IN THE HIGH COURT OF JUSTICE HELD AT KUMASI IN THE ASHANTI REGION THIS TUESDAY THE 19TH DAY OF DECEMBER, 2023 BEFORE HIS LORDSHIP JUSTICE FREDERICK TETTEH

SUIT NO. C8/31/19

CHRISTABEL NTIM - PLAINTIFF
SUING PER HER FATHER AND NEXT FRIEND KOFI NTIM

VRS

1. DR. WILLIAM D. DANKWA -DEFENDANTS
2. FAJIN MUSTAPHA

JUDGMENT:

By her endorsement on her writ of summons dated 19th August, 2019, the Plaintiff suing through her father and next friend is claiming the following relief from the Defendants.

a. The Plaintiff who is a minor and aged 3 years old at the time of the incident, brings this action per her father and next friend, claiming against the 1st and 2nd Defendants jointly and severally, special and general damages for the personal injuries, loss and damages suffered by her when the 2nd Defendant then in charge and control of the 1st Defendant's vehicle No. GT 3109 – W, acting as the agent or servant of the 1st Defendant, drove the 1st Defendant's said vehicle, negligently that, it ran down the Plaintiff, who was then sitting somewhere outside the motorable road at Abidjan-Nkwanta, off Lake Bosomtwe road, thereby causing very serious personal injuries i.e. the amputation of right leg and thigh on the 18th of October, 2018.

Upon the issuance of the writ of summons and statement of claim from the registry of this court on the 28th August, 2019, two copies of the above-mentioned processes were served on the 2nd Defendant, personally at Aputuogya on the 17th October, 2019 at 2pm, by Samuel Owusu Gyamfi, a Bailiff attached to the District

Court, Kuntenase. After several attempts to serve the 1st Defendant with the court's processes had failed, Counsel for Plaintiff filed an application for substituted service on the 10th July, 2020. The application was granted on the 13th July, 2020. The processes were posted on the Notice Boards, High Court, Kumasi and Circuit Court, Kumasi. There is also an EMS of Ghana Post receipt dated Wednesday 7th July, 2023, indicating that, the process was mailed to the address of the 1st Defendant at Bawku, in the Upper East Region. The Plaintiff subsequently had published in the Daily Graphic dated 12th July, 2023, the order of substituted service, writ of summons and statement of claim. This in my considered view is enough notice to the Defendants, particularly the 1st Defendant, regarding the pendency of the writ of summons and statement of claim. The Plaintiff then filed an application for interlocutory judgment against the Defendants. The Plaintiff was ordered to file her witness statement and documents that she was minded to rely on, which she did on 22nd March, 2023. It is important to add that, the Defendants failed to file any process after they were served with the writ of summons and statement of claim.

In the case of **Linda Edzidor, Joshua Edzidor vs. Republic [2014] 70 GMJ pages 87 to 114,** it was held that, **'undeniably, a trial judge would not be in error to require a case to proceed in the absence of counsel who has had notice of the trial date and yet does not show up in court on the said date'.** Having failed to file any process, this court decided to proceed against the Defendants. Further, in the case of **Republic vs. High Court (Human Right Division), Accra, Ex Parte Alerta (Mancell Egala & Attorney General, Interested Parties [2010] SCGLR 374 @ 383 -384,** the Supreme Court speaking through Brobbey JSC (as he then was) stated the law as follows:

> **"A person who had an opportunity to be heard but deliberately spurned it to satisfy his or her decision to boycott proceedings, cannot later complain of any procedural irregularity as the party would be deemed to have waived any irregularity thereof". See also the case of In Re Krah (deceased) and others vs. Osei Tutu & anor [1989-90] 1 GLR 638".**

In the instant case, I am of the considered view that, the Defendants have been given the opportunity to be heard in this case, but they, particularly 1st Defendant, in my view deliberately spurned the opportunity. It can obviously be inferred that, the Defendants do not have a defence. This court has no other alternative than to determine the suit to a finality.

In her Statement of Claim, the Plaintiff averred among others that, at all times material to this action, the 1st Defendant was the owner of vehicle with registration no. GT 3109 – W, which vehicle was then being driven, controlled or managed by his servant Fajin Mustapha, the 2nd Defendant herein. The Plaintiff added that, the 2nd Defendant was working or acting in his normal work as the driver, agent or servant of the 1st Defendant.

According to the Plaintiff, on the 18th day of October, 2018, the 2nd Defendant then in-charge or control of the 1st Defendant's vehicle with registration no. GT 3109 – W drove or managed the said vehicle negligently, thereby running off the motor road of Abidjan-Nkwanta, off Lake Bosomtwe road, and knocked down the Plaintiff, causing very serious injuries to the Plaintiff.

The Plaintiff spelt out the following as the particulars of negligence at paragraph 4 of her statement of claim;

a. Driving without due care, caution and attention.

b. Failing to stop or manage the said vehicle so as to prevent it from running off the motor road and thereby knocking/running the Plaintiff down.

c. In so far as it is applicable, the Plaintiff relies on the doctrine res ipsa locquitur.

d. By reason of the matters aforesaid in paragraph 4, the 1st Defendant's vehicle knocked down the Plaintiff and caused very serious personal injuries to the Plaintiff.

The Plaintiff averred that, she was admitted on the 19th October, 2018 at 12.20 am to the Komfo Anokye Teaching Hospital (K.A.T.H.) due to the Road Traffic Accident. She added that, she underwent a traumatic accidental injury to her right lower limb leading to amputation of a non-viable right lower limb. The injury has been estimated to have a 40% conspicuous deformity. She has also an estimated percentage of incapacity of 75%. The Plaintiff at paragraph 5 spelt out the following as among others, the particulars of injury;

i. Deep lacerations at the right inguinal region

ii. Muscle of the thigh exposed and severed

iii. Two vessels about 5cm from the right inguinal ligament seen severed with clots and pulsating.

iv. Avulsion injury extending from thigh to popliteal region

v. Cold and pale right lower limb

vi. Right popliteal, right dorsalis pedis and right posterior tibial arteries pulsation absent.

vii. Vicryly (3:0) sutures seen in wound ligating the vessels.

The following are the current health status, complaints and findings affecting the Plaintiff;

a. Wounds on stump of amputated thigh (not healed yet with hyper granulation tissue.
b. Scars on amputated thigh
c. Wounds on left donor thigh
d. Patient not walking or attempting to walk.

The Plaintiff averred that, she was knocked down by the vehicle owned by 1st Defendant and being under the control, management and being driven by the 2nd Defendant. As a result of the accident, her right leg and thigh was run over by the vehicle leading to an amputation. The Plaintiff particularised the following as special damages;

a. Police Report --- GH c 580.00
b. Medical Report --- GH c 1,300.00
c. Medical Expenses --- GH c 2504.00
d. Native Treatment --- GH c 2500.00

GH c 6,884.00

In her bid to prove her claim for the relief on her writ of summons, the Plaintiff's testimony was in essence a narration of what was contained in her Statement of claim. Plaintiff adduced evidence through her father and next friend and did not call any witness. She however relied on documents he tendered in evidence. The Plaintiff tendered in evidence, exhibits 'A', 'B series', 'C', 'D series', and 'E' representing police report, medical report, driver's temporal license, receipts and photograph.

Having perused the exhibits stated above, I do not doubt their authenticity and credibility.

It is trite law that the Evidence Act places the burden on a party that is asserting a claim to prove it by a preponderance of the probabilities. The burden of persuasion in a civil case is provided in the Evidence Act as the establishment of the existence or non-existence of a fact by a preponderance of the probabilities. Section 10 of the Evidence Act, which deals with the burden of persuasion on parties to actions states specifically as follows:

> (1) For the purposes of this Act, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the Court.
>
> (2) The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact, or to establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.

With respect to the burden of providing evidence, section 11(1) of the Evidence Act provides as follows:

> **For the purposes 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.**

Section 12 of the Evidence Act restates the general rule that the degree of proof usually required to satisfy the burden of persuasion in civil actions is proof by the preponderance of the probabilities.

Sophia Adinyira JSC (as she then was) in **Don Ackah v Pergah Transport [2010] SCGLR 728** held that the party with the burden to produce evidence, must produce evidence with the **'quality of credibility, short of which his claim may fail.'** She further held thus;

> **"It is a basic principle of the law of evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. It is trite 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 probable than its non-existence".

Further, in the case of **Ababio v Akwasi III [1994-95] GBR 774,** Aikins JSC repeated that a plaintiff must prove what he alleges. He stated at page 777 of the report as follows:

"... the general principle of law is that it is a duty of a Plaintiff to prove his case, i.e., he must prove what he alleges. In other words, it is the party who raises in his pleadings an issue essential to the success of his case who assumes the burden of proving it...."

In **Zabrama v Segbedzi [1991] 2 GLR 221**, the Court of Appeal held that the burden to provide evidence goes beyond simply repeating on oath, one's pleadings. The Court held thus;

"... proof in law is the establishment of facts by proper legal means. Where a party makes an averment capable of proof in some positive way, e.g. by the production of documents, description of things, reference to other facts, incidents or circumstances, and his averment is denied he does not prove it by merely going into the witness-box and repeating that averment on oath or having it repeated by his witness. He proves it by producing evidence of other facts and circumstances from which the court can be satisfied that what he avers is true".

Finally, under section 14 of the Evidence Act, the burden of persuasion is normally on the party to whose case the fact is essential. The section provides specifically that;

"Except as otherwise provided by law, unless and until 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 he is asserting".

From the above, when the Plaintiff discharged his burden with the documentary and other evidence he proffered, the evidentiary burden shifted to Defendants, to establish their alleged defence, if any, by the same evidentiary standards set by sections 10, 11, 12 and 14 of the Evidence Act. Furthermore, it is also necessary if

any allegation or averment pleaded is to be proved by documents or some other evidence, the court should ensure that the proper evidence is accepted as proof of that averment. In the case of **Memuna Moudy & Ors vrs. Antwi [2003-2004] 2 SCGLR page 967,** the Supreme Court speaking through Wood JSC (as she then was) held thus;

> **"A cardinal principle of law on proof as enunciated in the age-old case of Majolagbe vrs. Larbi (1959) GLR page 190 and reiterated in a number of cases, including Zabrama vrs. Segbedzi (1991) 2 GLR page 221 at 246, is that, a person who makes an averment or assertion which is denied by his opponent, has the burden to establish that his averment or assertion is true. And he does not discharge his burden unless he leads admissible and credible evidence from which the fact or facts he asserts can be properly and safely inferred"**

As stated in **Zabrama vrs Segbedzi supra**, a person who makes an averment or assertion, which is denied by the opponent, has the burden to establish that the averment or assertion is true. And this burden is not discharged unless that person leads admissible and credible evidence from which the facts asserted can properly and safely be inferred.

It is trite law that where the Plaintiff makes a positive assertion at the start of the trial, he bears the legal burden. At the same time, the Plaintiff bears the evidential burden to adduce evidence at the start of the trial. In the case of **Barima Gyamfi v. Ama Badu [1963] 2 GLR 596,** the Supreme Court held in holding 1 thus;

> **"in a claim made by a Plaintiff, there is no onus on the defendant to disprove the claim so that however unsatisfactory or conflicting the Defendant's evidence may be, it cannot avail the Plaintiff. The evidence of the defence only becomes important if it can upset the balance of probabilities which the Plaintiff's evidence might have created in the Plaintiff's favour or if it tends to corroborate the Plaintiff's evidence or tends to show that evidence led on behalf of the Plaintiff was true".**

The Plaintiff has spelt out her relief as per the endorsement on her writ of summons dated 28th August, 2019. In the endorsement, the Plaintiff, a minor and aged 3 years old, brought this action per her father and next friend, claiming against the 1st and 2nd Defendants jointly and severally, special and general damages for the

personal injuries, loss and damages suffered by her when the 2nd Defendant then in charge and control of the 1st Defendant's vehicle No. GT 3109 – W, acting as the agent or servant of the 1st Defendant, at a time when he was within the scope of his employment, drove the 1st Defendant's said vehicle, negligently that, it ran down the Plaintiff, who was then sitting somewhere outside the motorable road at Abidjan-Nkwanta, off Lake Bosomtwe road, thereby causing very serious personal injuries i.e. the amputation of right leg and thigh on the 18th of October, 2018.

I have already stated in this judgment that after the Defendants had failed to file any process, the 1st Defendant failed to appear in court to prosecute any defence that he had. The 2nd Defendant on the other hand, failed to file any process but was present in court. He did not object to all documents tendered in evidence and further told the court that, he had no questions for the Plaintiff when he was called upon to ask questions if he was minded to do so. The Defendants were given the opportunity to cross examine the Plaintiff but they spurned it.

Brobbey JSC (as he then was), stated in his book "Practice and Procedure in the Trial Courts & Tribunals of Ghana" at page 513 paragraph 1210., that;

> **"The objects of cross – examination are two told. First it is to weaken or nullify the opponent's case and secondly, it is to establish facts which are favourable to the cross examiner. In effect cross – examination aims at testing the accuracy of the witness's evidence and at giving the witness the chance to deal with the case of the cross examiner"**

Further, in the case of **Agbosu vrs. Kotey also known as In Re – Ashalley Botwe Lands (2003 – 2004) SCGLR 420 Wood J.S.C. (as she then was)** in her lead opinion cited the case of **Mantey & Anor vrs. Botwe (1989 – 90) 1 GLR 479** and relied on the principle it established as follows:

> **"...where a party's testimony of a material fact was not challenged under cross – examination, the rule of implied admission for failure to deny by cross – examination would be applicable and the party need not call further evidence on that fact".**

In sum, if evidence is tendered and a party fails to cross examine so as to challenge its veracity, the party subject to some exceptions which in my view are inapplicable here would be deemed to have admitted the contents of the evidence. In the instant case, since the Defendants failed to file any process thereby failing to cross examine the Plaintiff, I find that, the Defendants have impliedly admitted the evidence of the Plaintiff.

The law is well established that where, in an action for negligence, the plaintiff proved that the offending vehicle belonged to the defendant, the fact of ownership of the vehicle was prima facie evidence that the vehicle was being driven at the material time by the servant or agent of the owner. Besides, there was evidence of the relationship of master and servant between the Defendants. See the cases of **Adom vrs Ntow [1992-93] GBR Vol 4 page 1603-1613, Aboaku v Tetteh [1962] 2 GLR 165, Packer v Sekondi-Takoradi Municipal Council [1960] GLR 259.**

From the evidence led, there is no doubt that the accident occurred, resulting in the injuries sustained by the Plaintiff. There is also no doubt that, the Plaintiff was admitted at the Komfo Anokye Teaching Hospital. There is further no doubt that, the Plaintiff was incapacitated as a result of the accident. This court also finds as a fact that, that the 2nd Defendant, who was arraigned before the District Court, Kuntenase for offences related to the accident, was convicted on his own plea and fined GH c600.00, which fine, he paid. Section 127(1), (2), (3) and (4) of the Evidence Act 1975 (NRCD 323) stipulates thus;

(1). Evidence of a final judgment in a criminal action of a court in Ghana adjudging a person guilty of a crime is not made inadmissible by section 117 when offered to prove any fact essential to the judgment.

(2). Evidence of a final judgment of a court is not made inadmissible by section 117 when offered by a judgment debtor to prove any fact which was essential to the judgment in an action in which he seeks to—

(a) recover partial or total indemnity or exoneration for money paid or liability incurred because of the judgment; or

(b) enforce a warranty to protect the judgment debtor against the liability determined by the judgment; or

(c) recover damages for breach of a warranty substantially the same as the warranty determined by the judgment to have been breached.

(3). When the liability, obligation or duty of a person other than a party is in issue in an action, evidence of a final judgment of a court in Ghana against that person is not made inadmissible by section 117 when offered to prove such liability, obligation or duty.

(4). A judgment offered in evidence and admissible under this section is not made inadmissible by the fact that the judgment is an opinion or is not based on personal knowledge.

From the above provisions, the position of the law in Ghana is that, a judgment of a criminal case, in which the accused was convicted is admissible in evidence in a civil trial to prove the contents of the judgment that are essential to the issue on trial. See Sections 127(1) and (4) of the Evidence Act. Further, by the person being found guilty, the court is presumed to have conducted such investigation into the case that there is supposed to be no reasonable doubt that the accused is guilty. In the absence of reasonable doubt, there can be no legitimate reason for rejecting a judgment in which facts have been proved beyond reasonable doubt. In the absence of any such objections, the facts leading to the conviction are essential to the issue on trial and may be admitted in the civil trial.

Section 127(2) applies where a person who acts for another and who incurs losses, seeks to recover her losses by a court action. In that action, essential facts in the judgment given against him while acting for the other body or his principal may be used to prove matters in dispute before the trial. Basically, Section 127(2) covers three main actions. They are;

a. To claim indemnity
b. To enforce a warranty to protect himself
c. To recover damages for breaches of warranty

Section 127(3) deals with a situation where a third party liability is in issue. In such an action, final judgment against the third party in another action may be admitted in evidence to prove facts therein essential to establish such liability.

Bearing the above stated provisions in mind, I am of the considered view that, the conviction of the 2nd Defendant obviously operated as prima facie evidence in

favour of the Plaintiff against the Defendants, and shifted the evidentiary burden on the Defendants to rebut the prima facie presumption. The burden therefore shifted onto the Defendants to rebut that presumption but they failed in their respective duty to rebut the presumption. Indeed, they failed to file any process upon the service of the writ of summons and statement of claim on them. In the absence of a rebuttal by the Defendants, the Defendants are estopped from adducing evidence to contradict the formal admission of guilt by 2nd Defendant during the criminal trial at the District Court, Kuntenase.

Since the success or otherwise of the Plaintiff's claim to damages whether general or special is dependent on a finding that the 2nd Defendant's negligence led to the accident, and the fact that the Defendants are jointly and severally liable for special and general damages, the court will proceed to consider the issue of negligence. The Plaintiff therefore assumes the burden of proof in that regard, more so when the Defendants failed to file any process.

The Police Accident report, Exhibit "A", showed that on the 5th November, 2018, accused driver therein and 2nd Defendant herein was arraigned before the District Court, Kuntenase, presided over by H/W Mrs. Cynthia Blagogee. The accused therein and 2nd Defendant herein pleaded guilty simpliciter. The 2nd Defendant herein was convicted on his own plea and sentenced to pay a fine of GH c600.00 or in default serve 4 months I.H.L. By this, the Plaintiff has introduced evidence about the probability of his case and the evidential burden is then thrown upon the Defendants to lead evidence in rebuttal to avoid judgment against them on the issue of negligence. This they failed since they failed to file any process including a statement of defence. The Plaintiff did set out the particulars of negligence, as well as the special damages suffered. Having regard to the totality of evidence on record, the Plaintiff has successfully proved her case. On the facts, I find that the accident was caused solely by the negligence of 2nd Defendant who is the employee or servant of the 1st Defendant.

The law did not demand of a party a regiment of witnesses to prove his case. The law was well settled that multiplicity of witnesses alone did not prove a case. Rather the credible and reliable testimony of a single witness, sufficed as proof of any matter in issue. See the cases of **Kru v Saoud Bros & Sons [1975] 1 GLR 46, CA, Ayiwa v Badu [1963] 1 GLR 86, COP v Kwashie (1953) 14 WACA 319, Atadi v Ladzekpo [1981] GLR 218, Majolagbe v Larbi [1959] GLR 1190.**

Eventhough the court has found against the 2nd Defendant on the issue of negligence and for which the 1st Defendant is vicariously liable, for the Plaintiff, to be entitled to damages, he must satisfy the court that whatever is being claimed is in respect of the injuries sustained and the incapacitation suffered subsequently. In the case of special damages, they must be pleaded specifically and then proved strictly. See **Norgbey v. Asante [1992] 1 GLR 506 at 516-517.** Such damages have to be strictly proved for the simple reason that they are not presumed by law as the natural, probable and direct consequence of the act complained of as stated in **Halsbury's Laws of England (3rd ed.) Vol.11 p 218.**

In support of Special damages for injuries, the Plaintiff tendered in evidence exhibits 'A', 'B series', and 'D' series, representing the police report, medical reports and receipts respectively. Though the production of invoices and receipts is not the only way of proving an expenditure, the mere production of receipts does not also mean that the expenses contained therein have indeed been incurred. The court must therefore scrutinise all such receipts to satisfy itself about their genuiness and they being expenses arising from the tort complained of. I have carefully examined the above stated exhibits and find that, the cost incurred in procuring the police report is GH c 580.00 as stated by the Plaintiff, eventhough the report did not disclose the amount paid. There is no official receipt in support of the procurement of the medical report. That notwithstanding, I am of the view that, the GH c 1,300.00 stated is reasonable having borne in mind the nature of the injuries and the series of reports produced by the medical personnel, including a specialist consultant. Further, having scrutinised all the receipts, the total cost incurred is GH c 2504.00.

The Plaintiff finally testified that, he paid GH c 2,500.00 for native treatment. He however failed to tender in evidence receipts for the native treatment. It is true that cases like **Yeboah & Ors v Yamak & Co. [1962] 1 GLR 120 and Yamusah v Mahama [1991] 1GLR 371** all held that a visit to a native doctor is reasonable having regard to the background of the Plaintiff and that expenses for native medicine was recoverable, and that the court must first be satisfied that the Plaintiff, from his/her background, is one who is likely to resort to herbal or native treatment in addition to or in preference to orthodox medicine. The Plaintiff next would have to satisfy the court that he/she did indeed seek for such herbal treatment and incurred expenses. I have already stated above that, the Plaintiff failed to tendered receipts in evidence.

At any rate how many of our local medicine men know of receipts in their activities at all, let alone to possess and issue them? Was it necessary to require that the plaintiff could only go in for native medical treatment upon a recommendation

from the medical officer? I must confess I am not aware of any rule to that effect. In line with my thinking, I believe the Plaintiff did not need anybody's recommendation or advice or otherwise to go for native treatment. Commonsense will surely dictate that he was at liberty to go elsewhere for additional or further treatment. It is also a known fact that, in cases of bone injury natives almost always consulted the herbalist. I know that they sometimes perform wonders in bone healing. Having observed the Plaintiff and her father, coupled with her evidence on record, this court finds that, from their background, they are persons who will seek for herbal treatment. This claim not having been at all disputed, I accept it and find as a fact that the plaintiff underwent native herbal treatment at a cost of ¢2,500.00, which reasonably arose from the injury he sustained due to the negligence of 2nd Defendant for which 1st Defendant is vicariously liable. I am of the considered view that, the Plaintiff is entitled to a sum total of GH c 6,884.00 as special damages. I hold accordingly.

The plaintiff tendered in evidence exhibit 'B series', being medical reports in support of her case. She however failed to call the medical officer. In the instant case, I do not think the failure to call the medical officer who examined the Plaintiff is fatal to her case. Indeed, I am of the considered view that exhibit 'B series', particularly exhibit B3 speaks for itself and I have no reason to doubt its authenticity and credibility. In exhibit 'B3', the Medical Officers, Dr. Boutrous Farhat, Surgical Specialist and Prof. C.K. Gyasi-Sarpong, Head of Dept. of Surgery, both Surgical Specialists, concluded that as a direct result of the accident, the Plaintiff sustained among others the following injuries;

i. Deep lacerations at the right inguinal region
ii. Muscle of the thigh exposed and severed
iii. Two vessels about 5cm from the right inguinal ligament seen severed with clots and pulsating.
iv. Avulsion injury extending from thigh to popliteal region
v. Cold and pale right lower limb
vi. Right popliteal, right dorsalis pedis and right posterior tibial arteries pulsation absent.
vii. Vicryly (3:0) sutures seen in wound ligating the vessels.

The Medical Officers stated that, the Plaintiff underwent a traumatic accidental injury to her right lower limb leading to amputation of a non-viable right lower limb. They added that, the injury has been estimated to have a 40% conspicuous deformity. They finally estimated percentage of incapacity of 75%

The Supreme Court in the case of **Kwadwo Appiah vrs. Kwabena Anane, Civil Appeal Suit No. J4/42/2019 dated 22nd January, 2020,** was of the view that awarding damages in the form of monetary compensation for personal injury claims is not an easy task. The Supreme Court per Amegatcher JSC, in his lead judgment, stated thus;

> **"One cannot conjure any figure at all or have a table with some guidelines or by any arithmetic exactitude establish what is the amount of money which would represent pain and suffering which a person like the Plaintiff has been occasioned in an accident, no two claims in such injuries can be compared and figures of one cannot be imposed on the other".**

The Supreme Court added that the fact of each case should determine which compensation the court should award in claims for personal injuries.

The Supreme Court in the **Kwadwo Appiah vs. Kwabena Anane case supra,** took guidance from the words of Cockburn CJ in the case of **Phillips vs. South Western Railway Co. (1879) 4 Q.B.D. page 406,** in assessing the sum to which the Plaintiff is entitled. In the above stated case, Cockburn CJ expressed the general approach of the courts in the assessment of damages for personal injuries at page 407-408 as follows;

> **"But we think that a jury cannot be said to take a reasonable view of the case unless they consider and take into account all the heads of damage in respect of which a Plaintiff complaining of a personal injury is entitled to compensation. These are bodily injury sustained, the pain undergone, the effect on the health of the sufferer, according to its degree and its probable duration as likely to be temporary or permanent, the expenses incidental to attempts to effect a cure, or to lessen the amount of injury, the pecuniary loss sustained through inability to attend to a profession or**

business as to which, again, the injury may be of a temporary character, or may be such as to incapacitate the party for the remainder of his life"

The Supreme Court also referred to English Court of Appeal case of **Roach vs. Yates [1938] 1 KB page 256** where the following guidelines were laid down when assessing damages for personal injuries…;

"i. pecuniary losses and expenses down to the date of the action.

ii. prospective loss of wages;

iii. nursing attendance, a sum sufficient to cover a reasonable weekly payment for that purpose during the period of his life as shortened by the accidents; and

iv. past and future physical and mental pain and suffering, and the shortening of his life, a sum, in estimating which the following consideration should be kept in view, namely, that no amount of money, however large, could fully compensate the Plaintiff for these injuries, and that the most that could be done was to award him such compensation as was reasonable in all the circumstances of the case".

The Supreme Court, in the **Kwadwo Appiah vs. Kwabena Anane case supra**, held the view that, in the dynamism of the present world, the time has come to be forward looking and award realistic and comparable compensation to comparable injuries to adequately compensate for the long term deformity, mental torture and unimaginable losses suffered. Damages sometimes must bite as one of the measures to fight the high rate of accidents and indiscipline on the roads.

In the instant case, there is no doubt that, the 2nd Defendant was found guilty for not giving due care and attention to his vehicle and further failed to put the said vehicle into gear. For the avoidance of doubt, on the 19th October, 2018 at about 7pm, 2nd Defendant drove DAF [95] Tipper Truck with registration no. GT 3109-W from Ahodwo-Kumasi and parked at Abidjan-Nkwanta and without due care attention he failed to put the said vehicle into gear. In the process the vehicle moved and crossed the other side of the road, knocked down the Plaintiff aged 3 years then, who was seated on a table at the shoulders of the road. She sustained severe injury

on her right leg and was rushed to St Micheal's Hospital, Pramso and later referred to KATH Accident and Emergency Unit, Kumasi for further treatment but due to the nature of the injury of her leg, it was amputated. The 2nd Defendant was obviously negligent and as a result, the Plaintiff sustained various degrees of injuries. The injuries the Plaintiff suffered has led to the calculation of his incapacitation by the Medical Officer as Seventy-five (75%). It is unfortunate to say the least the failure of the Defendants to at least contribute to the health needs of the Plaintiff. They both did absolutely nothing to assist the Plaintiff during the period of her pain, suffering and agony. This indeed is insensitive.

In view of the above, regarding general damages in the nature of pain, suffering, mental agony, loss of amenities, physical disabilities, e.tc., I will award the Plaintiff general damages in the sum of GH c 250,000.00. This is to enable the Plaintiff acquire a prosthetic leg and/or wheel chair to facilitate her movement. This in my view will ameliorate the mental agony, suffering, physical disabilities and facilitate her movement. In that regard, I hereby settle a trust for the benefit of the Plaintiff. GH c 200,000.00 of the judgment debt payable should be put in an interest yielding account to be managed for the benefit of the Plaintiff. In that regard, I hereby appoint the Plaintiff's father, the Plaintiff's lawyer, J.K. Koduah and the Regional Accountant of the Judicial Service as trustees of the trust. They are to ensure that, the Plaintiff has been provided with a prosthetic leg and a wheel chair. The rest of the money left if any, should be used for the educational needs of the Plaintiff. The rest of the money should be used by the Plaintiff and her father to pay off debts incurred by them during the period when the Plaintiff was hospitalized till date.

In sum therefore, judgment is entered for the Plaintiff for the relief endorsed on the Writ of Summon against the Defendants jointly and severally. For the avoidance of doubt the Plaintiff is adjudged entitled to the following: -

a. Special Damages	-- GH c 6884.00
b. General damages	-- GH c250,000.00
TOTAL	GH c256,884.00

The policy rationale behind the institution of costs in litigation has been judicially pronounced on in **SCOA Motors v Koranteng [1967] GLR 263**, where Azu Crabbe JA (as he then was) said at page 273 of the report that:

"The real object of awarding costs is to recoup a plaintiff who had successfully established his right to maintain the litigation which he had commenced or the defendant who had been wrongly dragged into court and harassed with litigation".

Further, in **Erskine v Erskine [1984-86] 1 GLR 249**, Twumasi J held that in awarding costs, courts must take all relevant factors into consideration, stating as follows:

"In order not to frustrate the policy rationale behind the award of costs in litigation it is of paramount importance that every court, superior or inferior, takes the question of costs seriously to ensure that justice is done to the parties not only in respect of the merit of the issues but also with regard to expenses incurred by them in the prosecution of the case... The court must exercise its discretion in a judicial manner and this requires that all relevant factors should be taken into consideration and impartially adjudicated upon in fairness to the parties involved in accordance with reason and justice and not according to a feeling of hostility or sympathy"

Having regard to the nature of the case, the Plaintiff had to procure the services of Counsel to prosecute her claim in this court at an expense. The Plaintiff also published in the Daily Graphic the order of substituted service to enable her bring the suit to the attention of the 1st Defendant. In the circumstances, I will award costs of GH¢20,000, 000.00 in favour of the Plaintiff.

SGD
H/L JUSTICE FREDERICK TETTEH
JUSTICE OF THE HIGH COURT

J.K. KODUAH., ESQ. FOR PLAINTIFF