**ANYAEJI MARY ANDREW**

**V.**

**MTN (NIG.) COM. LTD**

COURT OF APPEAL (ILORIN DIVISION)

22ND DAY OF MARCH 2016

CA/IL/107/2015

**LEX (2016) - CA/IL/107/2015**

OTHER CITATIONS

2PLR/2017/42 (SC)

**BEFORE THEIR LORDSHIPS**

MOHAMMED LADAN TSAMIYA, JCA (Presided)

CHIDI NWAOMA UWA. JCA (Read the Lead Judgment)

UCHECHUKWU ONYEMENAM. JCA

**BETWEEN**

ANYAEJI MARY ANDREW

AND

MTN NIGERIA COMMUNICATIONS LTD

**ORIGINATING COURT**

KWARA STATE HIGH COURT, ILORIN JUDICIAL DIVISION (Judgment of M. Abdulgafar, J. delivered on 19 March 2014).

**REPRESENTATION/LAWYERS**

JOSEPH OBOITE signed the counsel list but was absent when appealed called for hearing.

O. ATOFARATI Esq. [with him, D. A. IJALAYE Esq., D. Y. AWOGBADE and I. R. ODERINDE] - for the Respondent.

**ISSUES FROM THE CAUSE(S) OF ACTION**

CRIMINAL LAW AND PROCEEDINGS – POLICE INVESTIGATIONS:- Complaints relating to crimes arising from misuse of information inadvertently received as a subscriber to telecommunications services – A line re-issued to another user because prior user had left it dormant for a long period – Connection with family and friends of prior subscriber by later subscriber(s) – Fraudulent request for money and other illicit misrepresentations - Request for co-operation from telecommunication company by Police in order to unmask the identity of the latter users – Failure to cooperate – How may be challenged

HUMAN RIGHTS – RIGHT TO PRIVACY AND FAMILY LIFE:- Telephony services – Re-issuance of a phone number – Exposure of contacts of prior subscriber to fraudulent demands when they call the number without notice that it had been issued to a new subscriber – Crime investigation arising therefrom – Whether telecommunication under legal duty to provide law enforcement agency with information of subsequent subscriber(s) so as to investigate the crime – Failure of telecommunication company to cooperate with Police investigation thereto – Whether ground for claims in liabilities against them – Who may bring such an action – Nature of damages the Court may award – Relevant considerations

SCIENCE AND TECHNOLOGY – TELECOMMUNICATION SERVICES – MTN:- Liability for obligations connected with telecommunications service delivery – Duty of assistance to law enforcement agencies investigating allegation of crime by a subscriber - Misuse of private information gotten in the course of use of a re-subscribed phone number as to defraud persons connected with prior subscriber – Breach of – Nature of damages arising therefrom – Defrauding of/presentation in bad light to friends, relations and general public - How enforced

SCIENCE AND TECHNOLOGY – TELECOMMUNICATION SERVICES – MTN:- Re-issuance of a subscriber’s number to another subscriber due to inactivity for a prolonged activity – Where first reissued another line but not the old one – Notice to telecommunication company that some of first user’s family members and friends had the previous number and were not aware that it had been reallocated to someone else – Allegation that someone using the re-allocating number was impersonating the first subscriber so as to demand money and airtime from his friends and family members – Report to Police upon which a letter was written by the police to telecommunication company requesting information relating to the identity of the person using the appellant’s old line – Obligation on telecommunications company there – Failure thereto – Reliefs available to first subscriber against telecommunications company

ETHICS – LEGAL PRACTITIONER:- Counsel leaving a Court in session without any excuse – Legal implication for case called in his absence – Attitude of court thereto

**PRACTICE AND PROCEDURE ISSUES**

APPEAL – AWARD OF DAMAGES:- Principle that the award of general damages is ordinarily within the realm of the trial court - Situations when an appellate court would interfere with the award or non-award of damages - Relevant considerations

COURT – DUTY OF:- Duty of court to restrict itself to pleadings and evidence led before it in proof thereof – Effect of failure thereto

EVIDENCE – MISAPPLICATION OF:- Evidence led to establish an issue – Where mis-attributed by trial court to another matter altogether – Evidence led in support of a case for general damages being dismissed as inadequate a case for special damages – Duty of appellate court thereto

JUDGMENT AND ORDER - DAMAGES - GENERAL DAMAGES - Award of - Basis for - Power of trial court to award same - When appellate court will interfere therewith.

JUDGMENT AND ORDER - DAMAGES - GENERAL DAMAGES:- Award of – Whether requires prove of damage or quantum of – Proper basis for award – Duty of court thereto – Calculation of quantum of damages - Whether wholly reliant on what is considered by the Court as opinion and judgment of a reasonable man

JUDGMENT AND ORDER - DAMAGES - GENERAL AND SPECIAL DAMAGES:- Meaning and distinctions between - - Conditions necessitating.

JUDGMENT AND ORDER – CONTRADITCTORY ORDERS:- Grants reliefs sought establishing a wrong – Failure to grant general damages as relief thereto on ground that evidence for award of same was not made out – Duty of appellate court thereto

WORDS AND PHRASES:- “Special Damages” – “General Damages” – Meaning of

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The appellant subscribed to the respondent’s network but had cause to remove her SIM card from her phone in 2007 when her phone was faulty. When she replaced the SIM in year 2008, she could not activate the line. Upon complaint to the respondent’s office at Ilorin, she was told the line was blocked when it was inactive. She subscribed to another line.

In 2009, someone impersonating her, using the old line called and demanded monies and airtime from her family and friends who had no knowledge of the impersonation. She reported the matter to the police, and the police wrote a letter to the respondent requesting information about the user’s identity. The respondent denied receipt of the letter. The appellant instituted an action when the respondent neglected to supply the information to the police to aid its investigation.

The trial court in its judgment found in her favour but the trial judge refused the general damages sought on the ground that she failed to specifically prove entitlement to it. Dissatisfied, the appellant appealed to the Court of Appeal.

DECISION(S) APPEALED AGAINST

The trial Court entered judgment in favour of the Appellant, but refused to grant her the general damages she had sought on the ground that she had failed to specifically prove her entitlement to it hence the appeal by the Appellant.

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

“i. Whether the appellant has a duty to prove her entitlement to general damages.

ii. Whether the trial court was right to have relied on irrelevant issues to refuse the appellant any award of general damages.

iii. Whether this honourable court has power to intervene and award general damages to the appellant in the circumstances to this appeal.”

*BY RESPONDENTS*

“Whether considering the facts and the law applicable to the circumstance of this case, the trial court was not right when it refused to grant general damages in favour of the appellant.”

*AS ADOPTED BY COURT*

The Court adopted the sole issue formulated by the Respondent but rephrased it viz:

*“Was the trial court right to have refused to grant the appellant the general damages sought in the circumstances of this case?”*

DECISION OF THE COURT OF APPEAL

1. The Appellant proved she was a subscriber to a prior line which was re-allocated to another user because she was not able to operate the line for an extended period. And that she subscribed to another line. And that some of her family members and friends had her previous number and were not aware that she had stopped using it.

2. The Appellant proved that someone impersonated her using the previous number to demand money and airtime from her friends and family members which matter was reported to the police upon which a letter was written by the police and been served on the respondent/telecommunication company to make available, information relating to the identity of the person using the appellant’s old line. The request was not complied with.

3. The order of the trial court compelling the respondent to release the information was correct but the refusal to further grant any damages against the respondent and in favour of the appellant was not.

4. The loss and injury suffered by the claimant/appellant did not need to be specifically proved by the appellant for him to be entitled to general damages as claimed. The law is that general damages need not be specifically pleaded, not to talk of proof. It arises from the inference of law and need not be proved by evidence. It suffices if it is generally averred. Its award is presumed by law to be the direct and probable consequence or result of the act complained of. This can be distinguished from special damages in that it is generally incapable of being inferred from the nature of the act complained of and, substantially, of exact computation or calculation.

5. Equally, the quantum of general damages need not be pleaded or proved, for it is the loss which flows naturally from the defendant’s act and it is generally presumed by law. The manner therefore in which general damages is quantified, is by relying on what would be the opinion and judgment of a reasonable man.

6. General damages as claimed by the appellant for the loss and injury she incurred by the respondent not releasing the information required to enable the police investigate [her] complaint through [her] letter of request, are claims made at large. It is quantified according to the opinion of the reasonable person.

7. From the pleadings and the evidence led by the appellant, he did not make out a case or claim special damages. It was erroneous for the trial judge to attribute evidence led in proof of the wrong complained of as evidence in proof of entitlement to general damages as a result of the act complained about when there was no need for such proof or evidence.

8. The award of general damages is ordinarily within the realm of the trial court, but there are situations when an appellate court would interfere with the award or non-award of damages. The exceptions are, where:

(a) the trial court has acted under a mistake of law;

(b) the trial court has acted in disregard of known principle or acted on no principles at all;

(c) the trial court has acted under a misapprehension of facts;

(d) the trial court has taken into account irrelevant matters or failed to take account of relevant matters;

(e) injustice would result if the appeal court does not interfere; or

(f) the amount awarded by the trial court is either ridiculously low or ridiculously high that it must have been a wholly erroneous estimate of damages.

9. Appeal is meritorious and so allowed. The aspect of the trial court’s judgment where it was held that the claimant did not suffer shame, shock, psychological trauma and that there was no basis to award the claimant general damages as he did not prove any, even after granting the claimant’s reliefs one and three is erroneous. Therefore, claimant is awarded N5,000.000.00 (Five Million Naira) general damages.

**MAIN JUDGEMENT**

**UWA JCA** (DELIVERING THE LEAD JUDGMENT):

This is an appeal against the judgment of the Kwara State High Court, Ilorin Judicial Division, presided over by M. Abdulgafar, J. Delivered on 19 March 2014. Judgment was given in favour of the appellant but the trial court refused to award general damages to the appellant for the reason that the appellant did not prove his entitlement to same. The appellant aggrieved by that part of the judgment, appealed against same to this court, raising three (3) grounds of appeal, pages 145 - 147 of the printed records. As the claimant at the trial court, paragraph 31 of his amended statement of claim, pages 43 - 48 of the printed records, the appellant claimed against the respondent (as defendant) as follows:

“1. A declaration that the defendant is under obligation to disclose and/or furnish the police with necessary information to aid her investigation of the claimant’s complaint.

2. A declaration that the defendant’s refusal and/or neglect to disclose and/or furnish the police with the necessary information to aid the investigation of the claimant’s complain has hindered the said police investigation and occasioned loss and injury to the claimant.

3. An order mandating the defendant to disclose and/or furnish the police with necessary information to aid the investigation of the claimant’s complaints.

4. The sum of N20,000,000.00 (twenty million naira) only as general damages for the shame, bad social reputation, shock, public ridicule, family disharmony and psychological trauma suffered by the claimant as a result of the defendant’s refusal and/or neglect to disclose and/or furnish necessary information to aid investigation.

5. Cost of filing and prosecuting this suit.”

The background facts are that the appellant (from her amended statement of claim) was a subscriber to the respondent’s network service and was issued with a line sometime in 2005. It was alleged that sometime in 2007, the appellant’s telephone became faulty and she removed the sim card pending when she would replace his telephone. When the appellant replaced her telephone in 2008 she was unable to activate her line. She could not make calls or receive any. The situation was reported to the MTN connect office in Ilorin (along Ahmadu Bello Way, GRA, Ilorin) where she was told that the line had been blocked for not having been in use for long. The appellant subscribed to another line. She made out that some of her family members and friends had her previous number and were not aware that she had stopped using it.

Sometime in 2009, the appellant alleged that someone impersonated him using the previous number to demand money and airtime from his friends and family members. The appellant reported the matter to the police upon which a letter was written by the police and said to have been served on the respondent. The respondent was requested in the letter to make available, information relating to the identity of the person using the appellant’s old line. The respondent denied receiving the letter. He approached the trial court, prayed amongst other things for an order of the court compelling the respondent to release the information required and general damages for the failure of the respondent to release the required information.

In its judgment, the trial court granted an order compelling the respondent to release the information but did not grant any damages on ground that the appellant failed to establish that he suffered any injury that would warrant a grant of general damages. The appellant was dissatisfied with the findings and conclusion of the trial court as to the issue of general damages, appealed to this court on three (3) grounds of appeal. From the grounds of appeal, the appellant identified three (3) issues for determination. These are:

“i. Whether the appellant has a duty to prove her entitlement to general damages.

ii. Whether the trial court was right to have relied on irrelevant issues to refuse the appellant any award of general damages.

iii. Whether this honourable court has power to intervene and award general damages to the appellant in the circumstances to this appeal.”

The respondent on its part formulated a sole issue for the determination of the appeal as follows:

“Whether considering the facts and the law applicable to the circumstance of this case, the trial court was not right when it refused to grant general damages in favour of the appellant.”

When the appeal was called up for hearing, Joseph Oboite Esq. who signed the counsel’s list as representing the appellant had left the court without any excuse. The appellant’s brief of argument filed on 23 December 2015 and his reply brief filed on 1 February 2016 were deemed as argued on application by the learned counsel to the respondent.

In the appellant’s brief of argument, settled by S.A. Bamidele Esq. in respect of his first issue, it was submitted that the appellant had no duty to prove his entitlement to general damages. It was submitted that the trial court does not have the discretion as to whether or not to award general damages to the appellant in the present circumstances of this case. It was argued that the trial court could only have discretion as to the quantum of general damages to be awarded to the appellant. Also, that having held that the appellant’s case has merit and consequently granted his reliefs could no longer under the law refrain from awarding general damages to the appellant. Further, that the law presumes general damages to flow from the wrong complained about and reiterated that general damages need not be proved, the averment of same was argued, to be enough. See Federal Mortgage Finance Ltd v. Ekpo (2005) All FWLR (Pt. 248) 1667 at 1691, paragraphs E - G.

It was contended that the appellant having succeeded in his case is entitled to general damages. The learned counsel faulted the non-award of same and denial of costs. See also Ozoro v. Eneh (2005) All FWLR (Pt. 204) 929 at 939, paragraph E.

The appellant’s second and third issues were argued together. The learned counsel made out that the trial court relied on irrelevant issues to refuse the award of general damages, we were urged to intervene and award the general damages sought.

The reasons given by the trial court were reviewed at page 142, lines 15 - 23 of the printed records. The trial court’s holding that it did not believe the evidence of the PW2 and PW3 was faulted by the learned counsel to the appellant to the effect that the evidence of these two (2) witnesses had nothing to do with general damages but rather to support the appellant’s pleadings that unknown persons were using his sim card and/or line to impersonate him.

It was further argued that the respondent did not controvert paragraphs 30 and 31 of the appellant’s amended statement of claim which dealt with the issue of award of damages. Also, that the respondent did not deny the appellant’s pleadings concerning general damages and did not deny that the appellant suffered any injury as asserted by the appellant in paragraph 30 above.

The learned counsel agreed that the award of general damages is at the realm of the trial court, we were urged to intervene and award the general damages sought in this case. Reliance was placed on Federal Mortgage Finance v. Ekpo at 162, paragraphs A - D. We were urged to resolve all the issues in favour of the appellant and award general damages in the interest of justice.

In response, the learned counsel to the respondent, I. O. Atofarati Esq. appearing with D.A. Ijaodola Esq.; D.Y. Awogbade (Miss.); I. R. Oderinde (Miss.) and O. A. Johnson (Miss.) in arguing his sole issue contended that the appellant’s claim is founded on the tort of negligence on the part of the respondent for the alleged failure to make available to the police, information to enable the police investigate the impersonator of the appellant. It was argued that failure of the respondent to release the necessary information is a breach of the duty of care owed the appellant; see Lufthansa German Airlines v. Ballanyne (2013) 1 NWLR (Pt. 1336) page 527 at 543. It was argued that the appellant’s case centered on the tort relating to negligence.

The learned respondent’s counsel gave the ingredients that must be established for a claim founded on negligence to succeed. It was argued that without proof of any damage suffered by the appellant, he could not succeed with the claim for award of general damages, a claim in the tort of negligence being an exception where damages must be specifically proved. See A.M.C. (Nig.) Ltd v. Volkswagen of (Nig.) Ltd (2010) 7 NWLR (Pt. 1192) page 97 at 118, (2011) All FWLR (Pt. 588) 928. It was argued that the case of Federal Mortgage Finance Limited v. Ekpo did not apply to the present case. The case Of Ozor v. Eneh was distinguished from the present case.

It was further argued that the appellant did not appeal against the finding of the trial court that the evidence the appellant relied upon to prove that he suffered injury as a result of the respondent’s refusal to accede to the request of the police in exhibit 4 through the evidence of the PW2 and PW3 which the trial court did not believe as the truth.

It was concluded that there was no evidence that the appellant suffered any shame, bad social reputation, shock, public ridicule, family disharmony and psychological trauma after the alleged service of exhibit 4 on the respondent, the letter requesting for the release of the information concerning the impersonator.

In the appellant’s reply brief, it was argued that the respondent made out a different case for the appellant, that of negligence as opposed to the appellant’s case in the trial court against the respondent which was simply the respondent’s wilful refusal to furnish the police with the required information needed to investigate a criminal complaint made to the police by the appellant, which refusal has led to the continuous psychological loss suffered by the appellant. It was argued that this had nothing to do with any duty of care owed the appellant by the respondent to protect him against the impersonator. The respondent was said not to have denied the reliefs sought by the appellant in paragraph 30 of the amended statement of claim before the trial court. We were urged to allow the appeal.

I have examined the issues raised by the parties and would adopt the sole issue raised by the respondent as it encompasses the three raised by the appellant and would recap it as follows:

Was the trial court right to have refused to grant the appellant the general damages sought in the circumstances of this case?

I would start with circumstances under which general damages are awarded. It may be awarded to assuage such a loss which flows naturally from the defendant’s act. In this case, the respondent’s refusal to disclose and/or furnish the police with necessary information to aid her investigation of the claimant’s complaint. Further, it was made out that the refusal hindered the police investigation and occasioned loss and injury to the claimant. The claimant sought from the trial court that the respondent be mandated to disclose and/or furnish the police with the necessary information to aid in the investigation of the claimant’s complaint. The claimant claimed the sum of N20,000,000.00 (twenty million naira) general damages for all that she suffered as a result of the refusal to release the information to the police by the respondent.

The learned trial judge granted the reliefs sought by the appellant in his reliefs 1 and 2 but, further held that the claimant did not prove that she had occasioned any loss and injury by the act of the respondent and did not grant the general damages sought. At page 142 of the printed records of appeal, the learned trial judge held thus:

“ I find as a fact that the defendant was served exhibit 4 in respect of the claimant’s complaint. On the question whether the defendant has an obligation to accede to the request of the police, I think the contention of Mr. Oboite that the claimant has established this aspect of the case both through the pleadings of the defendant in paragraphs 9 and 15 of the statement of defence and exhibit is unassailable.

I therefore hold that the defendant do indeed have an obligation to respond to exhibit 4”

Further at page 143 of the printed records held thus:

“In the light of the foregoing, I find for the claimant and make the following orders:

1. A declaration that the defendant is under obligation to furnish the police the information to aid the investigation of the claimant’s complaint.

2. An order directing the defendant to furnish the police with the information to aid the investigation of the claimant’s complaint.”

The learned counsel to the respondent had argued in line with the view of the trial court that the loss and injury to the claimant by the act of the respondent needed to be specifically proved by the appellant for him to be entitled to general damages as claimed. In my considered view, the law is that general damages need not be specifically pleaded, not to talk of proof. It arises from the inference of law and need not be proved by evidence. It suffices if it is generally averred. Its award is presumed by law to be the direct and probable consequence or result of the act complained of. This can be distinguished from special damages in that it is generally incapable of substantially exact computation or calculation. See Adekunle v. Rockview Hotel Ltd (2004) FWLR (Pt. 188) 1037, (2004) 1 NWLR (Pt. 853) at 161; Oluigbo v. Umeh (2004) All FWLR (Pt. 196) 823, (2004) 6 NWLR (Pt. 870) 621 at 647 paragraphs D - E; Gari v. Seirafina Nigeria Limited (2007) CA LPELR, 8397 CA, (2008) All FWLR (Pt. 399) 434; Incar v. Benson (1975) 3 SC 117; Odulaja v. Haddad (1973) 11 SC 375, and in Osuji & Anor. v. Isiocha (1989) 3 NWLR (Pt. 111) 623 at 636; SCNJ (Pt. 11) 227 at page 236, his lordship, Uwais JSC (as he then was) made the following observation:

“...the quantum of general damages need not be pleaded or proved, for it is the loss which flows naturally from the defendant’s act and it is generally presumed by law. The manner therefore in which general damages is quantified, is by relying on what would be the opinion and judgment of a reasonable man.” See also U.B.N. Plc v. Ikwen (2000) 3 NWLR (Pt. 648) 223 at 236 - 237.

Special damages on the other hand, are such damages the law will not infer from the nature of the act complained of. Contrary to the argument of the learned counsel to the respondent, general damages as claimed by the appellant for the loss and injury she incurred by the respondent not releasing the information required to enable the police investigate his complaint through his] letter of request, exhibit 4, are claims made at large, as highlighted above, it is quantified according to the opinion of the reasonable person. It is considered adequate loss or inconvenience which flows naturally from the defendant’s act. It is presumed by law. It is not dependent upon calculation and figures from specific items that need to be proved. See Odulaja v. Haddad, Law v. Stirling Astaldi Ltd (1977) 11 - 12 SC 53; and Osuji v. Isiocha (1989) 3 NWLR (Pt. 111) 623.

In my view, the conclusion of the learned trial judge which supports a claim for special damages, which also is in line with the argument of the learned counsel to the respondent is erroneous.

At page 143 of the printed records, the trial court held as follows:

“I do not therefore find the claim of the claimant that she suffered shame, shock and psychological trauma credible. There is, consequently, no basis to award the claimant general damages in this as she has not proved any.”

The above holding is contradictory to the trial court granting the reliefs sought as follows at page 144 of the printed records thus:

1. A declaration that the defendant is under obligation to furnish the police with the information to aid the investigation of the claimant’s complaint.

2. An order directing the defendant to furnish the police with the information to aid the investigation of the claimant’s complaint.”

Special damages are such that the law will not infer from the nature of the act complained of, they must be specifically pleaded and strictly proved; in this case, all the losses claimed on every item must be concrete in terms and value before trial. They do not flow in the ordinary course. See Gamboruma v. Borno (1997) 3 NWLR (Pt. 495) 530 at 545; Ijebu-Ode L. G. v. Adedeji Balogun & Co. Ltd (1991) 1 NWLR (Pt. 166) 135; Momodu v. University Of Benin (1997) 7 NWLR (Pt. 512) 325; Orient Bank (Nig) Plc v. Bilante International Ltd (1997) 8 NWLR (Pt. 515) 37; Adodo v. Ismaila (1998) 11 NWLR (Pt. 573) 214 and Uzoechi v. Alinnor (2001) 2 NWLR (Pt. 696) 203 at 214. In Chinda v. Amadi (2002) 7 NWLR (Pt. 767) 505 at 524, (2003) FWLR (Pt. 145) 696, his lordship, Nsofor JCA summed it up thus:

“Now, general damages are awarded for general damage and special damages are awarded for special damage.”

From the pleadings and the evidence led by the appellant, he did not make out a case or claim special damages. The learned trial judge attributed the evidence of the PW2 and PW3 as what the appellant relied upon to prove his entitlement to general damages as a result of what he suffered by the act of the respondent and found their testimony incredible. This is erroneous. The evidence of the PW2 and PW3 at pages 123 - 125 of the printed records, in my humble view was to substantiate the appellant’s claim in order to succeed in his case, which she indeed succeeded to prove, which the trial court found to be meritorious (at page 143 of the printed records) and granted his reliefs. See Ajigbotosho v. Reynoids Construction Co. Ltd (2008) CA LPELR 3716.

The appellant’s claim in his fourth relief is specific: he claimed for “general damages”. The learned counsel to the respondent dwelt on and made out a case of negligence for the appellant, arguing that the respondent owed the appellant a duty of care to release the necessary information that would help the police investigate his complaint, failure of which amounted to a breach of the said duty of care, which needed proof to entitle the appellant to the damages sought. I have examined the pleadings of the appellant and evidence in their support, as well as the reliefs sought, especially paragraphs 30 and 31. On the face of the claim, there is nothing that connoted duty of care owed the appellant by the respondent or negligence. The learned trial judge found for the appellant and made declarations granting the reliefs sought except for the general damages, the respondent did not appeal against the trial court’s findings in favour of the claimant.

The award of the general damages sought is a natural consequence of the claimant having succeeded in his claim and ought to have been awarded by the trial court, which had no discretion to exercise in this case looking at the reasons for its refusal (the court’s discretion would be as to the amount awarded). The award flows from the non-action on exhibit 4 to enable the police investigate the appellant’s complaint that an unknown person was using his former mobile number to call friends and relations making demands from them, which presented her in bad light to his friends, relations and general public. The learned trial judge was wrong to have held that there was no basis to award the claimant general damages as he did not prove any.

The award of general damages is ordinarily within the realm of the trial court, but there are situations when an appellate court would interfere with the award of damages, in this case its non-award of general damages. The exceptions are, where:

(a) the trial court has acted under a mistake of law;

(b) the trial court has acted in disregard of known principle or acted on no principles at all;

(c) the trial court has acted under a misapprehension of facts;

(d) the trial court has taken into account irrelevant matters or failed to take account of relevant matters;

(e) injustice would result if the appeal court does not interfere; or

(f) the amount awarded by the trial court is either ridiculously low or ridiculously high that it must have been a wholly erroneous estimate of damages.

See Adekunle v. Rockview Hotel Ltd; UBN Ltd v. Odusote Book Stores Ltd (1995) 9 NWLR (Pt. 421) 558; SPDC (Nig.) Ltd v. Tiebo VII (1996) 4 NWLR (Pt. 445) 657; Allied Bank v. Akubueze (1997) 6 NWLR (Pt. 509) 374; and Onwu v. Nka (1996) 7 NWLR (Pt. 458) 1.

In the present case, I am of the considered view that the trial court having granted the reliefs sought by the claimant, the natural flow of events or consequence was to grant the general damages sought, at its discretion in respect of quantum, not a total denial of same on the alleged basis of not proving his entitlement to same through evidence.

In the final analysis, I am of the view that the appeal is meritorious, I allow same. I set aside the aspect of the trial court’s judgment where it was held that the claimant did not suffer shame, shock, psychological trauma and that there was no basis to award the claimant general damages as he did not prove any, moreso, having granted the claimant’s reliefs one and three. The claimant’s relief 4 in his amended statement of claim is granted, but modified by a reduction in the amount claimed, that is, N5,000.000.00 (five million naira) general damages for the reasons enumerated therein.

I award costs of N100,000.00 (one hundred thousand naira) to the appellant.

**TSAMIYA JCA:**

This appeal is meritorious and for the reasons clearly set out in the lead judgment of my learned brother, Chidi Nwaoma Uwa JCA. I also allow it with N100,000.00 (one hundred thousand naira) as costs to the appellant.

**ONYEMENAM JCA:**

I have read in advance, the judgment delivered by my learned brother, Chidi Nwaoma Uwa JCA. I totally agree with my lord that the appeal is meritorious and to that extent allow same. I also set aside part of the trial court’s judgment as contained in the lead judgment.

I abide by the consequential order as to costs.

Appeal allowed.