

**IN THE DISTRICT COURT TDC TEMA HELD ON WEDNESDAY THE
3RD DAY OF MAY 2023 BEFORE HER WORSHIP BENEDICTA
ANTWI (MRS) DISTRICT COURT MAGISTRATE**

SUIT NO: A2/89/21

SAMUEL ADUSEI PLAINTIFF

VRS

MR. SAMUEL KODEI DEFENDANT

JUDGMENT

BREIF FACTS

Plaintiff instituted this suit on the 18th June 2021 praying for the following reliefs against the defendant;

- a. Recovery of the sum of GH¢ 19,800.00 being expenses incurred as a result of the reckless and dangerous driving of the defendant
- b. Special damages in the sum of GH¢ 15,400.00 as a result of loss of use of plaintiff's shackman tipper truck for a period of 22 days
- c. Interest on the total sum claimed in relief (a) and (b)
- d. General damages
- e. Cost inclusive of legal fees.

the suit was fixed for hearing on the 22nd July 2021. However when the suit came up for hearing, the defendant had not been served and the court differently constituted gave an order for substituted service of the writ on the defendant. The suit suffered several adjournments with several hearing notices served on the defendant, mostly by substitution.

On the 29th April 2022, the court ordered the plaintiff to file their witness statement. Same was served on defendant by substitution and adjourned to the 14th December 2022 for hearing.

On the 14th December 22 when the suit first came before me, the court ordered for hearing notice to be served on the defendant by substitution for hearing on the next adjourned date.

Plaintiff's case

Plaintiff who is the owner of tipper truck with registration number UE 65-09 and the defendant the owner of Toyota Highlander with registration number GT 2278-19. On the 2nd October 2019, the defendant who was driving the said high lander crushed his vehicle into the rear of plaintiff's tipper truck in order to avoid a head-on collision. The impact was so severe that it caused the immediate death of the only passenger in defendant's vehicle and further caused damage to a third vehicle; a ford transit mini bus with registration no BA 1325-14. The impact caused the rear tires of plaintiff's truck to come off immediately bringing the vehicle to an instant stop. The matter was reported to the prampram police station.

The defendant did not file any defence to the suit neither did he appear in court despite repeated hearing notices duly served on him.

Plaintiff testified on the 1st march 2023 by relying on his witness statement together with the following exhibits.

Exhibit "SA" is a photograph of the rear tire of the tipper truck

Exhibit "SA1" is a copy of the police accident report dated 12th June 2020.

Exhibit "SA2" is a list titled "cost incurred" showing items and their cost and totaling GH¢ 19,800.00

Exhibit "SA2B" is a receipt from G8 Logistics Ltd of an amount of GH¢1000 received from Samuel Adusei

Exhibit "SA2C" is a receipt from Yehowa mo Towing services showing an amount of GH¢ 800.00 received from Samuel Adusei

Exhibit "SA2D" is an invoice from M. Nzolee Ent dated 18th October 2019 showing the sum of GH¢ 10,800.00

Exhibit "SA2E" is an invoice from Nkansah black smithing dated 18th October 2019 and showing an amount of GH¢ 1,900.00

Exhibit "SA2F" is an invoice from washisco Ent dated 22nd October 2019 and showing an amount of GH¢ 4,600.00

Exhibit "SA3" is a picture of the rented truck.

The defendant did not file any defence to the suit neither did he appear in court despite the hearing notices duly served on him.

Burden of proof

The position of the law is that a party who asserts assumes the burden of proving same. The burden of producing evidence as well as the burden of persuasion is cast on such a party and the standard of proof required to discharge the burden of persuasion in civil matters is one of preponderance of the probabilities. Sections 12 (1) and (2) and 11(4) of the Evidence Act, 1975 (NRCD 323) are the statutory provisions that deal with the burden of proof and the standard of proof.

These statutory provisions have been the subject of discussion in a plethora of decisions in our courts. Some of the cases on this point are ***Takoradi Flour Mills v. Samir Faris [2005-2006] SCGLR 882***, where

the Supreme Court per Ansah JSC exhaustively dealt with the burden of proof at pages 896-898 of the report and ***In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors. [2003-2004] SCGLR 420***, amongst others.

The court is also mindful of one of the cardinal duties of a court in evaluating evidence led during trial which is for the court to assess all the evidence on record in order to determine in whose favour the balance of probabilities should lie.

Some cases in point are **Adwubeng v. Domfeh [1996-97] SCGLR 660** and **Takoradi Flour Mills v. Samir Faris [2005-2006] SCGLR 882**. This principle was further reiterated by the Supreme Court in the case of **In re Presidential Election Petition (No. 4) Akuffo-Addo & Ors. Vs. Mahama & Ors. [2013] SCGLR (Special Edition) 73**, the Supreme Court held at page 322 of the report as follows:

"Our understanding of the rules in the Evidence Decree, 1975 on the burden of proof is that in assessing the balance of probabilities, all the evidence, be it that of the plaintiff, or the defendant, must be considered and the party in whose favour the balance tilts is the person whose case is the more probable of the rival versions and is deserving of a favourable verdict." [Emphasis mine.]

Analysis and Determination

Plaintiff's claim is for damages incurred as a result of defendant's negligence. For this, he claims both general and special damages in various sums from the defendant. General damages are damages the law

presumes to have resulted from the defendant's tort. Special damages on the other hand cannot be presumed by the law. The plaintiff must specifically plead it. A careful look at the pleadings will reveal that the basis for the claim for special damages was not specifically pleaded, neither was it particularised nor proved.

Plaintiff took the pains to particularized general damages under paragraph three of his claim, but when it came to the special damages that ought to be particularized, he simply stated "*special damages, daily sales at 700 for 22 days GH¢ 15,400*" under paragraph 16 of his claim.

PARTICULARS OF DAMAGES TO PLIANTIFF'S TRUCK

- 1. Damage to back axle of the truck repaired at the cost of GH¢ 8,000*
- 2. Damage to beam repaired at the cost of GH¢ 1,500*
- 3. Damage to the beam shaft repaired at the cost of 500*
- 4. Damage to the long shaft repaired at the cost of GH¢ 800*
- 5. Damage to tail board repaired at the cost of GH¢ 700*
- 6. Damage to moist guard repaired at the cost of GH¢ 400*
- 7. Damage to bumper repaired at the cost of GH¢ 500*
- 8. Damage to tail light repaired at the cost of GH¢ 300*
- 9. Damage to 2 pieces 13 R22.5 tires repaired at the cost GH¢ 3,400*
- 10. Damages to 2 pieces 22.5 rims repaired at the cost of GH¢ 1,200*
- 11. Towing of truck at the cost of GH¢ 800*
- 12. Hiring of truck to convey sand at the cost of GH¢ 1,00*
- 13. Labour cost for repair of truck GH¢700*

The averments contained in the statement of claim were repeated verbatim in the witness statement of the plaintiff with the only modification being the exhibits attached.

Plaintiff particularized what he called negligence of the defendant under paragraph 8 of his claim as follows and the court deems it necessary to reproduce same verbatim for the avoidance of doubt;

- 1. the defendant attempted to overtake plaintiff's truck without checking to see whether or not there was an oncoming vehicle in the opposite direction*
- 2. the defendant attempted to avoid a head on collision with the driver of the vehicle in the opposite direction and thereby crashed into the rear of plaintiff's truck*
- 3. plaintiff states that after the parties involved were treated and discharged at the hospital, he contacted the defendant about the damaged caused to his truck and the need for the defendant to have it repaired so the truck can resume work but the defendant refused to repair plaintiff's truck.*

When Plaintiff got to the reliefs he claimed from the court, he completely neglected to make any claim for the alleged negligence of the defendant. This court will thus focus on the reliefs claimed by the plaintiff.

The authorities are very clear with respect to the grounds on which the court will award special damages. A person claiming special damages

must not only specifically plead and particularize the special damages but must also lead evidence in support of those claims.

Thus merely pleading and particularizing without evidence in support will be fatal to a claim for special damages. Furthermore, merely pleading without particularising will also be fatal to a party's claim for special damages.

In *Klah v. Phoenix Insurance Co. (supra)*, the Supreme Court per Vida Akoto-Bamfo JSC dealt with the above issue at pages 1152 to 1153 of the report in the following terms:

*"A distinction exists between general and special damages: for whereas general damages arise by inference of law and therefore does not need to be proved by evidence; special damages representing a loss which the law will not presume to be the consequence of the defendant's act but which depends in part, on the special circumstances, must therefore be claimed on the pleading and particularised to show the nature and extent of the damages claimed. **The plaintiff must go further to prove by evidence that the loss alleged was incurred and that it was the direct result of the defendant's conduct.**" [Emphasis mine.]*

*Determination of relief (a) recovery of the sum of 19,800 ---*The court has considered exhibits 'SA2 series' tendered by plaintiff in support of his claim in relief (a) and even though the total sum of the attached exhibits is GH¢ 19,100.00 the court is of the opinion that this being general

damages, which are considered by law to flow naturally from the negligence of the defendant, the relief ought to be granted.

Accordingly, the court awards plaintiff the sum of GH¢ 19,800.00 as general and aggravated damages.

Determination of relief (b) - There was no particularisation of the said special damages in the statement of claim and no evidence was also led in proof of the said special damage. In the case of **Zakaria v Billa (1992) 1 GLR 42 per Benin J** as he then was, it was held as follows;

" the court could only award nominal damages in respect of the burnt premises in the absence of pleadings on its value and evidence thereon. It was not the court's duty to fill in the gaps which parties' knowledge and mind could not help them disclose to the court; for the principle of law was that special damages must be specifically pleaded and specifically proved"

Since this relief is a special damage which per the authorities must be specifically proved, the court cannot make any positive determination without any positive proof. This claim therefore fails and the same is dismissed.

Finally, the position of the law is that, where an income-earning vehicle is damaged beyond economic repairs, the period for which loss of profit is recoverable is a reasonable time.

Depending on the circumstances of each case. ***West African Bakeries v Meizah (1972) 1 GLR 78*** cited and applied by the Court of Appeal in ***Twim & anor v Barnes (1992-93) GBR 417, C.A.*** Plaintiff testified that when defendant drove into his tipper truck, the truck was on its way to deliver a trip of sand.

This shows that the truck was being used for economic purposes which came to a halt after the accident. The plaintiff is thus entitled to some relief for the loss of use of the commercial truck. The court will make an award of nominal damages for loss of use in the sum of GH¢ 5000.00.

Final orders

In the light of the discussions, analysis and the holdings above, I make these final orders in favour of the plaintiff:

1. the court awards the sum of GH¢ 19,800.00 as general and aggravated damages in favour of plaintiff.
2. Norminal damages of GH¢ 5000 for loss of use of vehicle due to defendant's negligence.
3. Interest on the sum of GH¢ 19,800.00
4. Cost of ¢ 3000 in favour of plaintiff as against the defendant.

SGD

**BENEDICTA ANTWI (MRS)
DISTRICT MAGISTRATE**

COUNSEL:

Excely Ahiagbedey for Francis Gariba Apam for Plaintiff

PARTIES:

Plaintiff Present

Defendant Absent