wit, Namukose Amina as PW1, and Tenywa Salim as PW2.

Submissions.

- 11. Counsel for the Plaintiff filed written submissions. I have read and considered all the pleadings, the evidence, and submissions on record. I will refer to the submissions as and when I find it necessary.
- 12. Counsel filed a Joint Scheduling Memorandum on the 14th of October, 2022, in which the following four issues were proposed for determination by the Court:
 - *1. Whether the Defendant's Driver negligently caused an accident?*
 - *2. Whether the Defendant is vicariously liable to the negligence of the Driver?*
 - *3. Whether the Plaintiff suffered any damage as a result of the accident?*
 - *4. What remedies are available to the parties?*
- 13. However, in the submissions, Counsel for the Plaintiff submitted on only two issues as follows:
 - *1. Whether the Defendant's Driver was negligent?*
 - *2. Whether the Plaintiff is entitled to the relief sought?*

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14. The above indicates that Counsel for the Plaintiff submitted on own issues and deviated, and abandoned the issues agreed upon in the scheduling memorandum. Since the matter proceeded ex-part, this Court will resolve based on the issues submitted on by Counsel for the Plaintiff.

Analysis.

Evidence

15. The Plaintiff presented evidence annexed to the pleadings, which this Court has carefully read and analysed. When the suit was called for hearing, the Plaintiff led evidence of 2 witnesses, herself as PW1 and Tenywa Salim as PW2, all of whom all proceeded by way of witness statements. On the other hand, there was no witness that was led for the Defendant since the matter proceeded ex-parte. The Plaintiff led detailed evidence; however, due to the volume of Annexures, I will not reproduce them here, but I have taken them into consideration.

Burden and Standard of Proof.

- 16. In determining the above issues, this Court is alive to the principle of law that, *the Plaintiff has to prove his case on the balance of probabilities even where the matter is not defended.*
- 17. In civil proceedings, the burden of proof lies upon the person alleging. **Sections 101,102 & 103 of the Evidence Act** provide that the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence unless any law provides that the proof of that fact shall lie on any particular person. Such proof in civil matters is on the balance of probabilities, which evidence should be of such a quality that a tribunal properly directing its mind to the law and the facts would think that it is more probable than not. *(see Miller vs Minster of Pensions (1947) 2 All ER 372*) except in cases involving allegations of fraud, it was held in *Kampala Bottlers Limited –vs- Domanico (U) Ltd SCCA No. 22 of 1992* that the burden is heavier than on a mere balance of probabilities generally applied in civil matters.
- 18. Accordingly, the burden of proof in civil proceedings normally lies upon the Plaintiff or Claimant. The standard of proof is on a balance of probabilities. The law, however, goes further to classify between a legal burden and an evidential

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burden. When a Plaintiff has led evidence establishing their claim, they are said to have executed the legal burden. The evidential burden thus shifts to the Defendant to rebut the Plaintiff's claims (*See Asha Ali Suleman and another Versus Nassanga Aysha Salma and another Civil Suit No. 338 of 2015 (2022)*. These principles are instructive in determining this suit.

Issues 1: *Whether the Defendant's Driver was negligent?*

- 19. PW1, Namukose Amina, testified that she owned a Motor Vehicle Fuso Truck Reg. No. UBG 720 L, and attached a copy of the logbook marked Annexure "A"). That on the 27th day of September 2020, her Driver who was called Muzaya Asadi Friday aka Muzaya Aggrey (now deceased) was driving the said Motor Vehicle from Mbarara carrying Matooke and got an accident. That when the Driver reached Nkoni village on Masaka-Kampala Highway, the Defendant's Driver called Bahezi Amisi while driving Tractor (Tractor head) Registration Number RAE 836 A and Tractor RL2581 negligently swerved from his side, drove on the right side of the road as if keeping right and knocked her Motor vehicle on its side of the road (from Mbarara to Masaka). That at the time of the accident, the Motor Vehicle was occupied by, Turyakira Mathias and Byesiga Dan the owners of the goods (Matooke), Muzaaya Asadi (the Driver) and Tenywa Salim (the Turn man). That as a result of the accident, her Motor Vehicle was damaged to written off value.
- 20. That after the accident, she went to Kinoni Police Station where she was given a bank advice form to pay 82,000/= for Police Abstract Report. That upon payment for the said Report, the Police Officer called Bariyo William compiled a Report and gave it to her. She attached a copy of the Traffic Accident Report, Vehicle Inspection Report, Abstract Report and Sketch Plan of the Accident marked collectively as Annexure "B". That some of the vehicle occupants died instantly to wit; Turyakira Mathias, Byesiga Dan and Muzaaya Asadi while Tenywa Salim was badly fractured and unconscious. Copies of the post mortem Reports for the deceased persons were attached and marked as 'C'. That the fractured Turn man was rushed to Masaka Hospital where he was given first Aid and later he was transferred to Iganga Main hospital due to the cost of the treatment and management of the patient.

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- 21. That the Driver of the Tractor failed to follow the Highway Traffic Code and as a result caused an accident to Motor Vehicle Fuso Fighter Reg. No. UBG 720L to be damaged beyond repair for which she seeks special damages, particulars of which are herebelow. That the value of vehicle Fuso Fighter Reg. No. UBG 720L was Ushs 120,000,000/= having purchased the same from Yuasa car bond at a cost of 92,000,000/= and spent an extra 28,000,000/= in building the body the truck since it was flat and without the container. That she paid for the break down that towed the Motor Vehicle from Nkoni along Masaka-Mbarara High Way to the Police Station which cost her Ushs. 2,000,000/=.
- 22. That she has continuously lost income of 3,000,000/= per week as a result of the accident for which she seeks orders of compensation from the Defendant from the date of the accident of 27th September 2020 to the date of judgment. That she has so far paid about 16,700,000/= (Sixteen Million Seven Hundred Thousand Shillings) in treatment, buying in-plants, general care among others for Mr. Tenywa Salim the Turn man. That she has gone through enormous suffering, pain, stress, inconvenience, mental anguish for the negligent

actions of the Defendant for which the Defendant is liable in general damages.

- 23. PW2, Tenywa Salim testified that he was the Turn man working with Muzaya Asadi aka Muzaya Aggrey, the Plaintiff's Driver driving Motor Vehicle Fuso Truck Reg. No. UBG 720L. That on or around the 24th day of September, 2020, they got a business transaction to transport cement from Tororo to Mbarara. That upon reaching Mbarara they offloaded the cement and looked for a return journey whereupon, they got a business of transporting Matooke for Turyakira Mathias and Byesiga Dan from Isingiro District to Kaliro District. That on the 27th day of September 2020 they loaded the Matooke from Kagarama Trading Centre and they set off for Kaliro in the evening. That on the way back, as they reached Nkoni village on Mbarara-Masaka high way, at about 1:30 Am in the morning, he saw the Defendant's motor vehicle negligently being driven on their side of the road from his side, PW2 heard, Driver now late Muzaya hooting endlessly but the Tractor of the Defendant came and knocked their Motor Vehicle Fuso Fighter Reg. No. UBG 720L off the road causing an accident.

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- 24. PW2, further testified that all the other three people he was with to wit; Muzaya Asadi the Driver, Turyakira Mathias and Byesiga Dan the owners of the goods (the Matooke) they were carrying died on the spot and he personally got unconscious and very injured. That he was badly injured and fractured and rushed to Masaka Hospital where he was given first Aid before being rushed to Iganga Hospital where he got treatment. That as a result of the accident, the Motor Vehicle was damaged to written off value and the Driver, Muzaya Asadi, Turyakira Mathias and Byesiga Dan, the owners of the Matooke died instantly. That the accident was caused by the negligence of the Defendant's Driver a one Bahezi Amisi who was driving the Tractor Truck Registration No. RAE 836A/RL 2581 on the wrong side of the road, by keeping right instead of keeping left as the traffic rules provide in Uganda.
- 25. PW2 testified further that it is the Plaintiff who has been meeting his medical bills upkeep and all his necessities and he is due for another operation to change the in- plants. That the Defendant's Driver was reckless without caring about the safety of other road users while driving the said Motor Vehicle. That the Driver drove at a speed which was reckless and excessive in the circumstances foreseeing that this could cause an accident. That he has gone through enormous suffering, pain, stress, inconvenience, mental anguish because of the injuries caused by the negligent actions of the Defendant's Driver.

Analysis.

- 26. Counsel for the Plaintiff relied on **Blyth Vs Birmingham Water Works (1856) 11 EX.78**, to define negligence as 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.
- 27. The law on negligence has been well stated by Counsel for the Plaintiff. For a suit to disclose negligence, it must show that the Defendant owed to the injured a duty to exercise due care; That the Defendant failed to exercise the due care and that the Defendant's failure was the cause of the injury or damage suffered. (**See H. Katerawire Vs Paul Lwanga [1989-90] HCB 56**).

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- 28. 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. (**See Donoghue v. Stevenson [1932] AC 562**). As noted earlier on, the Defendant's representatives nor their Counsel did not attend the hearing and the evidence of the Plaintiff remained uncontroverted at trial. This implies that the evidence on acts of negligence or negligent conduct of the Defendant's Driver in executing his duties are proved as pleaded and supported by the documentary evidence of the Police Accident Reports and extracts, which were unchallenged. Save for the general denials in the Written Statement of Defence, it was agreed as a fact as per the Joint Scheduling Memorandum that there was an accident, that as a result, the Plaintiff lost income and earnings as a result of the accident and her car was destroyed to written off value. It was also an agreed fact that the accident led to loss of lives of three people and one was badly injured. In the written statement of defence, it was not denied that the said Bahezi Amisi was a Driver of the Defendant's Motor-Vehicle.
- 29. Drivers are expected to keep their cars under control by avoiding reckless driving or overspending along Highways like Masaka-Mbarara Road or avoid any negligent act which would obviously put other road users like the late Muzaya Asadi, Turyakira Mathias and Byesiga Dan in danger, and also those who survived but left with injuries like Tenywa Salim. Also, properties like the Plaintiff's Motor-Vehicle. Such danger was foreseeable and would have been avoided had the Defendant's Driver, a one Bahezi Amisi been mindful to exercise caution on the road.

- 30. The Sketchmap clearly shows how the Defendant's Driver while driving Tractor Truck Registration No. RAE 836A/RL 2581 knocked the Plaintiff's Motor Vehicle Fuso Fighter Registration number UBG 720L, which resulted into the death of Muzaya Asadi, Turyakira Mathias and Byesiga Dan, and injuring Tenywa Salim, as well as destroying the Plaintiff's Motor-Vehicle to written off value. The Sketch map clearly indicates that the Defendant's Driver left his left side of the road and drove on his right-hand side which is the left

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side where the Plaintiff's Motor-Vehicle was properly being driven. This evidence was not challenged and even if were challenged it would have remained strong evidence of reckless and negligent driving. Therefore, the only explanation is that the Defendant's Driver, a one Bahezi Amisi was negligent when he caused the accident. I am therefore satisfied that the Defendant's Driver was negligent in the circumstances.

- 31. This issue is answered in the affirmative.

Issue 2: *Whether the Defendant is vicariously liable for the negligence of the Driver?*

- 32. PW1 testified that the accident was caused by the negligence of the Defendant's Driver a one Bahezi Amisi who was driving the Tractor Truck Registration No. RAE 836A & RL 258 on the wrong side of the road, he was keeping right as if he was in Rwanda, and PW1 referred to the Uganda Police Form 37. That the Driver was an employee of the Defendant and at the material time of the accident, he was in the course of his employment. A copy of the driving license was attached and marked 'E'.
- 33. PW2, testified that the accident was caused by the negligence of the Defendant's Driver a one Bahezi Amisi who was driving the Tractor Truck Registration No. RAE 836A/RL 2581 on the wrong side of the road, by keeping right instead of keeping left as the traffic rules provide in Uganda.

Analysis.

- 34. It was not disputed in the Written Statement of Defence that at all material time, Bahezi Amisi was driving the Tractor Truck Registration No. RAE 836A/RL 2581 which belonged to the Defendant as per the Abstract Report, Police Form 37, was acting within the scope and in the course of his employment as the Defendant's employee, in this case a Driver. According to the **East African Cases on the Law of Tort* by E. Veitch (1972 Edition) at page 78*, an employer is in general liable for the acts of his employees or agents while in the course of the employer's business or within the scope of employment. This liability arises

whether the acts are for the benefit of the employer or for the benefit of the agent.

- 35. In deciding whether the employer is vicariously liable or not, the questions to be determined are: whether or not the employee or agent was acting within the scope of his employment; whether or not the employee or agent was going about the business of his employer at the time the damage was done to the Plaintiff. When the employee or agent goes out to perform his or her purely private business, the employer will not be liable for any tort committed while the agent or employee was on a frolic of his or her own. An act may be done in the course of employment so as to make his master liable even though it is done contrary to the orders of the master, and even if the servant is acting deliberately, wantonly, negligently, or criminally, or for his own behalf, nevertheless if what he did is merely a manner of carrying out what he was employed to carry out, then his master is liable (see *Muwonge vs. Attorney General [1967] EA 17*).
- 36. On basis of the evidence availed to Court, I find that the Plaintiff has proved on the balance of probabilities that Bahezi Amisi who was driving the Tractor Truck Registration No. RAE 836A/RL 2581 which belongs to the Defendant, was negligent, and his negligent and omissions occurred within the scope and in the course of employment of the Defendant as to make his master, the Defendant, vicariously liable in the circumstances of the case.
- 37. This issue is answered in the affirmative.

Issue 3: *Whether the Plaintiff suffered any damage as a result of the accident?*

38. PW1, testified that at the time of the accident, the Motor Vehicle was occupied by, Turyakira Mathias and Byesiga Dan the owners of the goods (Matooke), Muzaaya Asadi (the Driver) and Tenywa Salim (the turn man). That as a result of the accident, my motor vehicle was damaged to written off value.

**Analysis*.*

- 39. From the Joint Scheduling Memorandum filed by both Counsel for the parties, it was an agreed fact that as a result of the accident, the Plaintiff lost income and earnings as a result of the accident and her car was destroyed to written off value. It was also an agreed fact that the accident led to loss of lives of three people and one was badly injured. In the Written Statement of Defence, it was also not disputed that Motor vehicle Fuso Fighter Reg. No UBG 720L belongs to the Plaintiff. There is also a copy of the Logbook which indicates that the said Motor-Vehicle is registered in the names of Namukose Amina, who is the Plaintiff in this case.
- 40. It therefore, follows, that since this issue of damage was not disputed, I find that the Plaintiff suffered damage as a result of the accident.
- 41. This issue is answered in the affirmative.

Issue 4.***What remedies are available to the parties?***

42. The Plaintiff prayed for a declaration that the Defendant's Driver was negligent; Special damages of Ushs. 127,000,000/=; Compensation for loss of business of 3,000,000/= per week from 27th September 2020 till payment in full; General damages; Interest at the rate of 25% per month and costs of the suit.

Special damages

43. Special damages were defined in **Provincial Insurance Co. of East Africa Ltd. Vs. Mordekai Mwanga Nandwa [1995-98] EA 289** to mean damages which are ascertainable and quantifiable before the action and must be specifically pleaded and proved by the Claimant. The Plaintiff sought Special damages of Ushs. 127,000,000/=: and made particulars in the Complaint as follows:

PARTICULARS OF SPECIAL DAMAGES

- *a) Value of vehicle Fuso Fighter Reg. No UBG 720L. Ushs 120,000,000/=*
- *b) Towing the Motor Vehicle from Nkoni along Masaka-Mbarara high way to the police station. Ushs. 2,000,000/=*
- *c) Medical treatment and drugs for the Turn man (Tenywa Salim) Ushs 4,000,000/=.*

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- *d) Costs of the Ambulance from Iganga to Masaka and back to pick the deceased and the injured 1,000,000/=. TOTAL- 127,000,000/=.*
- 44. From the above, the Plaintiff claims Ugx 127,000,000/=. (One Hundred Twenty-Seven Million shilling) in special damages, being monies for the value of her damaged Motor-vehicle, Fuso Fighter Registration No, UBG 720L, valued Ushs 120,000,000/=: costs incurred for towing the vehicle from Nkoni along Masaka-Mbarara high way to the police station at Ushs. 2,000,000/=: Medical treatment and drugs for the Turn man (Tenywa Salim) Ushs 4,000,000/=: and costs of the Ambulance from Iganga to Masaka and back to pick the deceased and the injured 1,000,000/=:.
- 45. For the value of the Motor-Vehicle, the Plaintiff did not attach any valuation Report to prove the said Ushs 120,000,000/= so that Court can have a basis upon which to determine the reasonable amount. Now that this has not been done, am not awarding anything under this head of special damages as they have to be strictly pleaded and proved. However, the Plaintiff attached receipts dated 13th December 2020, 20th July 2021, and 14th April 2022, from Hope Medical Clinic to prove medical treatment and drugs for the Turn man (Tenywa Salim) at a total of Ushs 4,000,000/= and costs of the Ambulance from Iganga to Masaka and back to pick the deceased and the injured 1,000,000/=: The costs incurred for towing the

vehicle from Nkoni along Masaka-Mbarara Highway to the Police Station at Ushs. 2,000,000/=. All these have been proven and unchallenged. I therefore award the Plaintiff special damages of Ugx 7,000,000 (Seven Million shillings).

General damages.

46. Regarding the claim for general damages, the law is that the damages are awarded at the discretion of the Court and the purpose is to restore the aggrieved person to the position they would have been in had the breach or wrong not occurred. See: **Hadley vs Baxendale* (1894) 9 Exch 341; *Kibimba Rice Ltd vs Umar Salim*, SC Civil Appeal No. 17 of 1992* and **Robert Cuossens vs Attorney General* (SCCA No. 8 of 1999) 2000 UGSC 2 (2 March 2000)*. In the assessment of general damages, the Court should be guided by the estimated value of the subject matter, the economic inconvenience that the Plaintiff may

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have been put through and the nature and extent of the injury suffered. See: **Uganda Commercial Bank vs Kigozi* [2002] 1 EA 305*.

- 47. In the present case, the Plaintiff has proved that the negligent actions of the Defendant's Driver caused an accident which destroyed and led to writing off the Plaintiff's Motor-Vehicle Fuso Fighter Reg. No UBG 720L, estimated at Ushs 120,000,000/=. The Plaintiff also prayed for compensation for loss of business of 3,000,000/= per week from 27th September 2020 till payment in full. General damages and compensation can be determined as one and the same as both are intended to restore the victim to the original position. I find that suggestion of compensation way off the mark. Considering the facts and circumstances of this case especially where the Defendant's Motor-Vehicle was destroyed, I am convinced that an award of UGX 50,000,000/= (Fifty Million shillings) as estimated is appropriate. I also award the Plaintiff UGX 50,000,000 (Fifty Million Shillings) for the inconveniences suffered as result of the accident. This makes the total of general damages to UGX 100,000,000/= (One Hundred Million shillings), as general damages for the damage to Plaintiff's property and inconveniences.
- 48. The Plaintiff is awarded interest on both general and special damages at 18% per Annum from the date of judgment till payment in full. Costs awarded to the Plaintiff.
- 49. All in all, the Plaintiff proved a case against the Defendant to the required standard, and therefore, judgment is entered for the Plaintiff with the following declarations/orders:
 - a) A declaration that the Defendant's Driver negligently caused the said accident.
 - b) A declaration that the Defendant is vicariously liable for the negligence of the Driver.
 - c) The Plaintiff is awarded special damages of UGX 7,000,000/=.

- d) The Plaintiff is awarded general damages of UGX 100,000,000/= for the damage of her Motor-Vehicle and other inconveniences.

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- e) Interest on (c.) and (d) at 18% per annum from the date of judgment till payment in full
- f) Costs are awarded to the Plaintiff.

It is so ordered.

Judgment signed and delivered electronically at Masaka this 16th day of April, 2025

LAWRENCE TWEYANZE JUDGE. 16th April 2025.

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