IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - AD. 2025

CORAM: LOVELACE-JOHNSON (MS.) JSC (PRESIDING)

PROF. MENSA-BONSU (MRS.) JSC

ASIEDU JSC

GAEWU JSC

ADJEI-FRIMPONG JSC

CIVIL APPEAL
NO: J4/56/2024

19TH MARCH, 2025

BERTHA KWARTENG …. PLAINTIFF/APPELLANT/ RESPONDENT

VRS

ORANS LIFE COMPANY LIMITED….
DEFENDANT/RESPONDENT/APPELLANT

JUDGMENT

ASIEDU, JSC:

[1] INTRODUCTION:

My lords, this is an appeal against a judgment of the Court of Appeal, Kumasi, dated the 23rd November, 2023. In the said judgment, the Court of Appeal reversed a judgment of the trial High Court which had been delivered in favour of the Defendant.

In this judgment, the parties shall retain their respective designations as from the trial High Court. That is, the Defendant/Respondent/Appellant shall herein be referred to as the Defendant, and the Plaintiff/Appellant/Respondent shall be referred to as the Plaintiff.

[2] GROUNDS OF APPEAL:

The grounds of appeal formulated in the Notice of Appeal filed on the 18th December, 2018, are that:

a. The judgment is against the weight of evidence.

b. The Court of Appeal erred when it relied on documents termed as EXHIBITS "A" and "B" in arriving at their decision/judgment when same did not form part of the Record of Appeal.

c. The Court of Appeal further erred in its assessment of the general damages when it failed to take into account the payments already made by the Defendant/Respondent/Appellant to the Plaintiff/Appellant/Respondent.
d. The Court of Appeal erred when it shifted the burden of proof of negligence unto the Defendant/Respondent/Appellant.
e. Additional grounds of the Appeal would be filed upon the receipt [of] the Records of Appeal.

My Lords, there is no indication that additional grounds of appeal have been filed. Consequently, the appeal would be determined in the light of the grounds of appeal stated above.

[3] FACTS:

The facts culminating in the instant appeal are that, the Plaintiff issued out a writ with an accompanying statement of claim, from the Registry of the High Court, claiming against the Defendant (1st Defendant therein) and one Opoku Sarkodie (2nd Defendant therein) (now deceased), then an employee of the Defendant, jointly and severally as follows:

> "Special and general damages arising from the injuries sustained by the Plaintiff in an accident involving ISUZU TIPPER TRUCK NO. AW 680 W which knocked down the Plaintiff on the 6th November 2006 on the Bechem-Kwasu motor road of which said accident was negligently caused by the 2nd Defendant who was then working as an agent for the 1st Defendant and was working for its benefit."

The Plaintiff averred in her statement of claim that, the 2nd Defendant negligently drove ISUZU Tipper Truck No. AW 680 W, which was owned by the Defendant herein and driven by the 2nd Defendant, Opoku Sarkodie, in the course of Opoku Sarkodie's employment with the Defendant.

The Plaintiff averred that Plaintiff had suffered injuries, was rendered incapacitated and lost amenities of life due to the accident negligently caused by the Defendant's employee, and effectively pleaded that the Defendant was vicariously liable.

In a joint statement of defence filed by the Defendants at the trial Court, the Defendants admitted, specifically in paragraph 4 thereof, that the Plaintiff was knocked down by the truck driven by Opoku Sarkodie. The Defendants, however, denied that the said Opoku Sarkodie drove negligently. According to the Defendants, it was the Plaintiff

who negligently ran into the vehicle driven by 2nd Defendant, thus resulting in the accident. The Defendants averred further that, a criminal prosecution of 2nd Defendant in the Circuit Court following the accident, was withdrawn after the parties settled the case amicably and compensation paid to the Plaintiff. That the Defendants paid Four Hundred Cedis (GH₵400.00) to the Plaintiff and One Hundred Cedis (GH₵100.00) to a child who the Plaintiff was carrying at the time of the accident. The Defendants, therefore, denied the Plaintiff's claim and urged the trial Court to dismiss the Plaintiff's suit.

The 2nd Defendant died during the pendency of this suit before the trial High Court. By an order of the Court dated 10th March 2017, the 2nd Defendant's name was struck off the suit.

[4] JUDGMENTS OF THE COURTS BELOW:

At the end of trial, the learned trial High Court Judge dismissed the Plaintiff's claim on the basis that there was no evidence to establish negligence on the part of the 2nd Defendant. The learned Judge proceeded to find that the Police Accident Report which was tendered in evidence, had no sufficient indication or at all that the 2nd Defendant drove negligently. Consequently, the Plaintiff's claim of negligence and for special damages against the Defendants, was dismissed. The Court reasoned that, the Plaintiff's failure to call as witnesses the Medical Superintendent who authored the Plaintiff's medical report, and the Police Investigator in the matter, was fatal to the Plaintiff's claim.

The Court, however, considered the Medical Report that was in evidence and found that, by the medical "history" of Plaintiff, the Plaintiff was unconscious at the time of admission, and had suffered injuries resulting in a 45% permanent incapacity. Consequently, the Court awarded the Plaintiff general damages in the sum of GH₵5,000.00 less the GH₵500.00 said to have been paid to the Plaintiff by the Defendant as compensation in the criminal aspect of the case.

Dissatisfied with the judgment of the trial High Court, the Plaintiff appealed to the Court of Appeal, praying the Court of Appeal to reverse the judgment of the trial High Court. In their judgment delivered on the 23rd November, 2023, the Court of Appeal allowed the Plaintiff's appeal and reversed the judgment of the trial High Court. The Court of Appeal reasoned that, there was ample evidence on record to show that the 2nd Defendant drove negligently, which negligent driving led to the accident. The Court took the view that the general damages of GH₵4,500.00 awarded the Plaintiff by the trial High Court, was inadequate considering the injury suffered by the Plaintiff and the length of treatment that the Plaintiff went through. Again, that the Plaintiff's testimony that the Plaintiff was a seamstress and earned a monthly income of GH₵150.00 therefrom, was not taken into account by the trial Court in the award of damages. Accordingly, the Court of Appeal awarded a "lump sum" of the GH₵100,000.00 in favour of the Plaintiff, and awarded costs of GH₵20,000.00 in Plaintiff's favour.

It is against the judgment of the Court of Appeal that the Defendant has lodged the instant appeal on the grounds identified in paragraph [2] above.

[5] ARGUMENTS BEFORE THIS HONOURABLE COURT:

In his statement of case filed on the 10th May, 2024, it has been argued by counsel for the Defendant that, the learned Justices of the Court of Appeal erred when they shifted the burden of proof of negligence to the Defendant. That the Court of Appeal fell in error when the Court relied on documents, described as exhibits "A" and "B", in their judgment, when the said documents did not form part of the Record of Appeal. That considering that exhibits 'A' and 'B' were not part of the Record of Appeal to the Court of Appeal, the said exhibits could not have properly formed the basis of the conclusions reached by the learned Justices of the Court of Appeal. Counsel argues that the pages in the Record of Appeal containing exhibits 'A' and 'B' were not properly included in

the Record. It has also been submitted by counsel that, the Court of Appeal erred when, in awarding damages to the Plaintiff, they failed to take into account the payments that had been made by the Defendant to the Plaintiff in connection with the criminal aspect of the case. That the inference by the Court of Appeal of 2nd Defendant's drunkenness and thereby fixing the 2nd Defendant with negligence, is not supported by the evidence on record. Counsel, therefore, prays this Honourable Court to set aside the judgment of the Court of Appeal.

On the other hand, counsel for the Plaintiff, in his statement of case filed on the 12th June, 2024, argues that the Defendant has failed to demonstrate that the judgment of the first appellate Court is against the weight of the evidence on record. Counsel has submitted that, after the Record of Appeal was compiled at the trial Court for transmission to the Court of Appeal, Plaintiff's Counsel noticed that exhibits 'A' and 'B', which were in evidence before the trial High Court, were omitted from the Record of Appeal. That Counsel for Plaintiff brought the omission to the attention of the staff of the Court, and the omission was rectified before the record was transmitted to the Court of Appeal. Counsel has argued further that, exhibits 'A' and 'B' were in evidence at the trial Court having been tendered without any objection from the Defendant. That at the Court of Appeal, counsel for Defendant raised no issues with the propriety or otherwise of the inclusion of the said exhibits in the record. Counsel, therefore, submits that even if the said exhibits were not properly before the Court, it is too late in the day for the Defendant to be heard on the complaint that they were not before the Court of Appeal. At page 7 of her statement of case, Plaintiff's counsel put her argument as follows:

> "It is not correct that Exhibit 'A' and 'B' which the Court of Appeal relied on does not form part of the Record of Appeal. In any case, on the 18th of July 2023, when the matter came on for hearing before the Court of Appeal, the Appellant made no complaint or mentioned for the Record to be remitted back to the trial

Court for the said documents to be properly compiled assuming what it is pushing on this Honourable Court is correct.

The Court adjourned it for Judgment and the Appellant cannot be heard to say that exhibits 'A' and 'B' does not form part of the Record. If that is the case, where is the Exhibit 'A' and 'B' referred to by both parties and the judge in his judgment at the trial Court."

Accordingly, counsel for the Plaintiff prays the Honourable Court to dismiss the instant appeal in its entirety.

[6] CONSIDERATION OF THE APPEAL:

My lords, it appears that the judgments of the courts below, and the arguments of counsel in this matter, revolve mainly around exhibits 'A' and 'B'. It is, therefore, my humble view that the argument by counsel for the Defendant that the said exhibits were not properly before the Court of Appeal, should be considered first. The Defendant has argued that, the Court of Appeal erred when it relied on documents described as exhibits "A" and "B" in arriving at their judgment when the said exhibits did not form part of the Record of Appeal. According to counsel, exhibits "A" and "B", even if they were in the Record of Appeal, were not properly incorporated therein, and therefore, ought to have been ignored by the learned Justices of the Court of Appeal. Counsel has argued that, his copy of the record compiled by the Registry of the trial Court did not contain exhibits 'A' and 'B', yet the Plaintiff's copy and that received by the Registry of the Court of Appeal, have the said exhibits. Counsel has attached a copy of a search report (found at pages 130 and 131 of the ROA) from the Registry of the trial High Court which report indicates on the face, that the pages containing exhibits A and B, were inserted by one Constance Sarfo, not the Registrar of the trial Court, and answers in the negative the question by counsel whether the Registrar was aware of the said insertion of the pages containing exhibits A and B. Even though it is not clear from the records what role the said Constance Sarfo plays in the Registry of the trial

High Court, counsel for Defendant gives the impression, in his statement of case, that, she is a member of the Court's staff.

[7]. My lords, the procedure for settlement of records of appeal and its transmission to the Court of Appeal, is set out by Rules 11 and 14 of the Court of Appeal Rules, 1997 (C.I 19). The Rules provide as follows:

"**11. Settling record of appeal**

(1) When an appeal is brought in the court below, the Registrar of the court shall issue summons in Form 2 in Part I of the Schedule directing the parties to appear before him to settle the record of appeal and shall whether or not any of the parties attend the appointment, settle and sign the record and in due course file it.

(2) The Registrar of the court below, and the parties shall exclude from the record documents that are not relevant to the subject matter of the appeal and shall generally reduce the bulk of the record as far as practicable, taking special care to avoid duplication of documents; but the title of the documents not copied with the record shall be enumerated in a list at the end of the record.

(3) Where the Registrar of the Court below or a party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant and the other party insists on its inclusion, the document shall be included and the record shall, with a view to the subsequent adjustment of the costs of and incidental to the inclusion of the document, indicate in the index of papers or otherwise that fact, and the party who objected to the inclusion of the document…."

"14. **Transmission of record**

(1) The Registrar of the Court below [High Court herein] shall transmit to the Registrar [of the Court of Appeal] when ready together with…

(d) the docket or file of the case in the Court below containing the papers or documents filed by the parties concerned; and

(e) the exhibits, documents or any other things received by the Court below in respect of the appeal.

(2) The Registrar of the Court below shall also serve on the parties mentioned in the notice of appeal, a notice in the Form 6 set out in Part One of the Schedule that the record has been forwarded to the Registrar."

My lords, a combined reading of Rules 11 and 14 of C.I 19 suggests that the Registrar of the trial Court is duty bound, unless agreed upon by the parties, to compile and include in the Record of Appeal all relevant materials that went before the trial Court, and transmit the record to the Registry of the Court of Appeal with all the exhibits, documents, papers and other things that were received by the trial Court.

It is noteworthy that the inclusion in the Record of Appeal of the pages containing the impugned exhibits, is not alleged to have been done at the trial Court after the Record of Appeal had been transmitted to the Court of Appeal. Therefore, Counsel for the Defendant has not prayed in aid the ramifications of the transmission of record of appeal (issuance of Form 6) on proceedings in the trial Court subsequent to the transmission of the record of appeal to the appellate court. Counsel argues, however, that the inclusion of the exhibits was done by some person other than the Registrar of the trial Court. This, counsel has argued, was improper and ought to have informed the learned Justices of the Court of Appeal to exclude from the record or ignore the impugned exhibits in considering the appeal before them.

My lords, there is ample evidence on record to show that exhibits 'A' and 'B' were tendered in evidence before the trial High Court during the examination in chief of the Plaintiff on the 18th day of March 2014. This can be found on pages 18 to 20 of the record of appeal. During examination in chief of Plaintiff (at pages 19 to 20 of the Record of Appeal), the following ensued:

> "Q. How did the accident happen
>
> A. Yes, I went to buy something **by walking on the pavement**. A tipper truck which had then deposited a dead body at the Bechem hospital mortuary because **the driver was driving under the influence of alcohol was speeding**. **Due to the over speeding the driver lost control and came to hit me on the pavement**. (Emphasis).
>
> ***By Court***: - **Plaintiff identifies the photocopy of Police Report tendered and marked as Exhibit 'A'**. (Emphasis)
>
> Q. You have been issued with a final Medical Report
>
> A. Yes
>
> ***By Court***: Plaintiff identifies the Medical Report
>
> Q: What do you want to do with the report
>
> A: I want to tender it in evidence
>
> ***By Court***: **Medical report dated 28/5/07 tendered and marked as Exhibit 'B'"**

My lords, the above shows that Exhibits 'A' and 'B' were in evidence at the trial High Court, and as such the Registrar of the trial High Court was required, in line with the

Rules of Court, to include the said exhibits in the final record compiled and transmitted to the Court of Appeal.

My lords, it is my humble view that exhibits 'A' and 'B' were properly before the Court of Appeal in the light of the rules governing appeals to the Court of Appeal. Counsel's plaint about how the exhibits, which were admitted in evidence at the trial Court, became part of the Record of Appeal, is without any substance as far as the record transmitted to the Court of Appeal was concerned.

[8]. Negligence of 2nd Defendant Driver:

In an action claiming negligence, it is the duty of the Plaintiff to establish that the Defendant owed the Plaintiff a duty of care, that the Defendant is in breach of the duty of care and, that the breach has resulted in injury or damage to the Plaintiff. **James Ackon vs Abosso Goldfields Ltd, Civil Appeal No. J4/71/2022, Delivered on 26th April, 2023**.

The Court of Appeal, in their judgment, expressed themselves at page 115 of the Record of Appeal as follows:

> "Negligence is a question of fact and the burden is always on the Plaintiff to prove his case on the balance of probabilities or to adduce evidence from which the inference can be drawn that the negligence of the Defendant led to the accident….There is evidence on record per the Police Accident Report tendered in evidence and marked as Exhibit 'A' that on the 6/11/2006 the suspect driver Opoku Sarkodie (now deceased) drove mourners and a corpse from Derma to Bechem Government Hospital for preservation in the mortuary and **he was drunk**. There is also evidence on record that he was speeding when he knocked down the Plaintiff." (Emphasis).

In support of the Honourable Court of Appeal's finding that the driver was over speeding at the time of the accident, the Court referred to DW1's testimony where DW1

testified that DW1 was informed that the Plaintiff was not hit by the car, but rather that the Plaintiff was blown away by the strong wind from the speeding vehicle.

My lords, this testimony of DW1 is in sharp contrast with the Plaintiff's case and the Defendants' own admission in their statement of defence, that the Plaintiff was knocked down by the car driven by the Defendant's employee (2nd Defendant).

At page 116 of the ROA, the learned Justices of the Court of Appeal stated further that:

> "Though the accused driver was not convicted for negligent driving because the case was withdrawn for settlement which should not have been the case, there can be an inference of negligence of a drunken driver, driving at a terrific speed in a built-up area where he owes a duty of care to other road users including the Plaintiff he knocked down. We hold that the driver was negligent and the appeal on that ground must succeed…. There is also evidence on record that the Plaintiff was **knocked down on the pavement meant for pedestrian walk**. If the accused driver was not negligent then how could that have happened?" (Emphasis)

In fact, at page 23 of the ROA, Counsel for Defendant challenged, in cross examination, Plaintiff's reliance on Exhibit A as follows:

> "Q: There is nothing in Exhibit 'A' to indicate that the defendant's car knocked you on the pavement as you claimed.
>
> A: That is not true
>
> Q: You were on the road and not the pavement
>
> A: I was on the pavement
>
> Q: Your allegation that the 2nd defendant drove the vehicle negligently is not true
>
> A: He was negligent and was even drunk

Q. Exhibit 'A' has not indicated that 2nd defendant was drunk

A. It is in it."

My lords, Exhibit A, the Police Accident Report, can be found at page 76 of the ROA. The Exhibit is, with the greatest respect, apparently incomplete and does not state that the driver was drunk at the time the accident occurred [though a few lines of the document are blurry]. As a result, it is my humble view that the Court of Appeal wrongly imputed drunk driving to the 2nd Defendant driver on the strength of Exhibit A only. It was not part of the Plaintiff's case that the driver of the Tipper Truck that knocked her down was drunk at the time of the accident. Indeed, given the gravity of the injuries sustained by the Plaintiff, which includes head injury, injury of the knee and a rib fracture, as shown on exhibit 'B', the medical report, it is not humanly possible for the Plaintiff to smell alcohol on the driver to enable her state with emphasis that the driver was drunk at the time of the accident. To make matters worse, the medical doctor stated on exhibit B that the Plaintiff was brought to the hospital in a state of unconsciousness. Hence, the Plaintiff's testimony that the driver was drunk could not be evidence coming from the perception of the Plaintiff personally.

[8.1]. At paragraph 3 of the statement of claim found at page 2 of the ROA, the Plaintiff pleaded that:

"3 The 2nd defendant negligently drove Isuzu Tipper Truck No. AW 680 W on 6th November 2006 on the Bechem- Kwasu road and knocked down the Plaintiff on the pavement"

In response to the above averment by the Plaintiff, the Defendants jointly pleaded at paragraphs 4 and 5 of their statement of defence that:

"4. The 2nd defendant admits that he drove the vehicle Isuzu Tipper Truck No. AW 680 W on 6th November, 2006 and the vehicle knocked down the Plaintiff on that day but vehemently denied that he was negligent.

5. The 2nd defendant again says that the incident occurred not on the pavement and tried as he did it was the Plaintiff who rather negligently hit the vehicle and as a result sustained minor injuries."

In the light of the above averments by the parties, the Plaintiff as well as the Defendants have a duty to lead evidence to prove their allegations of negligence which they have both averred against each other. At the trial, the Plaintiff gave evidence by herself and called two other persons who testified on her behalf. The 2nd defendant, who was the driver of the Tipper Truck at the material time, did not give evidence. The 1st defendant company that owned the Tipper Truck in question did not call any eye witness to the accident to give evidence on its behalf. Instead, the person who testified as DWI, one Joseph Kwadwo Henneh, described himself as an Evangelist at Duayaw Nkwanta. The evidence of DW1 centred mainly on the role he played in settling the criminal case brought by the Police against the 2nd defendant. Technically and factually therefore, there was no evidence given contrary to the testimony given by the Plaintiff herein. Apart from the averment contained in paragraph 3 of her statement of claim, the Plaintiff in her testimony gave evidence to the effect that:

"I went to buy something by walking on the pavement. A Tipper Truck which had then deposited a dead body at the Bechem hospital mortuary because the driver was driving under the influence of alcohol was speeding. Due to the over speeding, the driver lost control and came to hit me on the pavement"

During cross examination, counsel for the Defendant tried to challenge the above testimony given by the Plaintiff. However, the Plaintiff stood by her evidence. The following discourse ensued between counsel and the Plaintiff. See page 23 of the ROA:

"Q. There is nothing in exhibit A to indicate that the defendant's car knocked you on the pavement as you claimed.

A. That is not true.

Q. You were on the road and not the pavement

A. I was on the pavement.

Q. Your allegation that the 2nd defendant drove the vehicle negligently is not true.

A. He was negligent and even drunk."

From the answers given by the Plaintiff to the questions posed under cross examination, it cannot be said that the Defendant successfully denied or rebutted the Plaintiff's testimony that the 2nd defendant, at the material time drove the Tipper Truck negligently, by driving same at an unreasonable speed and also hitting the Plaintiff on the pavement. The evidence given by the Plaintiff was a positive one which was in no way rebutted just by the questions posed to her under cross examination. A positive rebuttal will find expression in evidence given by either the 2nd defendant or an eye witness to the contrary. As it is, no such evidence was called by the defendant. The Plaintiff's evidence that she was knocked down by the 2nd Defendant on the pavement whiles the 2nd defendant was speeding, therefore, stood unchallenged. The defendants are, therefore, deemed to admit the evidence adduced by the Plaintiff. As stated in section 17(a) of the Evidence Act, 1975, NRCD 323

"17. Allocation of burden of producing evidence

Except as otherwise provided by law,

(a) the burden of producing evidence of a particular fact is on the party against whom a finding on that fact would be required in the absence of further proof"

See also Fori vs Ayirebi [1966] GLR 627. The evidence by the Plaintiff that the 2nd defendant drove at a great speed, and in the process knocked her down on the pavement where she was walking at the material time, smacks of negligence on the

part of the driver because, a driver has no business to drive on pavements constructed purposely to serve as walk ways by pedestrians. The 1st defendant being the owner of the Tipper Truck in question is, therefore, vicariously liable for the negligence of the 2nd defendant driver.

The Court of Appeal was therefore right when it came to the conclusion that the 2nd defendant was negligent. In so doing, the Court of Appeal observed in their judgment at page 116 of the ROA that:

> "Though the accused driver was not convicted for negligent driving because the case was withdrawn for settlement which should not have been the case, there can be an inference of negligence of a drunken driver, driving at a terrific speed in a built-up area where he owes a duty of care to other road users including the plaintiff he knocked down. We hold that the driver was negligent and the appeal on that ground must succeed".

[9]. Counsel for the Defendant has also argued that, the Court of Appeal further erred in its assessment of the general damages when it failed to take into account the payments already made by the Defendant to the Plaintiff/Appellant/Respondent. At paragraph 5 of the statement of claim, the Plaintiff averred that she has suffered loss of income in the sum of GH₵150.00 per month and that she was claiming this sum from November 2006 to the date of final payment. The Plaintiff also pleaded that she spent GH₵2,600.00 by way of medical expenses and GH₵1,000.00 on extra nourishment. The Plaintiff could not put a figure on the amount she spent on transportation. The Plaintiff pleaded also that she was 32 years at the time of the accident and has become incapacitated and has also lost amenities of life as a result of the accident.

At the trial, the Plaintiff gave evidence to the effect that she spent about GH₵2,000.00 on medical expenses and GH₵1,000.00 on nourishment. The Plaintiff could not remember how much she spent on transportation. She also could not remember how much money she had lost by way of income. Later, the Plaintiff stated in her evidence in chief that she earned about GH₵150.00 per month from her trade as a seamstress and was also spending between GH₵7 to GH₵10 on transportation to and from the hospital.

[10]. In his judgment, the trial Judge found that the Plaintiff failed to prove that the 2nd Defendant was negligent. Yet, the trial Court went ahead to assess general damages in favour of the Plaintiff. This assessment is a bit worrying in view of the conclusion reached by the Judge that negligence had not been proved. In a claim for damages based on an allegation of negligence, once the trial Judge comes to a conclusion, upon the evaluation of the evidence, that the Plaintiff has failed to adduce evidence to prove her allegation of negligence, the natural consequence is for the trial Judge to dismiss the Plaintiff's claim. It is not open for the trial Judge, after a finding that negligence has not been proved, to go ahead and assess damages in favour of the very person who, allegedly, has failed to prove the very claim for which she has come to court.

[11]. The claim made by the Plaintiff in paragraph 5 of her statement of claim is in the nature of special damages and in paragraph 6, the Plaintiff makes a claim for general damages. The authors of Halsbury's Laws of England (5th edition) draw a distinction between general and special damages. They state at paragraph 317, Volume 29 that:

> "A distinction is sometimes drawn between the terms 'general' and 'special' damages. These terms unfortunately are somewhat confusing, in that they have a number of different and often conflicting meanings according to the context in which they are used.
>
> In the context of liability for breach of contract, the distinction between special and general damages is often regarded as corresponding to that between losses arising naturally and in the normal course of events on the one hand, and on the

other those within the reasonable contemplation of the parties themselves (that is, between losses within the first and second limbs of the rule in Hadley vs. Baxendale (1854) 9 Exch. 341.

The distinction between the two terms is also drawn in connection with different types of losses. Here, general damages are those losses, usually but not exclusively non-pecuniary, which are not capable of precise quantification in monetary terms; whereas special damages, in this context, are those losses which can be calculated in financial terms.

A third distinction between the two terms is in relation to pleading. Here, special damages refer to those losses which must be pleaded and established by the claimant, whereas general damages are those which will be presumed to be the natural or probable consequence of the wrong complained of, with the result that the complainant is required only to assert that such damage has been suffered.

Finally, the expression 'special damage' may be used alone, not in conjunction with the term 'general damage'. Here, it may refer to the particular damage which an individual member of the public must prove to succeed in a private action based on a public nuisance, or to the specific loss which must be proved in order to sue for certain wrongs, such as malfeasance in public office, or in the case of certain other wrongs to obtain a substantial, as against a nominal award.

This distinction has been recognised as the position of the law in respect of claims for general and special damages in a number of cases. In Royal Dutch Airlines (KLM) and Another vs. Farmex Ltd [1989-90] 2 GLR 632, the point was drummed home that:

"Special damages must be specially pleaded and specifically proved. But the rule did not imply that if one claimed general damages only, one could not lead evidence of specific damages as a foundation for an award of general damages.

> In coming to a decision as to how much general damages to award, the court would need some guidance as to financial loss".

Again, in Klah vs. Phoenix Insurance Co. Ltd. [2012] 2 SCGLR 1131, the court rendered itself at page 1152 that:

> "A distinction exists between general and special damages: for whereas general damages arise by inference of law and therefore does not need to be proved by evidence; special damages representing a loss which the law will not presume to be the consequence of the Defendant's act but which depends in part, on the special circumstances, must therefore be claimed on the pleading and particularized to show the nature and extent of the damages claimed. The Plaintiff must go further to prove by evidence that the loss alleged was incurred and that it was the direct result of the Defendant's conduct.

[12]. We find from the evidence on record that the within named Plaintiff could not adduce sufficient and cogent evidence to prove her claim for special damages as required by law. The Plaintiff gave evidence to the effect that she spent between GH₵7 to GH₵10 on transportation to and from the hospital. However, the Plaintiff failed to state the number of times that she attended the hospital. There is, however, evidence to show that although the accident happened in 2006, as at the date of the trial even in 2014, the Plaintiff was still attending the hospital. The Plaintiff again, gave evidence to the effect that she had lost her seamstress vocation; that she had also lost her teaching at Sunday school and can also not act as a porter. More importantly, she stated that she can not lift any heavy object and can also not carry anything due to her injuries and advice by her doctor. The medical report, exhibit B herein, shows that as a result of the accident, the Plaintiff sustained injury to her head, lacerations on her back and right ear and abrasions on both knees. Chest x-ray revealed a fracture of the left 5th rib. The Plaintiff was on admission for two weeks before she was discharged. According to the medical doctor, as a result of the accident, the Plaintiff, has the tendency to post

traumatic epilepsy (head injury); osteoarthritis (injury of the knee) and hypostatic pneumonia (rib fracture). The level of the Plaintiff's permanent incapacity was assessed at 45%.

[13]. This Court has ironed out the theoretical basis and the policy reason for the award of damages. In Yungdong Industries vs. Roro Services [2005 -2006] SCGLR 816 this Court stated that:

> "Generally, damages in tort are awarded by way of monetary compensation for a loss or losses which a Plaintiff has actually sustained, and the measure of damages awarded on this basis may vary infinitely according to the individual circumstances of any particular case. It is for a Plaintiff to prove what loss if any, it has suffered by reason of a tort and when as in this case, the effect of the tort is potentially adverse interference with the course of its business operations, it is for it to establish by evidence that there was in fact such adverse interference and that it suffered a properly quantifiable loss by reason of it."

In Livingstone vs. Rawyards Coal Co. 5 App Cas. 39 Lord Blackburn explained the purpose which the award of damages serves as recompense for actionable wrongs as follows:

> "Where any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured or who has suffered in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation".

[14]. After considering the totality of the evidence given by the Plaintiff, especially with respect to the evidence relating to the claim for general damages, the Court of Appeal made an assessment in favour of the Plaintiff in the sum of GH₵100,000.00 which the

Court described as lump sum. But, however described, this assessment represents general damages in favour of the Plaintiff. From the judgment of the Court of Appeal, it is clear that in making the award, the Court made no distinction between special damages and general damages; that is why the Court awarded a global sum which it described as lump sum in favour of the Plaintiff. Damages, in tort, are awarded to distinct heads of claim and there is no such concept as lump sum award. We will therefore set aside the award of GH₵100,000.00 described as lump sum made by the Court of Appeal since the award was made under no specific head of claim known to the law of tort, and as such was made under wrong principles. The award of damages is an exercise of the Court's discretion and will generally not be interfered with by an Appellate Court except under strict conditions. In Standard Chartered Bank (Ghana) Ltd v Nelson [1998-99] SCGLR 810, it was pointed out that:

> "An appellate court might reverse or vary the award of damages by a trial court in the exercise of its discretion on the grounds that: (a) the trial judge had acted on some wrong principles of law; or (b) the amount awarded was so extremely high or so very small as to make it, in the judgment of the appellate court, an entirely erroneous estimate of the damages to which the Plaintiff was entitled"

However, this is not to say that the Plaintiff is not entitled to general damages. The award ought to be made under heads known to the law of tort and especially in personal injury claims. We will therefore revisit the Plaintiff's entitlement in this judgment. We agree with the sentiments expressed by this Court in Appiah vs. Anane [2019-2020] 2 SCLRG 791 to the effect that:

> "In making awards in the form of monetary compensation in personal injury claims, the Court does not imagine any amount at all or have a table with some guidelines or by any mathematical exactitude, establish what amount of money will represent the pain and suffering which a claimant has been occasioned on account of the accident. No two claims in such cases can be compared and

figures of one cannot be imposed on the other. This is where the dilemma and challenge lie. The court ought to determine the quantum of monetary compensation to award the complainant on the basis of the facts of each case".

The Court in the Appiah vs. Anane (supra) decried the low level of damages awarded by the courts in this country for losses suffered as a result of the negligence and encouraged Judges to award competitive sums as may be appropriate to the facts of a given case. In the words of Amegatcher JSC at page 811 of the report:

> "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. This, we believe, will give affected persons hope that the State for that matter and the justice delivery system will not abandon them in their times of need. It will also serve as a deterrent to vehicle owners, drivers, professionals and workers into whose care precious lives of people are entrusted. It is precisely because of this that at common law, exemplary, punitive or aggravated damages are awarded in appropriate cases to demonstrate the court's disapproval of such outrageous conduct on the part of defendants. In this jurisdiction as well, damages sometimes must bite as one of the measures to fight the high rate of accidents and indiscipline on the roads".

In Roach vs Yates [1938] 1 KB 256, the English Court of Appeal laid down guidelines for the assessment of damages in personal injury claims. These guidelines which were quoted with approval in the Appiah vs. Anane (supra) are that a claimant or a Plaintiff in a personal injury claim is entitled to:

> "(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 accident; 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".

[15]. In the instant matter therefore, after considering all the factors discussed above, we will award the Plaintiff the following damages under the relevant heads as follows: (1) The Plaintiff gave evidence to the effect that she was a seamstress who was making an amount of GH₵150.00 per month. She stated that she has lost her seamstress vocation since the accident as a result of the injuries suffered. We will therefore award an amount of GH₵30,000.00 to the Plaintiff as loss of earnings. (2) The Plaintiff suffered injuries to her head, lacerations on her back and right ear and abrasions on both knees. She also suffered fracture of the left 5th rib and the medical doctor assessed her permanent incapacity to be 45%. We will award the sum of GH₵50,000.00 to the Plaintiff for her pain and suffering. (4) There is evidence that the Plaintiff has lost her teaching at the Sunday school and can also not lift heavy objects. We assess the Plaintiff's loss of amenities of life at GH₵20,000.00. This brings the total award of damages to GH₵100,000.00 in favour of the Plaintiff against the Defendant/Appellant herein.

[16]. We proceed to dismiss the appeal filed against the judgment of the Court of Appeal delivered on the 23rd November 2023 as being without merit. We also set aside

the award of GH₵100,000.00 lump sum made by the Court of Appeal as having been awarded contrary to the principles in the award of damages. We award the sum of GH₵100,000.00 in total as non-pecuniary damages in favour of the Plaintiff against the Defendant.

(SGD.) S. K. A ASIEDU
(JUSTICE OF THE SUPREME COURT)

(SGD.) A. LOVELACE-JOHNSON (MS.)
(JUSTICE OF THE SUPREME COURT)

(SGD.) PROF. H. J. A. N. MENSA – BONSU (MRS.)
(JUSTICE OF THE SUPREME COURT)

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