

THE TORT OF NEGLIGENCE IN NIGERIA AND DAMAGES

AWARDED IN PERSONAL INJURIES ARISING OUT OF AUTOMOBILE ACCIDENTS

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KEY TO ABBREVIATIONS OF NIGERIAN LAW REPORTS

All N.L.R.	All Nigeria Law Reports
CCHCJ	Selected Judgments of the High Court of Lagos State
L.R.N.	Law Reports of Nigeria
N.L.R.	Nigeria Law Reports
N.M.L.R.	Nigerian Monthly Law Reports
W.S.C.A.	Judgments of the Western State Court of Appeal

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A. Introduction.

Nigerian law of tort is derived from English common law relating to tort. As such the various torts existing at common law also exist under Nigerian law with some modifications to suit local conditions. The tort of negligence is such an example.

In Nigeria, negligence has only comparatively recently begun to assume the prominence which it has long enjoyed in the industrial common law countries, and the increase in negligence litigation in Nigeria is directly linked with the dramatic growth of commercial activity, and road traffic during post industrial period. ^{1/}

B. Circumstances leading to the recovery of damages which may arise out of negligence in Nigeria for persons injured in automobile accidents.

As indicated above, therefore, the tort of negligence in Nigeria denotes the same meaning as the one attached to it under English common law, ie., "the breach of a legal duty to take care which results in damage undesired by the defendant to the plaintiff." In the same token, the tests of legal negligence, such as the duty to take care as owed by the defendant to the plaintiff, breach of that duty by the defendant, and damage to the plaintiff resulting from that breach are the same as those prevailing under

^{1/} G. Kodilinye, Nigerian Law of Torts (1982) at 38.

English common law. Generally speaking therefore, the duty of care is owed wherever and in those circumstances where it is foreseeable that if the defendant does not exercise due care, the plaintiff will be harmed. 2/

A driver of a vehicle on the road is under a duty to take proper care not to cause damage to other road users...including drivers and passengers in other vehicles, cyclists and pedestrians and to the property of others. In order to fulfill this duty, he should for example keep a proper lookout...observe traffic rules and signals, avoid excessive speed...and avoid driving under the influence of alcohol...or drugs. 3/

The second aspect of the tort of negligence under Nigerian law, is the determination by the court whether or not the defendant was in breach of the legal duty owed to the plaintiff. 4/ The court therefore determines the question whether a reasonable man put in the defendants position would have acted as the defendant did in the same circumstances. The burden of proving negligence that the defendant was indeed in breach of the duty of care owed to the plaintiff is on the plaintiff himself. In addition, Nigerian courts also apply the doctrine of res ipsa loquitur, which literally means, "the facts speak for themselves." In those circumstances where it is successfully invoked, the doctrine not only affords prima facie evidence of negligence, but also shifts the burden of proof on to the defendant, to show either that the accident was due to a non-negligent act, or that the defendant had exercised reasonable care. 5/

2/ See, *Donoghue v. Stevenson* (1932) AC 562.

3/ *Supra* note 1, at 61.

4/ *Blyth v. Birmingham Waterworks Co.* [1843-60] All E.R. Rep. 478.

5/ *Akinola v. Guffanti & Co. Ltd.* (1974) 5 CCHCJ 671.

Therefore the act causing damage must have been under the control or management of the defendant or his servants, and the accident was of such a kind and nature that it would not ordinarily have happened without the negligence of the defendant.

The majority of Nigerian cases in which the doctrine of res ipsa loquitur has been invoked concern road accidents... ^{6/}

In cases of res ipsa loquitur under Nigerian tort law, the defendant commonly advances a plea that the accident in question was caused by some other factor beyond the defendant's control or management. For example, that the accident was caused by a latent defect in the defendant's vehicle, effectively converting such a plea to a plea of inevitable accident. ^{7/}

Once it has been established that the defendant owed a duty of care to the plaintiff, which was breached, the plaintiff must then prove that he suffered damage for which the defendant was liable. As such, the principles of tort at common law dealing with causation in fact and remoteness of damages will also be deemed applicable under Nigerian tort law of negligence. In addition, the liability of occupiers as understood under English common law will also be deemed pertinent to Nigerian law of tort. In this context therefore,

the liability of an occupier of premises to lawful visitors to those premises is governed in Lagos by sections 7-12 of the Law Reform (Torts) Law, 1961... [3 Laws of Lagos State of Nigeria, Ch. 67 (1973)], which is closely modelled on the English Occupiers'

^{6/} Supra note 1, at 50.

^{7/} See, Kuti v. Tugbobo (1967) 1 All N.L.R. 311.

Liability Act, 1957. In the rest of Nigeria, the common law rules which were in force in England before 1957 still apply... ^{8/}

According to section 7(3)(a) of the Act of 1961 as amended, the term "premises" is defined broadly to include not only land and buildings, but also "any fixed or movable structures including any vessel, vehicle or aircraft." In keeping with the provisions of the above-cited section, section 8(1) and (2) of the Act of 1961 as amended, therefore states as follows:

(1) An occupier of premises owes the same duty--the common duty of care to all his visitors except in so far as he is free to extend, restrict, modify or exclude his duty to any visitor or visitors by agreement or otherwise;

(2) The common duty of care is a duty to take such care as in all the circumstances of the case reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.

Both volenti non fit injuria (no injury is done to one who consents) and contributory negligence are valid defenses to liability imposed under the provisions of section 8 of the Law Reform (Torts) Law of 1961 as amended. Furthermore, the principles of vicarious liability regarding the liability of a master for the torts of his servants committed by them during the course of their duties, as they are understood at common law will also be deemed applicable to Nigeria. ^{9/}

C. Measure of Damages for Personal Injury Under Nigerian Tort Law.

Section 5(1) of the Law Reform (Torts) Law of 1961 as amended provides that:

^{8/} Supra note 1, at 78.

^{9/} Supra note 1, pp. 229-252.

In an action for damages for personal injuries (including any such action arising out of a contract) there shall

(a) in assessing those damages be taken into account against loss of earnings or profits which have accrued or probably will accrue to the injured person from the injuries, such proportion as the court may in all circumstances consider just...

Furthermore, subsection (2) of section 5 of the Act of 1961 as amended also provides as follows:

the reference in subsection (1) of this section to assessing of damages for personal injuries shall in cases where the damages otherwise recoverable are subject to reduction under the law relating to contributory negligence or are limited by or under any enactment or by contract to be taken as referring to the total damages which would have been recoverable apart from the reduction or limitation.

Thus under Nigerian tort law as in most common law countries, damages for personal injuries arising as a result of negligence on the part of the defendant may be subdivided into two parts, ie., (i) special damages and (ii) general damages.

(i) Special Damages. Special damages in actions for personal injuries include, loss and expenses incurred from the date of the accident to the date of judgment. Examples of special damages under Nigerian law of tort will include, damage to clothing, damage to the vehicle, medical expenses, transportation costs to and from hospital, loss of earnings from the time of the accident to the time of judgment. ^{10/}

^{10/} See for example, Okolo v. Umoro (1973) 2 W.S.C.A. 145.

(ii) General Damages. General damages are those damages including the loss to the plaintiff which cannot be precisely quantified. These include, all non-financial loss (past and future) and also future financial loss. Examples of such general damages will include, pain and suffering, loss of amenities, loss of expectation of life, future loss of earnings or earning capacity, and future expenses. 11/

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11/ See the following cases dealing with damages in personal injuries: Okuneye v. Lagos City Council (1973) CCHCJ 38; Anumba v. Shohet (1965) 2 All N.L.R. 183; Ejisun v. Ajao (1975) N.M.L.R. 4; Olopada v. Komolaffe (1978) L.R.N. 303.