IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF MWANZA)

AT MWANZA

CIVIL CASE NO. 06 OF 2019

OMARY RAMADHANI MAFELE .....PLAINTIFF

VERSUS

1. **MWITA CHACHA NGATUNI..... 1ST DEFENDANT**
2. **TARIME DISTRICT COMMISSIONER ..... 2ND DEFENDANT**
3. **ATTORNEY GENERAL .....3RD DEFENDANT**

JUDGEMENT

Date of last order: 30/12/2021

Date of judgment: 27/04/2022

F. K. MANYANDA, J.

1. Introduction

In this case the Plaintiff, **Omary Ramadhani Mafele,** a businessman based in Mwanza City is suing the Defendants abovenamed jointly and severally for claim of TShs. 50,000/= being loss of income per day from the date of accident and TShs. 7,559,000/= being costs for repair of his damaged motor vehicle on allegations that the Defendants' motor vehicle negligently caused an accident in which his motor vehicle was involved and severely damaged. The Defendants vehemently denied the

allegations throwing the blame to the driver of the Plaintiff's motor vehicle.

2. **Background**

The brief facts averred in the plaint are that on 11/10/2019 at about 0630 Hours, motor vehicles with Registration No. STL 3783 make Toyota Landcruiser, in this judgement I will be referring to it simply as **"the Landcruiser",** and another with Registration No. T187 CWE, make Toyota Hiace, which in this judgement I will be referring to it simply as **"the Hiace",** were involved in a head on collision accident at Nkrumah/Uhuru Roads intersection. The former motor vehicle was being driven by the 1st Defendant and was in use by the 2nd Defendant in his official duties. The latter belongs to the Plaintiff and was in use for commuting passengers in Mwanza City trips.

The Plaintiff alleges that the former motor vehicle was been driven at a rush speed and without stopping at a stop sign board and have lookout to other users of the road therefore negligently driven. It caused the accident which severely damaged the latter motor vehicle which despite of substantial amount of money used to repair the same, it failed to resume to its business. The 1st Defendant who was driving the former motor vehicle alleges that it was the latter motor vehicle which being

driven at a high speed failed to take precautions when approaching the roads intersection. He disputed all the allegations of damage and repair costs to the latter vehicle.

3. Representation

At the hearing of this case the Plaintiff was represented by Mr. M. S. Mwanaupanga, learned Advocate; the 1st Defendant enjoyed representation services of Mr. Abdallah Kessy, learned Advocate; the 2nd and 3rd Defendants were represented by Ms. Subira Mwandambo, learned State Attorney.

4. Issues

From the proposals by the parties, this Court framed four issues as follows: -

i. *Whether the accident that occurred on 11/10/2019 involving motor vehicles Toyota Land Cruiser with Registration No. STL 3783 and Toyota Hiace with Registration No. T187 CWE, was caused by negligent driving of the 1st Defendant;*

ii. *Whether the 2nd and 3rd Defendant are vicariously liable for the negligent driving of the 1st Defendant;*

iii. *Whether the Plaintiff has suffered damages; and*

iv. *What relief(s) the parties are entitled to.*

5. Summary of the Plaintiff's evidence

To prove his case, the Plaintiff called five (5) witnesses namely, Vedustus Laurent Shitungulu who testified as PW1, Harun Amos Kimune, testified as PW2, Hamisa Hassan who testified as PW3, Monila Mkula testified as PW4 and Omary Ramadhani Mafwele.

PW1 Vedustus Laurent Shitungulu testified that he was an employee of the Plaintiff as a driver; on the incident day at about 06:00 Hours was driving the Hiace which operated as commuter bus. That upon approaching at the intersection of Nkrumah/Uhuru he stopped then suddenly a Landcruiser coming from Uhuru Road at a high speed hit the Hiace causing it to overturn, it was in good condition before the accident, but was extensively damaged hence, it was towed to a police station.

That, the incident was examined by a traffic police officer namely Jasmin. He testified further that there were passengers in the Hiace some of whom got injured and that there was a stop sign board on the direction the Landcruiser came from. As to earnings, PW1 testified that

he used to earn an average of Tshs. 50,000/= per day after deducting running costs.

On cross examination by the defence Counsel he stated that he had an experience of two years driving, hence he could know a motor vehicle running with brake failure. He stated further that it was an agreement with the Plaintiff to submit Tshs. 50,000/= per day.

The second witness Harun Amos Kimune (PW2) testified that he was a conductor in the Hiace. He testified that on the fateful day and time witnessed the accident where a Landcruiser knocked their Hiace causing it to overturn, hence, seriously damaged it. He testified further that the Hiace stopped upon arriving at the Nkrumah/Uhuru roads intersection. There were some passengers who got injured. He supported PW1 on the amount of earning that it was Tshs. 50,000/= per day after deducting running costs.

On cross examination, he stated that it is likely a motor vehicle to fail brake while on road, however he doubted if a Landcruiser could fail as such.

PW3 was Hamisa Hassan who testified that she was among the passengers who got injured in the Hiace though she had no any ticket, she stated that she didn't witness how the accident occurred as she was facing backward and didn't know what happened as she fell unconscious until resumed sobriety in hospital. She was discharged the same day after undergoing some treatments.

Monila Mkula (PW4) like PW3 testified that he was a passenger injured in the Hiace.

PW5 is the Plaintiff who testified that he is the Hiace owner and tendered Exhibit P1, the Registration Card of the Hiace. That he used it for business as a commuter bus, he tendered Exhibits P2 Collectively namely TIN Registration Certificate, SUMATRA Road Service Licence, SUMATRA Fee Payment Notification, Insurance Interim Cover dated 11/06/2019 and Inspection Report dated 10/05/2019, He also tendered the Ticket Book as Exhibit P3.

He was told that his Hiace was hit by the Landcruiser at the incident scene and some passengers injured, he found it at Police Station. He tendered Exhibit P4, the Inspection Report which shows

that the Hiace was damaged. He tendered Exhibit P5, the Proforma Invoice dated 24/10/2019 for repair costs estimate of Tshs. 7,559,000/=.

Testifying further, PW5 stated that the 1st Defendant was convicted with a criminal offence of careless driving causing injuries to persons and damage to a motor vehicle per Exhibits P6, the proceedings and judgement in DC Traffic Case No. 134 of 2019. He tendered Exhibits P7 Collectively namely, letters to TRA and Sanlam Insurance to stop charges due to non-operation. Moreover, he tendered Exhibit P8 being various photographs of the Hiace and Exhibit P9, the 90 days' Statutory Notice to the 2nd and 3rd Defendants dated 22/10/2019. Then he prayed for payment of Tshs. 50,000/= day from date of accident to judgement and Tshs. 7,559,000/= being repair costs.

In cross examination PW5 stated that he was not present at the incident, he failed to show on Exhibit P4 the police station which inspected the Hiace. He conceded that an estimated costs for repair is not the actual costs and that he didn't involve the Defendants in repair estimation. Further, he stated that he rejected

an offer of repairing the Hiace by the Defendants on reasons that he didn't like the proposed garage. Upon further cross examination he stated that although he was a registered tax payer, he didn't tender tax receipts to evidence the same. He also conceded that PW3 and PW4 had no tickets.

In re-examination, he stated that he was dependent of the earnings from the Hiace, as to proof of the amount, PW5 asked the court to look at the earnings of other commuter buses in town.

6. Summary of the Defendants' evidence

The defence evidence was led by Mwita Chacha Ngatuni, DW1 supported by DW2 James Bunyanyembe Yunge.

DW1, Mwita Chacha Ngatuni, testified that he is an employee of Tarime District Council as a driver. On the incident day 11/10/2019 about 06:40 Hours he was driving the Landcruiser and his passenger was the then District Commissioner of Tarime District, Hon. Mtemi Semion. That when he was approaching Nkrumah/ Uhuru intersection the Landcruiser he was driving failed brake and knocked into the Hiace. He tendered Exhibit D1, a letter of offer of

appointment; D2, a letter of Transfer and D3 assignment letter to drive the Landcruiser.

On cross examination, he stated that the Hiace was a commercial vehicle and it was damaged. He conceded that he was convicted with the offences in the criminal charge.

DW2, James Bunyanyembe Yunge testified that he is a Division Officer in Tarime District was in Dar-es-Salaam when the accident occurred. He stated further that the Landcruiser was a property of the Central Government. On the incident day the Landcruiser was ferrying the District Commissioner for Tarime District on official duty being driven by the 1st Defendant.

He admitted that following the accident there would be some damages but the same is recoverable by the Plaintiff from his insurer. He denied that the 1st Defendant was liable.

7. Counsel's submissions

After closure of testimonies of witnesses for both sides, both Counsel made written submissions which I need not to reproduce them here, but I will be referring to them in this judgement. It suffices to say that I am thankful to the Bar. Both Counsel with the usual zeal and eloquence argued their positions well. Moreover, I sincerely register my apology for late delivery of this judgement, the causes of delay were out of my control.

8. Standard of Proof

It is a cardinal principle of law that he who alleges must prove and in civil cases the standard of proof is that of balance of probabilities.

The principle is enshrined under Sections 110 and 111 of the Evidence Act, [Cap. 6 R. E. 2019]. Section 110 of the Evidence Act, reads: -

> *"110(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.*

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

And Section 111 of the same law reads: -

"111. The burden of proof in a suit proceeding lies on that person who would fail if no evidence at all were given on either side."

The principle is illustrated in the **Sarkar Law of Evidence**, Malaysia Edition, by SC Sarkar, published by Lexis Nexis, at page 2355 thus: -

"(b) 'A' desires a court to give judgment that he is entitled to certain land in possession of 'B' by reason of facts which he asserts and 'B' denies to be true, A 'must prove the existence of those facts."

The burden of proving the facts always lies upon the person who asserts. The principle is based on an ancient rule that *'incumbit probation qui dicit non qui negat'*, which means the burden of proving facts rests on the party who substantially asserts the affirmation of the issue and not upon the party who desires it; for a negative is usually incapable of proof.

9. Analysis of Evidence

a. First Issue

I will start with the first issue, that is, whether the accident that occurred on 11/10/2019 involving motor vehicles Toyota Land Cruiser with Registration No. STL 3783 and Toyota Hiace with Registration No. T187 CWE, was caused by negligent driving of the 1st Defendant.

As gleaned from the Plaintiff's Counsel and the 1st Defendant's Counsel submissions, there is no dispute that an accident occurred in the early morning of 11/10/2019. It involved the Hiace and the Landcruiser. It is not disputed either that the Hiace is the property of PW5 as evidenced by Exhibit P1, the Registration Card and on the incident day it was been driven by PW1 under the authority of its owner, PW5. It is also proved without dispute that the Landcruiser is the property of the Government and at the time of accident it was being driven by the 1st Defendant in the course of executing his usual official duties.

It is also not disputed that the 1st Defendant was convicted with traffic offences of careless driving in a criminal charge.

On cross examination DW1, the 1st Defendant admitted that he was convicted with traffic offences in the criminal charge. PW5, the Hiace owner, stated in his testimony that the 1st Defendant was convicted with a criminal offence of careless driving causing injuries to persons and damage to a motor vehicle per Exhibits P6, the proceedings and judgement in DC Traffic Case No. 134 of 2019.

It is trite law that where a person is convicted of an offence and the judgement for which he is convicted is unchallenged it becomes conclusive evidence on the facts which with which he was convicted and the same becomes relevant in subsequent civil proceedings as *prima facie* evidence of those facts.

I am fortified by the provisions of section 43A of the Evidence Act, [Cap. 6 R. E. 2019] which reads as follows: -

> *"43A. A final judgement of a court in any criminal proceedings shall, after the expiry of the time limit for an appeal against that judgement or after the date of the decision of an appeal in those proceedings, whichever is the later,* ***be taken as conclusive evidence that the person convicted***

or acquitted was guilty or innocent of the offence to which the judgement relates."

In the case of **Queens Cleaners and Dyers Ltd v East African Community and others** [1972] 1 EA 229, the Kenyan High Court discussed relevance of criminal conviction in a traffic criminal case as proof of negligence in an action for damages. In that case a third defendant was the driver of a vehicle which was involved in a motor accident and had been convicted of careless driving. When the relevance of his conviction became an issue in a civil the said defendant attempted to lead evidence showing his reasons for pleading guilty. The plaintiff objected, contending that the conviction was conclusive evidence of carelessness under Section 47A of the Kenyan Evidence Act. The said Kenyan High Court held *inter alia* that: -

"(i) evidence may not be admitted to qualify the conclusive nature of the evidence of conviction."

The said Kenyan High Court was interpreting the provisions of section 47A of the Kenyan Evidence Act which is *pari materia* with with section 43A of the Tanzanian Evidence Act reproduced above.

In our jurisdiction, the provisions of Section 43A of the Evidence Act were discussed by this Court in a case of **Mrs. Huba Hashim**

Kasim vs. M/S Tonda Express Ltd and 2 Others Civil Case No. 75 of 2010 where after holding that evidence of criminal conviction was not pleaded but was relevant, it stated as follows: -

> *"Thus, the criminal judgement would be important proof to show that the 2nd defendant was found guilty of the offence that he was charged with. It would have implied the negligence part because negligence in civil cases requires its definite proof."*

From the authorities I have cited above, which I associate with, a conviction of traffic offence of careless driving if is unchallenged, the same becomes relevant in civil proceedings as *prima facie* evidence on existence of negligence on the concerned driver.

I have perused Exhibit P6, the proceedings of DC. Traffic Case No. 134 of 2019 and found that the 1st Defendant was convicted on his own plea of guilty. He was charged with four (4) counts of causing bodily injuries through careless driving of a motor vehicle on the public road, contrary to sections 41 and 68(2)(b) and one count of causing damage to property through careless driving of a motor vehicle on the public road, contrary to sections 50(1) and 63(2)(b) both of the Road Traffic Act, [Cap. 168 R. E. 2019].

It follows therefore, in the instant suit, the 1st Defendant, been convicted with the offence of careless driving, a conviction which has neither been challenged nor altered to date, therefore, his conviction is conclusive, cannot deny negligence. The conviction of careless driving is prima facie evidence of negligence.

Careless driving in my understanding is a component of negligence driving as well. In the said Kenyan case of **Queens Cleaners and Dyers Ltd v East African Community and others (supra)** it was held that: -

> *"(vi) careless driving necessarily connotes some degree of negligence;*
> *(vii) the convicted defendant could not deny negligence completely."*

Though persuasive, I agree with this authority that it is applicable in our jurisdiction. I am alive on the position of law that a civil action for negligence arising from facts on which the defendant was convicted with criminal offence cannot be based on criminal conviction, but has to be proved on its own.

In this matter, on top of the criminal conviction, there is eye witness evidence at the

incident was given by two witnesses. PW1 a driver of the Hiace who testified that while stopped at Nkrumah/Uhuru intersection he suddenly saw the Landcruiser coming from Uhuru Road at a high speed and knocked the Hiace he was driving; causing it to overturn. According to him the Landcruiser was being driven negligently because there was a stop sign board on the direction the it came from, meaning that its driver was supposed to stop and have look out before crossing the intersection. PW2 was busy collecting money from passengers, only saw the Landcruiser hitting their Hiace.

In defence, the 1st Defendant (DW) admitted that on the incident day 11/10/2019 about 12:40 Hours while driving the Landcruiser approaching Nkrumah/Uhuru intersection knocked into the Hiace. However, he defended that the Landcruiser he was driving failed brake. I think this defence is an afterthought because he did not adduce any evidence to support him, such as inspection report of the Landcruiser before and after accident by the police. Part of the relevant facts concerning negligence read to the 1st Defendant in the criminal case which he admitted without any qualification, states as follows: -

"3) That the accused person was driving the said motor vehicle negligently and enter the main road without considering other road users and take precaution and knocked the motor vehicle with Registration No. T187 CWE Toyota Hiace and caused bodily injuries to one Vedastus s/o Laurence who was the driver of that vehicle."

Had the Landcruiser 1st Defendant was driving had break failure, I believe he could have told so the criminal court and could have adduced relevant evidence to that effect before this Court other than mere assertions, in an afterthought, about failure of break.

In the result I find that the first issue, whether the accident that occurred on 11/10/2019 involving motor vehicles Toyota Land Cruiser with Registration No. STL 3783 and Toyota Hiace with Registration No. T187 CWE, was caused by negligent driving of the 1st Defendant, is answered in affirmative.

b. Second issue

Now, let me determine the second issue that whether the 2nd and 3rd Defendants are vicariously liable for the negligent driving of the 1st Defendant.

As explained in the first issue above, that the Hiace is the property of PW5 as evidenced by Exhibit P1, the Registration Card and on the incident day it was been driven by PW1 under the authority of its owner, PW5. It is also proved without dispute that the Landcruiser is the property of the Government and at the time of accident it was being driven by the 1st Defendant in the course of executing his usual official duties.

The principle of law on vicarious liability is as stated in the Latin maxim *"Qui facit per alium facit perse"* which means that *"he who does something through another is deemed to have done it himself."*

By definition, the term vicarious liability is defined in the Book **Black's Law Dictionary,** Henry Campbell Black, 1990 as follows: -

> *"The imposition of liability on one person for the actionable conduct of another, based solely on a relationship between the two persons. Indirect or imputed legal responsibility for acts of another; for example, the liability of an employer for the acts of an employee."*

In our jurisdiction, the Court of Appeal of Tanzania had an opportunity of propounding the principle on vicarious liability applicability in the case of **Machame Kaskazini Corporation Limited (Lambo Estate) vs. Aikaeli Mbowe** [1984] TLR 70, where it held as follows: -

"In order to render the employer liable for the employee's act it is necessary to show that the employee, in doing the act which occasioned the injury, was acting in the course of his employment. An employer is not liable if the act which gave rise to the injury was an independent act unconnected with the employee's employment If at the time when the injury took place, the employee was engaged, not on his employer's business, but on his own, the relationship of employer and employee does not exist and the employer is not therefore liable to third persons for the manner in which it is performed, since he is in the position of a stranger."

Deducing from the case law stated above on definition and applicabilityof the term "vicarious liability, it is quite clear that the employer's vicarious liability arises in situations where an employee acts negligently in his performance of duties under the instructions of the said employer.

Gathering from the testimonuies adduced by the parties as analysed in the first issue, it is safe to conclude, in the absence of any controverting testimony, that the 2nd and 3rd defendant's vehicle, the Landcruiser, which was involved in a fatal accident with the plaintiff's vehicle, the Hiace, was being driven by the first Defendant (PW1). The first Defendant was a duly authorized driver by the 2nd and 3rd Defendants at

the time of the accident and he was executing his duties under authorization of the 2nd and 3rd Defendants. He, therefore, was in the course of his employment when the accident occurred, and what he did was authorized by the 2nd and 3rd Defendants, his employers.

In the result I find that the second issue, whether the 2nd and 3rd Defendants are vicariously liable for the negligent driving of the 1st Defendant, is also answered in affirmative.

c. Third issue

The third issue is whether the Plaintiff has suffered damages. Looking at paragraph 7 of the plaint, the Plaintiff averred that he suffered loss and damage due to severe damage of his motor vehicle and that it no longer works. In his testimony PW5 particularized the loss into two categories. First, he estimated loss of income due to non-use of his motor vehicle to the tune of Tshs. 50,000/= per day from the date of the accident 11/10/2019 to the date of judgement. Second, he averred a loss of Tshs. 7,559,000/= being estimated costs for repairing his motor vehicle. He also prayed for general damages and interest on the decretal sum from the date of judgement to the full settlement.

My understanding of the Plaintiffs testimony is that he pleaded two types of damages namely, specific damages and general damages. Let

me start with specific damages. It is trite law that specific damages must be specifically pleaded and strictly proved.

This is a position of the law found in the case of **China Henan International vs. Salvand Rwegasira** [2006] TLR 220 in which the Court of Appeal held that for a claim of special damages to succeed, the special damages in question must be specifically pleaded and strictly proved in court before they can be awarded.

In another case of **Stanbic Bank Tanzania Limited v. Abercrombie & Kent (T) Limited**, Civil Appeal No. 21 of 2001 this Court, Hon. Kalegeya, Judge, as he then was, held as follows: -

> *"The law is that; special damages must be proved specifically and strictly. Lord Macnaghten in **Bolag v. Hutchson** [1950] 8 AC 515 at page 525 laid down what we accept as the correct statement of the law that special damages are...such as the law will not infer from the nature of the act. They do not follow in the ordinary course. They are exceptional in their character and, therefore, they must be claimed specially and proved strictly."*

See also the case of **Zuberi Augustino v. Anicet Mugabe** [1992] TLR 137 in which it was held *inter alia* that: -

"it is trite law, and we need not cite any authority, that special damages must be specially pleaded and proved."

In the instant matter, the Plaintiff dully pleaded the specific damages as explained above. However, the question is whether he successfully strictly proved the same. In his testimony, the Plaintiff (PW5), stated that the Hiace was used for commercial as a commuter bus. This fact was not disputed. He tendered Exhibit P4, the Inspection Report which shows that the Hiace was damaged. He also tendered Exhibit P5, the Proforma Invoice dated 24/10/2019 being estimate of costs for repair of his Hiace at Tshs. 7,559,000/=.

A proforma Invoice is a document which contains estimation for the costs. When cross examined PW5 conceded that an estimated costs for repair is not the actual costs and that he didn't involve the Defendants in establishing the said repair estimation. PW5 did not adduce evidence establishing the actual costs he incurred, if at all, he repaired his motor vehicle.

This fact speaks itself, it needs no emphasis that the Plaintiff failed to strictly prove not only the amount he used, but also that he

repaired the said motor vehicle. This is due to absence of evidence such as tax invoice or payments receipts for acknowledgement of any payment by the Plaintiff, if at all, was made to the person who repaired the motor vehicle.

As regard to the estimated earnings of Tshs. 50,000/= per day, the Plaintiff tendered Exhibits P2 Collectively namely TIN Registration Certificate, SUMATRA Road Service Licence, SUMATRA Fee Payment Notification and Exhibit P3, Ticket Book.

All these documents did not prove any income purportedly was earned daily by the Plaintiff. PW1 and PW2 testified that it was their agreement with PW5 to hand Tshs. 50,000/= per day. However, they did not tender any documents to substantiate the same. PW3 and PW4 who were passengers in the Hiace, did not have any ticket. I have examined Exhibit P3, the same do not have any copy left after issuance of ticket, therefore, the only inference I could draw from it is that the same was not in use.

When PW5 was cross examined, stated requesting this Court to make research from other commuter busses and take judicial note

that commuter busses do earn Tshs. 50,000/= per day. With due respect, a Court of law is an umpire, it is the party who brings the evidence to prove his allegations.

It is my findings therefore that the Plaintiff also failed to prove loss of income. Hence, generally speaking, the Plaintiff has failed to prove the specific damages he pleaded for in his plaint.

The second category of damages, the Plaintiff requested for as relief(s) is general damages. It is trite law that general damages are awarded at the discretion of the court and the same need not to be pleaded or strictly proved. In the case of **The Cooper Motor Corporation Ltd. vs. Moshi/Arusha Occupational Health Services** [1990] TLR 96 the Court of Appeal of Tanzania stated as follows: -

> *"General damages need not be specifically pleaded; they may be asked for by a mere statement or prayer of claim."*

General damages are based on the principle of law known in a maxim *"restitutio in integrum"* which means restoration in full or restoration to the original position or to one's formal condition. It refers to a common law of equity principle that a successful plaintiff be fully compensated by the final judgement of the court for all losses and damages which the

commission of a tort or breach of a contract caused him. It requires that the victim of a tort or breach of a contract be placed in the same position he was in before the harmful event occurred.

In the instant matter, it has not been disputed that the Plaintiff's motor vehicle, the Hiace, was knocked by the Landcruiser property of the 2nd and 3rd Respondents when it was being driven by the 1st Defendant. I have also found that the 2nd and 3rd Defendants are vicariously liable for the negligent acts of the 1st Defendant for causing the accident. The Plaintiffs evidence which is conceded to by the Defendants is that the Plaintiff's motor vehicle was substantially damaged at the accident. It follows therefore, as proven fact, that the Plaintiff suffered sum damages, to which he deserves some reparation by way of general damages. As explained general damages are discretional, however, such discretion has to be exercised judiciously.

My perusal of the evidence shows that the Plaintiff served the Defendants with a 90 days' notice for purpose of settling the dispute administratively. The Defendants in their efforts to settle the dispute amicably they proposed to repair his motor vehicle, a proposal the Plaintiff turned down contending that the Defendants' garage might do sub-standard repair. To me, partly the Plaintiff contributed in prolonging

the dispute. In these circumstances, I find it expedient that general damages in a sum of Tshs. 10,000,000/=, say, Tanzanian Shillings Ten Million only, suits to be awardable to the Plaintiff.

d. Fourth Issue

As regard to the relief(s) the parties entitled to, as seen from the analysis of the evidence, the Plaintiff has proved his case to the extent explained above; However, he has failed to prove specific damages. Therefore, he is entitled to the award of general damages to the tune of Tshs. 10,000,000/=, say, Tanzanian Shillings Ten Million only and costs of the case, both has to be paid by the 2nd and 3rd Defendants who are vicariously liable.

10. Conclusion and Orders

In the result, I rule that the Plaintiff is the winer, to the extent explained above. Consequently, I make the following orders: -

a) The 1st Defendant was negligent when he drove Toyota Landcruiser No. STL 3783 which knocked the Toyota Hiace Registration No. T187 CWE at Nkrumah/Uhuru intersection, in Mwanza City, thereby damaging it;

b) The 1st Defendant negligently caused the accident while in the course of his employment discharging his official duties;

c) The 2nd and 3rd Defendants are vicariously liable for consequences of the 1st Defendant negligent piece of driving;

d) The Plaintiff is entitled to be paid by the 2nd and 3rd Defendants, who are vicariously liable, general damages to the tune of Tshs. 10,000,000/=, say, Tanzanian Shillings Ten Million only; and

e) The 2nd and 3rd Defendants to pay the Plaintiff the costs of this suit.

Order accordingly.

F. K. MANYANDA

JUDGE

27/04/2022