



The parties were referred to ADR and settlement could not be reached by the parties whereupon the case was tabled for trial. Parties filed their written statements and the Court proceeded to take evidence.

Plaintiff claimed that on or around 17<sup>th</sup> August, 2017 her son by name Emmanuel Sosi was sent on errands and was knocked down by a stray tire from a speeding Toyota Hiace vehicle with Registration number GN 2974-09 which resulted in a fracture in his left leg and was rushed to the Akuse Government Hospital for treatment and a traditional herbalist for treatment of his broken bones and stayed here for 13 months.

Plaintiff also claimed that the driver of the vehicle that caused the accident initially paid an amount of GH¢1,500.00 as part-payment of the medical bill. That the matter was processed by the Doryumu Police and forwarded to Donewell Insurance Company for motor claim Insurance.

The nub of Plaintiff's evidence is that on or around 26<sup>th</sup> July, 2018 an amount of GH¢10,000.00 was paid as compensation through the Defendant's bank account in favour of her son by Donewell Insurance Company because she had no Bank account at the time and that Defendant also represented his son as a step-father, attended to the processes and followed up on the Insurance Claims. That Defendant failed or refused to release the money to cater for her injured son upon persistent demands from Plaintiff.

Plaintiff further claimed that at a point when the insurance money came, both parties agreed that they would consult each other in every use and document every expense and cost they shall incur. Plaintiff claimed that the expenses Defendant incurred after the accident was GH¢900 for the child's discharge from the herbal hospital, a bicycle costing

GH¢250 to aid the child to go to school, and also GH¢400 to Plaintiff's mother for her efforts in taking care of the child. That Plaintiff does not know of any other expenses Defendant incurred again and even if any, it was without her consent and approval so Defendant's assertion that he borrowed money from friends and outsiders to cater for the injured child is untenable and palpable falsehood. Plaintiff claimed that Defendant never sold his poultry and kids to cater for the injured child as he claimed was a contribution to the collapse of his farms.

Plaintiff averred that when Defendant proposed to marry her, she personally told him of the children she had who lived with Plaintiff's mother at the time and Defendant had no problem with it. That Defendant requested for them to join them live together in the matrimonial home so as to assist him in the poultry and piggery farms.

Plaintiff tendered Exhibit 'A' through PW1 Emmanuel Sosi their son detailing the GH¢10,000 that was received by the Defendant in respect of the insurance claims for PW1. Plaintiff further claimed that the Defendant used the money without accounting for same and therefore she has resorted to this Court to retrieve the said GH¢10,000 for her from the Defendant, interest on the said amount to be paid at the prevailing bank rate from 26<sup>th</sup> July, 2018 till date of final payment, general damages for breach of trust and punitive costs.

Defendant per his evidence averred that he married the Plaintiff at the time when Plaintiff had five children fathered by other men. It is the case of the Defendant that he had been in charge of the maintenance of the Plaintiff as his wife and the children without any complaints from him. Defendant alleged that when their son was involved in the accident, he spent so much money in the ups and downs just to ensure that their son got well back on his feet. Defendant had to do all the rounds including going to the Police

Station, going to insurance company, paying medical bills until the child was subsequently taken to a herbalist for further treatment. All these while, the biological father of the child never came to his aid, and he the Defendant had to fight for the said son.

Defendant averred that the GH¢10,000 paid by the insurance company was used by him to take of some of the expenses he incurred. Defendant tendered Exhibit '1' detailing the expenses up to GH5,995 which he could readily account for. The rest of the money has been spent in the process. Defendant therefore prays the Court to compensate the Plaintiff and Emmanuel Sosi (PW1) with GH¢3,000.

Defendant finally prayed the Court for Plaintiff to consider and accept compensation of GH¢3,000 in that Plaintiff brought five of her children to the matrimonial home and he took care of them freely without ever demanding any money for their upkeep.

The Evidence Act, 1975 (NRCD 323) stipulates that the onus of producing evidence of a particular fact in civil cases is on the party against whom a finding of fact would be made in the absence of further proof: see Section 17(a) and (b) of NRCD 323. It is also a basic principle of law that matters that are capable of proof must be proved by producing sufficient evidence so that, on all the evidence, a reasonable mind could conclude that the existence of a fact is more reasonable than its non-existence. This is the requirement of the law on evidence under sections 10 (1) and (2) and 11(1) and (4) of the Evidence Act, 1975 (NRCD 323).

The burden of producing evidence has been defined in Section 11 (1) of the NRCD 323 as follows;

*“11 (1) For the purpose of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party”.*

Thus the burden of proof is not static but could shift from party to party at various stages of the trial depending on the obligation that is put on that party on an issue. This provision on the shifting of the burden of proof is contained in Section 14 of NRCD 323 thus:

*“14 Except as otherwise provided by law, unless it is shifted, a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence that party is asserting”.*

Per the evidence of the parties herein, they were married and lived as a husband and wife at the time of the accident of their son Emmanuel Sosi who is a stepson to the Defendant. The Plaintiff when questioned in open Court on one of the adjourned dates, admitted that the issues concerning the compensation paid in respect of their injured son escalated to the extent that they are now separated as couples. The Defendant did not deny the receipt of the GH¢10,000 from the insurers of the vehicle that was involved in the accident. He however said he spent some of the money on their child during the time he was on admission and subsequently taken to an herbalist, on medication and food etc. and Defendant tendered Exhibit ‘1’ detailing the expenses incurred during the recovery procedures. Plaintiff did not deny the fact that it was the Defendant who did all the rounds seeking recovery of their son, Emmanuel Sosi. Even the insurers Donewell Insurance Company had to pay the GH¢10,000 into the Defendant’s account as evidenced by Exhibit ‘A’ from the Plaintiff’s own case. The evidence of the Defendant reveals that out of the GH¢10,000, he spent all on seeking medical attention for their son Emmanuel Sosi and the money is finished as evidenced in Exhibit ‘1’ that Plaintiff spent close to GH¢6,000 on expenses he could account for.

Upon considering the total evidence of both parties and taking into consideration also the surrounding circumstances and the relationship of the parties herein, this court grants the relief of the Plaintiff in part and agrees with the Defendant to hand over the balance of GH¢3,000 to the Plaintiff.

Judgment is hereby given in favour of the Plaintiff to retrieve the GH¢3,000 from the Defendant herein on or before 30<sup>th</sup> April, 2023.

No order as to costs considering the relationship of the parties.

**(SGD.)**

**HER WORSHIP BRIDGET AKPE AKATTAH**

**DISTRICT MAGISTRATE**