

**IN THE HIGH COURT OF JUSTICE**  
**OF EDO STATE OF NIGERIA**  
**IN THE BENIN JUDICIAL DIVISION**  
**HOLDEN AT BENIN CITY**  
**BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIRO**  
**ON FRIDAY**  
**THE 17<sup>TH</sup> DAY OF APRIL, 2026.**

**BETWEEN:**

**SUIT NO. HEK/17/2017**

**BARRISTER KENNETH IMANSUANGBON -----CLAIMANT**

**AND**

**1. DANGOTE INDUSTRIES LIMITED**

**2. DANGOTE CEMENT PLC**

**3. ABUBAKAR SAIDU**

} -----**DEFENDANTS**

**AND**

**LEADWAY ASSURANCE COMPANY LTD -----THIRD PARTY**

**JUDGMENT**

By his amended Writ of Summons and Statement of Claim, the Claimant Claimed against the Defendants as follows:

- 1) A DECLARATION that the 3rd Defendant was negligent and in breach of his duty of care to the Claimant when he recklessly and dangerously drove a trailer truck (branded Howo Sino Truck) with Reg. No: KBT 99 XA, belonging to the 1st – 2nd Defendants, without warning or notice, sharply swerved off its lane and collided with Claimant’s 2010 Range Rover HSE Car (Armoured**

- SUV) with Reg. No. BP 998 GWA with the Claimant and Mercedes Benz S.550 Saloon car with Reg. No. BJ 900 GWA at Ekpon, along Uromi/Agbor highway within the jurisdiction of this Court and damaged the said vehicles beyond repairs, while inflicting severe bodily and internal injuries on the Claimant;*
- 2) A DECLARATION that at the time of the accident involving the said trailer truck (branded Howo Sino Truck) driven by the 3rd Defendant, belonging to the 1st – 2nd Defendants and the Claimant’s said Range Rover and Mercedes Benz Car, the 3rd Defendant was an employee of the 1st – 2nd Defendants and drove the said trailer truck in the course of his employment and within the scope of his authority;*
  - 3) A DECLARATION that the 1st – 2nd Defendants are vicariously liable for the damage and loss of the Claimant’s cars and the personal injury inflicted on the Claimant from the wrongful act of the 3rd Defendant;*
  - 4) The sum of \$165,525 US (One Hundred and Sixty-Five Thousand Five Hundred and Twenty-Five US Dollars) being the cost of 2010 Range Rover HSE (Armoured SUV) with Reg No: BP 998 BWR and Vin No: WDCYC7BFXAX182653 (now junked at the Divisional Police Station Igueben);*
  - 5) The sum of \$85,486.90 (Eighty-Five Thousand, Four Hundred and Eighty-Six Dollars, Ninety Cents US) being the cost of Mercedes Benz S.550 Saloon car with Reg. No. BJ 900 GWA and Vin No: WDDNG86X39A238555 (now junked at the Divisional Police Station Igueben);*
  - 6) 35% of the cost of the said 2010 Range Rover HSE (Armoured SUV) and Mercedes Benz S. 550 Saloon car being custom duties paid on the said vehicle upon importation into Nigeria;*
  - 7) The sum of \$60, 090.98 being the difference between the cost of purchasing the said Mercedes Benz S.550 Saloon car at the time of purchase and the present cost of replacing same;*
  - 8) The Claimant claimed medical and ancillary expenses as follows:*
    - (i) University of Benin Teaching Hospital Medical Expenses - N300,000.00;*
    - (ii) Charter of air Ambulance to UK - US\$ 147,000.00;*
    - (iii) Bupa Cromwell Hospital (London) - £33,000.00;*
    - (iv) US Post Therapy Medical Bill - US\$ 200, 000.00;*
    - (v) Charter of land Ambulance in London - £1,800.00;*
    - (vi) Mark Rickman Orthopaedic - £1,000.00;*

***(vii) Cathrine Greville Anaesthetic Service - £750.00***

***9) AIR ticket for claimant, wife and kid - N1,941,000.00;***

***(10) The sum of One Hundred Million Naira (N100,000,000) only being general damages for trauma, unquantifiable pains, sufferings and loss of amenities of life; and***

***(11) The sum of Two Million Naira (N2,000,000.00) only being the cost of this action.***

At the hearing, the Claimant testified and called three witnesses. During the trial, the Claimant and his witnesses tendered 41 documents admitted and marked as EXHIBITS A – X.

The 1st & 2nd Defendants called one Mr. Mohammed Adegboyega (DW1) as their witness while the Third Party called one witness in the person of Mr. Richard Akpotebu (DW2).

The 3<sup>rd</sup> Defendant did not put up any appearance or defence to this suit.

The Claimant's case as can be gleaned from the evidence which he adduced at the trial is that on the 14<sup>th</sup> of November 2013, he was traveling in his Range Rover SUV Car along Uromi/Agbor Road in the company of his brother, his personal assistant, with his backup cars conveying his officially assigned security details.

According to the Claimant, during the journey, at a place called Ekpon, a trailer truck branded (Howo Sno Truck) with registration No: KBT 99 XA belonging to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and driven by the 3<sup>rd</sup> Defendant was coming from the opposite direction and heading towards Uromi.

He alleged that suddenly, without warning, the trailer truck sharply swerved off its lane at high speed and collided first with the Claimant's 2010 Range Rover HSE Armoured (SUV) car with Reg. No: BP 998 GWA and in the same momentum also rammed into the Mercedes Benz Saloon car Reg. No: BJ 900 GWA despite the Claimant's driver's efforts to avoid the Defendant's truck which had apparently gone out of control. He said that the point of impact was on the owner's side of the vehicle where he was seated.

The Claimant alleged that he suffered severe injuries to his spine, rib cage, arms and the whole of his body. He said that he was traumatized and has been in serious pains till date.

He testified that immediately after the accident, he was taken to Central Hospital at Agbor near the scene of accident and was referred from there to the University of Benin teaching Hospital (UBTH) for medical attention.

He said that he paid the sum of N300,000.00 to UBTH as part payment for the cost of his medical treatment. He said that while he was on admission at the UBTH, his condition grew worse, so he was referred to Bupa Cromwell Hospital, London, United Kingdom by the UBTH. The Referral Letter from the UBTH to Bupa Cromwell Hospital London, dated 15/11/13 was admitted as Exhibit "S".

He said that following his referral, an emergency air ambulance was chartered to fly him to the United Kingdom for treatment at the cost of US\$147,000.00 and the receipt/invoice No:125 of 15/11/13 issued by the Flying Doctors Nigeria Limited. The original stamped copy of the receipt for the payment of the sum of \$147,000.00 was admitted in evidence as Exhibit "P".

He said that upon arrival at the United Kingdom by Air Ambulance, he was conveyed by land ambulance to Bupa Cromwell Hospital at the cost of £1,800 (One Thousand Eight Hundred British Pounds). The original copies of the two receipts amounting to the sum of \$1,800 were admitted as Exhibits "O1" and "O2" while the stamped copies of same were admitted as Exhibits "O3" and "O4" respectively.

He said that upon arrival at Bupa Cromwell Hospital, he was admitted and he paid the sum of £8,000 (Eight Thousand British Pounds) upon admission. The original copy of the receipt for the payment of the sum of £8,000 was admitted as exhibit "L" while the stamped copy of the same document was admitted as exhibit "L1".

He said that on the 22nd of November, 2013, he paid additional £10,000 (Ten Thousand British Pounds) to the said Hospital. The original copy of the receipt was admitted as Exhibit "M" while the stamped copy was admitted as exhibit "M1".

The Claimant said that he was examined by one Mr. Mark Rickman, a consultant Orthopaedic Surgeon on 22nd November, 2013 and he paid the sum of £1,000 (One Thousand Pounds) for this service. The original copy of the receipt was admitted as Exhibit "R" while the stamped copy was admitted as Exhibit "R1".

He alleged that a CT-spine examination was carried out on him which revealed that he suffered from multiple fractures and he tendered the guide to leaving hospital issued to him by the said hospital and it was admitted as Exhibit "T".

The Claimant stated that he had to fly with his wife to Nigeria after leaving hospital to pursue the police report on the accident and ensure that the appropriate authority

inspected the damaged vehicles. He said that they both purchased a 1<sup>st</sup> class ticket each for this trip for the equivalent of N891,000 (Eight Hundred and Ninety-One Thousand) per ticket and paid N159,200 for their little child who was too young to be left behind in the United States. The original copies of the receipts for the sum of N891,000 each and N159,200.00 were admitted as exhibits “V” and “V1” while the stamped copies were admitted as Exhibits “V2” and “V3” respectively.

The Claimant alleged that he bought the said Mercedes Benz Saloon car in the name of his wife Kate Imansuangbon and in proof of ownership he tendered some vehicle particulars.

The Claimant alleged that it would cost him the sum of \$145,577.88 to replace the said Mercedes Benz and he tendered a Buyer’s order No: 250872 from Mercedes Benz of Tyson's Corner of 30th January 2017 during trial. The Buyer’s Order was admitted as Exhibit “J”.

The Claimant alleged that the 3<sup>rd</sup> Defendant while driving the trailer truck of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on the date of the accident acted within the scope of his authority and in the course of his duties.

He informed the Court that after the said accident, his personal assistant reported the matter to the Divisional Police office at Igueben and a team of Police traffic officers conducted a thorough investigation into the accident. He said that the 3<sup>rd</sup> Defendant ran away from the scene of the accident immediately after the accident.

At the trial, one Ohikhuai Godfrey, a Vehicle Inspection Officer who was a member of the team that inspected the vehicles of the Claimant after the accident testified that after a thorough evaluation and inspection of the vehicles, they issued a report. He stated that they did not inspect the truck that allegedly collided with the Claimant’s vehicles.

At the trial, one Inspector Akinmoju Ajibola testified as the C.W 2. He stated that he was assigned together with his team to investigate the matter and put up a report. According to him, immediately after the accident they visited the scene of the accident and saw the damaged vehicles. He said that inside the trailer truck, he found the following items:

- a. An Identity card belonging to the 3<sup>rd</sup> Defendant (Abubakar Saidu) a staff of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants;
- b. An Identity card of Dangote Group card No 203600 belonging to the 3<sup>rd</sup> Defendant; and

- c. An ATM card belonging to the 3<sup>rd</sup> Defendant

He identified the above items which were already tendered in Court as Exhibits as follows:

1. Police Investigation Report was admitted in evidence as Exhibit “B”;
2. Two Dangote Cement Company staff identity cards were admitted in evidence as Exhibits “C” and “C1”; and
3. UBA ATM card of Abubakar Saidu was admitted as Exhibit “D”.

He said that he visited the Hospital where the Claimant was first rushed to at Agbor Specialist Hospital before he was transferred to UBTH. He alleged that from his investigation it was only the 3<sup>rd</sup> Defendant who was inside the truck on that fateful day.

He said that he wrote a letter to the Defendants requesting them to produce the 3<sup>rd</sup> Defendant, but they refused to respond to his letter. He identified his Police Investigation Report which was admitted as Exhibit “B”.

The Claimant alleged that he instructed his Solicitors to write to the 1st - 2nd Defendants in addition to Dangote Transport Ltd, demanding compensation from them for the cost of medical treatment incurred and loss of his two luxury 2010 Range Rover HSE (Armoured SUV) and Mercedes Benz Saloon car.

He said that the 2nd Defendant replied to the said letter and informed the Claimant's Solicitors that it would notify their Risk Department and contact the said Solicitors. The Reply Letter was admitted in evidence as Exhibit “W”.

The Claimant alleged that the 3rd Defendant was utterly negligent, reckless and breached his duty of care towards him on the day in question thereby resulting in bodily injuries and the loss of use of his said vehicles.

In defence of this suit, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants called one Muhammed Adegboyega Adesiyani (D.W.1), the fleet manager in the 1st Defendant Company.

In his deposition which he adopted as his evidence, the D.W 1 denied most of the evidence adduced by the Claimant and informed the Court that they would rely on the Insurance policy between the 2nd Defendant and the 3rd Party. He tendered a copy of the Insurance Policy document, and it was admitted as Exhibit “Y”.

Under cross examination by the Claimant's counsel, the D.W 1 alleged that it is the policy of their company that when they employ a driver, he is given an employment number and a means of identification. He said that Exhibit "C1" was issued by their company to the 3<sup>rd</sup> Defendant. He said that before a truck leaves their yard it must be driven by the driver assigned to drive that truck.

The witness stated that the registration number of their truck which was involved in the accident is KBT 99XA. He said that the truck was under the insurance cover of the Third Party when the accident occurred.

In defence of this suit, the Third Party called one Richard Akpotebu (D.W. 2) as their sole witness.

In his evidence, the D.W 2 testified that the Third Party was informed by the Defendants about the accident involving the Claimant and the 2nd Defendant's truck but they cannot confirm that the Defendant's truck was driven by a driver in the employment of the Defendant at the time of the accident or whether the alleged driver of the truck was on official assignment for the Defendant at the time of the accident.

He said that the accident did not result from the 2nd Defendant's driver's negligence neither was the truck driven at a very high speed or recklessly and dangerously as alleged by the Claimant.

He said that nobody suffered any life-threatening injuries because of the accident. He said that the Third Party is not aware of the medical treatments allegedly received by the Claimant at both local and foreign hospitals.

He maintained that the alleged 1st class ticket for the Claimant, his wife and their little child was not consequent upon the accident. He also denied any knowledge of the alleged letter written by the Claimant's solicitor, demanding compensation for the cost of medical treatment incurred and loss of the Claimant's Range Rover and Mercedes Benz saloon car and the letter which the 2nd Defendant allegedly replied to.

He said that at the time of the alleged accident, the Defendants maintained an insurance policy with the Third Party.

He said that by the said contract of insurance, the 2nd Defendant is obliged to give notice to the Third Party of the occurrence of any accident or loss or damage and in the event of any Claim.

Furthermore, he alleged that the Defendant had a duty to forward every Claim, Writ of Summons and/or process to the Third Party herein who shall then be entitled to take

over and conduct the defence of the Suit or settlement of the Claim in the name of the insured.

He said that contrary to the terms of the Insurance Contract, the 2<sup>nd</sup> Defendant failed and/or refused to forward the Writ of Summons or Statement of Claim in the instant suit to the Third Party upon receipt of same. He said that the Third Party only became aware of the pending suit upon receipt of the Third-Party Notice with the attached Writ of Summons and Statement of Claim.

He stated that the Third Party is not liable to the Claimant nor the Defendants for the Claims of the Claimant or for any Claim whatsoever.

Upon the close of evidence, the learned counsel for the parties who were represented filed their final written addresses which they adopted as their final arguments in support of their respective cases.

In his final written address, the learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, *David Nkire Esq.* formulated three issues for determination as follows:

- i) Whether the Claimant contributed to the accident;*
- ii) Whether the Claimant led credible evidence (both oral and documentary) in proof of the special damages sought; and*
- iii) Whether the Third Party is mandated by statute to pay the amount of the judgment to the Claimant entitled to the benefit of such judgment.*

Thereafter, the learned counsel argued the three issues seriatim.

### **ISSUE 1**

#### ***Whether the Claimant contributed to the accident.***

Arguing this first issue, the learned counsel submitted that it is trite law that he who asserts must prove and he relied on *Sections 131 and 132 of the Evidence Act*. He said that the mere occurrence of an accident is not proof of negligence. He referred to the cases of *ALHAJI KABIRI ABUBAKAR & ANOR. vs. JOHN JOSEPH (2008) LPELR-48 (SC) and B.J. NGALARI vs. MOTHERCART LTD. (1999) 13 NWLR (Pt.636) 626* where the courts held that the burden of proving negligence falls on the Claimant who alleged it.

He submitted that the Claimant's failure to act with reasonable care for his own safety and wellbeing constitutes contributory negligence and he relied on the case of

***ADEYEMI VS OLANIPEKUN (1988) 2 NWLR (Pt.76) 596*** where the Supreme Court discussed the principle of contributory negligence.

He posited that in the instant case it is clear from the pleadings that at the time of the accident, the Claimant was illegally plying the road. He said that the Claimant did not possess valid vehicle particulars to enable him to legally use the vehicles on the road. He said that the Claimant tendered his vehicle particulars for the years 2012 and 2015 in a bid to prove his case but did not tender his vehicle particulars for the year 2013 when the accident occurred.

He submitted that by the combined provisions of ***section 3(1) of the Motor Vehicle (Third Party Insurance) Act, CAP M22 LFN 2010*** and ***Section 10(4)(h) of the Federal Road Safety Commission (Establishment) Act, 2007***, the Claimant's Vehicles ought not to be on the road as at the time the accident occurred.

He reproduced the aforesaid provisions in his written address.

He contended that by the provision of these laws it is criminal for the Claimant to be on the road without a valid vehicle license. He said that the Claimant recklessly and in flagrant disregard of the extant traffic laws put himself in harm's way by causing a vehicle that ought not to be on the road to be on the road. He maintained that this reckless act of the Claimant contributed to the accident because the accident would not have occurred if the vehicle was not plying the Road. Counsel relied heavily on the cases of ***AMADI VV NWANKWO (2014) LPELR -24500 (CA)*** and ***OSUN STATE GOVT V. AKINYEMI (2020) LPELR- 48981***.

Furthermore, learned counsel cited the Latin maxim: "***Ex turpi causa non oritur actio***" meaning "no action arises from a dishonorable cause". He submitted that the principle behind the maxim is to prevent someone from using the legal system to enforce a claim that arises from their own illegal or immoral conduct. He said that in this suit, the Claimant is trying to profit from his own wrongdoing.

He also referred to the case of ***MALAMI V. OHIKHUARE (2019) 7 NWLR (Pt. 1670) 132***.

## **ISSUE 2**

***Whether the Claimant led credible evidence (both oral and documentary) in proof of the special damages sought.***

Counsel submitted that the Claimant has not discharged the burden of proof to be entitled to special damages. He said that the Claimant failed to lead material evidence

to prove the particulars of the special damages which he pleaded. He relied on the cases of *OSUJI V. ISIOCHA (1989) 3 NWLR (Pt. 111) 623*; *ALIYU v. BULAKI (2019) LPELR-46513 (CA)*.

He referred to Claimant's Reliefs 4, 5 6 and 7 of the Claimant's Amended Claim where he claimed special damages with particulars. He submitted that a Claimant who alleges a total loss of a vehicle due to an accident must, first and foremost, discharge the burden of proving that the vehicle was a total write-off. He said that in the instant case, there is no evidence before this Court to prove that the vehicles were total write-offs. He submitted that to prove that a vehicle has been completely written off, the Claimant must lead credible evidence to establish the following:

- i) The pre-accident market value of the vehicle;
- ii) The scrap or salvage value of the vehicle; and
- iii) Damages for loss of earnings, if applicable.

He maintained that for the Court to determine the quantum of special damages payable, there must be evidence from which the net loss can be calculated. He said that this is done by subtracting the scrap value from the pre-accident value and then adding any proven loss of earnings. He referred to the case of *ARMEL'S TRANSPORT LTD V. MADAM TINUKE MARTINS (1970) 1 ALL NLR 27*. He also relied on the cases of *S.G.E. (Nig.) Ltd. v. Okpanum [1989] 4 NWLR (Pt. 115) 373 at 380*; and *ADENUGBA & ANOR V. OKELOLA (2007) LPELR-8290(CA) at pp. 20–21, paras D–F*.

Counsel posited that the CW3's oral testimony and Exhibits B and B1 (the Vehicle Inspection Officers' Reports) did not state that the vehicles were beyond economic repair. He said that they merely indicated that the vehicles were "not roadworthy" which is not synonymous with being totally condemned or written off. He maintained that the Claimant has failed to meet the evidential threshold required for a claim for total loss.

Furthermore, he submitted that the law requires that the valuation of a written-off vehicle—both pre-accident and salvage value—must be supported by expert evidence and he referred to the case of *S.G.E. (Nig.) Ltd. v. Okpanum (supra)*.

He said in the present case, the Claimant has failed to produce any expert valuation report, especially in relation to the scrap value of the vehicles. He said that the documents purporting to show market prices are insufficient and contrary to settled law. He said that the Claimant's failure to meet these legal requirements is fatal to the

claims for special damages, particularly as articulated in Reliefs 4 and 5 of his Statement of Claim.

With regards to relief 6, he submitted that the Claimant did not place any material evidence to support this claim. He said that there was no document tendered to establish that cost.

Also, with regards to relief 7, he said that the Exhibit T which the Claimant tendered in support of his claim was for a 2017 model Benz whereas the Claimant's Benz model was for 2009.

Furthermore, he said that the Claimant also tendered a 2014-2015 vehicle particulars of the two vehicles whereas he claimed that vehicles that had been written off and no longer road worthy since 2013 when the accident occurred.

He submitted that the Claimant being in possession of a 2014 -2015 vehicle license presupposes that the vehicle is road worthy and still in use. He said that one of the essence and preconditions for the issuance of vehicle registration license is that the said vehicle is road worthy and in good condition and he cited the case of *AMADI VS NWANKWO ( SUPRA)*.

### **ISSUE 3**

***Whether the Third Party is mandated by statute to pay the amount of the judgment to the Claimant entitled to the benefit of such judgment.***

Counsel submitted that the Third Party is obligated by contract and by statute to assume liability in any valid insurance claim and he relied on the case of *University of Nigeria, Nsukka v. Turner (1965) L.L.R. 33*.

He said that in the instant case, it is uncontroverted that the vehicle involved in the accident that eventually metamorphosed into this suit was insured by the 1<sup>st</sup> & 2<sup>nd</sup> Defendants with the Third Party.

He referred to the insurance policy document tendered in evidence by the 1<sup>st</sup> & 2<sup>nd</sup> Defendants in this Suit and relied on the following cases: *U.N.I.C LTD. V FADCO INDUSTRIES (NIG.) LTD. [2000] 4NWLR (part 653); AJAOKUTA STEEL COMPANY LIMITED & 2ORS VS CORPORATE INSURERS LIMITED [2004] 16 NWLR ( Part 899) p. 399 para, D; IRUKWU V. TMIB (1997) 12 NWLR (PT.531) 113; ALAO V. ACB (1998) 3 NWLR (PT.542) 339 (PP. 392, PARAS. D-E; 399, PARA. C; 401-402, PARAS. H-B).*

Furthermore, he submitted that the third party is also mandated by statute to pay the amount of the judgment to the Claimant entitled to the benefit of such judgment where the case may arise. He relied on the provisions of *Section 69(1) (b) of the Insurance Act 2003* and *Section 10(1) of the Motor Vehicle (Third Party Insurance) Act, CAP M22 LFN 2010*.

He also relied on the case of *PEREIRA V MOTOR & GENERAL INSURANCE (1971) NNLR 118*.

In conclusion he urged the Court to dismiss the Claimant's claim.

In his written address, the learned counsel for the Third Party, *O.O. Erhahon Esq.* formulated three issues for determination as follows:

- 1. Whether the Claimant led credible evidence (both oral and documentary) in proof of the liability of the Defendants;*
- 2. Whether the Claimant led credible evidence (both oral and documentary) in proof of the special damages sought; and*
- 3. Whether the Trial Court has the requisite jurisdiction to hear and determine this case.*

Thereafter, the learned counsel argued the three issues seriatim.

### *ISSUE I*

*Whether the Claimant led credible evidence (both oral and documentary) in proof of the liability of the Defendants.*

Arguing this first issue, learned counsel submitted that in this suit, the evidence of the CW I as stated in paragraphs 7, 8 and 9 of his Witness Statement on Oath contradicts the evidence elicited from him under cross examination by Counsel to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

Furthermore, he said that the Claimant failed to lead credible evidence in proof of the averments contained in paragraphs 7, 8, 9, 12 and 13 of the Amended Statement of Claim.

He said that the evidence of CW3 (the Vehicle Inspection Officer), the CW2 (the Investigating Police Officer) and the Claimant failed to adduce any credible and cogent evidence showing the state and condition of the road, the weather condition, volume

of traffic at the time of the accident and the speed limit of the road to help the Court in reaching a verdict that the driver drove excessively.

He said that the Police failed to present the particulars of the witnesses that were interviewed and the statements made by the said witnesses which would have informed the Court on how the Police arrived at the conclusion contained in EXHIBIT B- the Police Investigation Report.

He referred to the case of *NGILARI VS. MOTHERCAT LTD 1999 12 SC (PART II) I* where the Supreme Court held that mere occurrence of an accident is not proof of negligence.

He maintained that to succeed in a claim of negligence, the Claimant must prove that the accident was a result of the negligence of the Defendant. He said that the circumstances, the nature and extent of the accident must be pleaded and evidence adduced thereon.

He submitted that negligence is a question of fact and he referred to the case of *ADETOUN v. LAFARGE AFRICA PLC & ANOR (2018) LPELR-44733(CA)*.

He said that the Vehicle Inspection Officers stated that they did not examine the Defendant's Truck and that the Police did not disclose whether the road was bad, forcing the Driver to leave his lane as alleged.

He pointed out that the EXHIBIT F (CKN Nigeria Publication) tendered in evidence by the Claimant referred to the accident as an assassination attempt and the Police failed and or neglected to investigate this publication keeping in mind that this accident happened during electioneering period of which the Claimant was an active participant.

He said that this allegation of crime was not within the scope of the authority of the 3rd Defendant. He said that the Police did not make any reasonable attempt to locate the 3rd Defendant to confirm if he was behind the wheel and what led to the accident.

He posited that the two Exhibits (E and EI) do not state that the said vehicles are total write offs neither was there any evidence adduced as per the cost of the scrap value of the said vehicles.

He maintained that a Claimant must succeed on the strength of his own case and not on the weakness of the Defendant's case. See the cases of: *ELOHOR v OSAYANDE [1992] 6 NWLR (PART 249) 524*; *ITAUMA v AKPE-IME [2000] 12 NWLR (PART 680) 156 at 180*; and *AKANDE V ADISA [2012] 15 NWLR (PART 1324) 547*.

## **ISSUE 2**

***Whether the Claimant led credible evidence (both oral and documentary) in proof of the special damages sought.***

The learned counsel submitted that the Claimant did not lead sufficient evidence to prove his claims for special damages.

Under this second issue, the learned counsel made submissions that are very similar to the submissions of the learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on the same issue.

Submitting on the Claimant's Medical Bills, learned counsel posited that the Claimant failed to provide any document in proof of his claim for the sum of N300,000.00 (Three Hundred Thousand Naira) which he allegedly spent at the University of Benin Teaching Hospital Medical. He said that this claim was not proved by the Claimant.

He said that the same defect affects the Claimant's claim in [Relief 8(iv)] for the sum of \$200,000.00 (Two Hundred Thousand Dollars) as post-surgery therapy. He said that no document(s) was tendered to substantiate that claim for special damages.

Furthermore, he referred to the Claimant's claims in Reliefs 8(ii) and 8(v) for the sum of \$147,000.00 (One Hundred and Forty-Seven Thousand Dollars) and £1,800.00 (One Thousand Eight Hundred Pounds) for Charter of Air Ambulance to UK and Charter of land Ambulance in London respectively.

He said that the Claimant gave evidence and tendered EXHIBITS O1 and O2 (and EXHIBITS O3 & O4) as Receipts for the Land Ambulance in the United Kingdom as well as EXHIBIT P (Receipt for Charter of Air Ambulance). He submitted that the evidence and pleadings regarding these two reliefs are contradictory or at variance with one another.

According to him, in his initial Witness deposition the Claimant stated the sum of \$140,000.00 as the cost of the flight whereas in the second Witness deposition he stated the sum of \$147,000.00.

He submitted that the evidence of cost of the charter of the Air Ambulance is conflicting and/or at variance with one another as per the evidence of the Claimant thus the claim should be disregarded by the Court.

He submitted that these contradictions are very material and it is not for the Court to provide explanation for inconsistencies in a party's case. He cited the case of ***ONUBOGU v. THE STATE (1974)4 U.I.L.R 538.***

Learned counsel made some submissions challenging some of the Claimant's flight tickets and urged the Court not to rely on them.

In respect of the Claimant's claim for general damages, counsel posited that the Claimant did not adduce any evidence to show the amenities of life that he lost.

On the claim for the cost of this action, learned counsel submitted that Solicitors fees are classified as a form of special damages which therefore should be pleaded and strictly proved. He cited the case of ***Divine Ideas Ltd. v. Umoru (2007) ALL FWLR (Pt.380) 1468 at 1509 Paras.A - D (CA).***

He said that in the instant case, the Claimant did not plead and prove how he expended the sum of N2,000,000.00 (Two Million Naira) as legal fees.

### **ISSUE III**

***Whether the Trial Court had the requisite jurisdiction to hear and determine this case.***

Counsel submitted that by the combined provisions of the ***Motor Vehicles (Third Party Insurance) Act CAP M22 Laws of the Federation 2010***, and the ***FRSC (Establishment) Act***, the Claimant's vehicles being driven on the highway on 14th November, 2013 is a criminal offence under Nigerian Laws.

He maintained that the Claimant's Claim is tainted with illegality and cannot be countenanced by the Court.

Finally, he urged the Court to dismiss the entire suit.

In his final written address, the learned counsel for the Claimant, ***Dr. Ehiogie West Idahosa SAN*** formulated three issues for determination as follows:

- i) Whether upon the pleadings and evidence led during trial, the Claimant proved that the Defendants were liable for the accident involving Claimant's vehicles and the consequences thereof.***
- ii) Whether upon the pleadings and evidence led during trial, the Claimant is entitled to the Reliefs claimed in this suit.***

***iii) Whether the third party is entitled to defend this suit against the Claimant.***

Thereafter, the Learned Senior Advocate argued the three issues seriatim.

**ISSUE 1**

***Whether upon the pleadings and evidence led during trial, the Claimant proved that the Defendants were liable for the accident involving Claimant's vehicles and the consequences thereof.***

Opening his arguments on issue one, the learned counsel submitted that they led evidence to show that the 3<sup>rd</sup> Defendant who drove the Defendants' said trailer on the day of the accident was an employee of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and he drove the said trailer within the scope of his authority and in the course of his duties as employee of the Defendants who were therefore vicariously liable for the damages suffered by the Claimant.

He pointed out that despite the direct pleadings and evidence led by the Claimant, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants simply made a general denial and put the Claimant to the strictest proof of the facts alleged by the Claimant. He said that they did not lead evidence to contradict the Claimant or to explain what happened on the day of the accident.

He posited that the evidence of the sole witness of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not help the defence of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. He said that in his deposition, the witness merely traversed and denied the averments in the Claimant's Amended Statement of Claim.

He said that under cross-examination, the said witness admitted that Exhibit C1, which is the staff I.D card of the 3<sup>rd</sup> Defendant, was issued to him by the Defendants as a staff. He said that the witness also admitted that under the Defendants' policy, only the driver who is assigned to a truck had the right to take the truck away from the parking yard.

He maintained that the Defendants failed to join issues with the Claimant in respect of how the accident occurred, ownership of the truck/trailer and the status of the 3<sup>rd</sup> Defendant as a staff of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants who had the authority to drive the truck in question within the scope of his employment.

Learned counsel referred to the evidence of the C.W.1, Thomas Izor who he said gave graphic details of how the accident occurred as a result of the negligent driving of the 3<sup>rd</sup> Defendant on the day in question.

He said that the 3<sup>rd</sup> Defendant never appeared in Court to contradict the evidence adduced by the Claimant.

He urged the Court to believe the only account of the Claimant and his witnesses. He relied on the cases of *Modupe v. State (1988) LPELR – 1888 (SC)* and *Laosebika & Ors v. Awojobi (2015) LPELR – 24831 (CA)*.

He submitted that the Claimant led evidence to establish negligence. He submitted that the 3<sup>rd</sup> Defendant had a duty of care to the Claimant, he breached the duty of care and caused damage to the Claimant. He relied on the case of *Abusomwan v. Mecantile Bank Ltd (No.2) (1987) 3 NWLR (Pt. 60) P. 196 at 209* where the Supreme Court followed the English case of *Ann v. Merton London Borough Council (1978) AC 728*.

The learned counsel referred to the case of *UBA Plc v. Achoru (1990) 9-10 SC 115* where the apex Court held that where the Claimant has successfully led evidence on how the accident occurred, the onus would shift to the Defendant to show that he was not at fault. He said that in the instant case the Defendants failed to lead any evidence to show that the 3<sup>rd</sup> Defendant was not at fault. He also relied on the cases of *Abdullahi v. State (1985) 1 NWLR (Pt. 3) P. 523 at 527* and *Moses v. State (2006) 11 NWLR (Pt. 992), P. 458 at 497*

He urged the Court to hold that the Claimant has successfully established that 3<sup>rd</sup> Defendant negligently and recklessly caused the said accident on the day in question.

Furthermore, learned counsel contended that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are vicariously liable for the negligence of the 3<sup>rd</sup> Defendant. He said that in their statement of Defence, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not plead any alternative set of facts to the pleadings of the Claimant in paragraphs 4(a), 28 and 35 of the Amended Statement of Claim. He said that they were evasive and did not explain how they were not vicariously liable. He referred to the case of *Elukpor & Sons v. FHA (1991) 3 NWLR (Pt. 179) 322* where it was held that, a mere denial in a statement of defence is not a proper answer to the averments contained in the statement of Claim and that such imperfect denial is deemed an admission of the facts contained therein.

He urged the Court to hold that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are vicariously liable for the wrongful act of the 3<sup>rd</sup> Defendant. He relied on the following cases on the principles

of vicarious liability: *NPF & Anor v State (2020) LPELR (CA) (Pp. paras A)*; *FBN PLc v. Paul (2022) LPELR – 57591 (CA)* and *Iyere v. Bendel Feed and Flour Mill Ltd (2008) LPELR – 1578 (SC)*.

## ISSUE 2

***Whether upon the pleadings and evidence led during trial, the Claimants is entitled to the Reliefs claimed in this suit.***

Counsel submitted that a Claim in special damage must be strictly proved and he referred to the case of *Nzeribe v. Dave Eng. Co. Ltd 8 NWLR (Pt. 361) Pg. 124 at 140 (Paras D-G) (sic)*. He said that in the instant case, the Claimant led credible evidence to prove his claims for special damages. He referred to Exhibits E and E1 to show that the Range Rover (Armoured SUV) was severely damaged and therefore not road worthy anymore due to the accident. He said that the scraps of the vehicles are still lying at Igueben Police Station from the evidence before the Court.

He said that the Claimant tendered the certificate of Armour Up-Fit as Exhibit G to show that the Ranger Rover was Armoured to the standards set out in the Certification and which proved that it was a special vehicle and not the everyday Range Rover in use. He referred to the evidence that was led to prove the state of the vehicles and their value before and after the accident.

On the medical evidence, the learned counsel referred to the volume of oral and documentary evidence adduced by the Claimant to prove his medical expenses both locally and internationally.

On his claim for general damages, learned counsel submitted that the Claimant led evidence to show that the accident caused him serious injuries to his spine, rib cage, arms, his entire body and that the accident traumatized him till date.

He submitted that the Claimant is entitled to general damages to compensate him for non-pecuniary losses, which are intangible in nature and include pain, suffering and emotional distress experienced by him. He submitted that the compensation by general damages is different from the award of special damages to restore the Claimant to the position where he was as nearly as possible in terms of money lost. He cited the case of *Anibaba v Dano Airlines (2025) 9 NWLR (Pt. 1994) 377 at 418 (paras C-D)*.

On the Defendants' plea of illegality and contributory negligence, learned counsel submitted that the Defendants cannot raise the plea of illegality and contributory negligence without pleading same. He referred to the case of *Bauhaus Int'l Ltd & Anor v. Midfield Investment Ltd (2008) LPELR – 3860 (CA)* where the Court of

Appeal held that issues of legality and conditions precedent are subject to strict rules on pleading that places obligations on the Appellant to specifically particularize the illegal conduct of the Respondent in the statement of defence as required by provisions of the Rules of Court which regulates the trial Court.

He referred to the provisions of *Order 15, Rule 7(2) of Edo State High Court (Civil Procedure) Rules, 2018* which state that: “***Where a party raises any ground which makes a transaction void or voidable or such matters as fraud, limitation law, release payment, performance, facts showing insufficient in contract or illegality, either by any enactment or common law, he shall specifically plead same.***”

He said that the Defendant did not plead illegality according to the Rules of Court and issues were never joined on any form of illegality involving the Claimant. He also relied on the cases of *Onwucheka v. NDIC (2002) 5 NWLR (Pt. 760) Pg. 371 at 388* and *West Construction Co. Ltd v. Batalha (2006) LPELR – 3478 (SC)*.

### **ISSUE 3**

#### **WHETHER THE THIRD PARTY IS ENTITLED TO DEFEND THIS SUIT AGAINST THE CLAIMANT.**

Learned counsel submitted that the Third Party’s participation in these proceedings is at the instance of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and is therefore a Defendant to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in this suit as far as the contract of indemnity between them is concerned. He referred to the case of *Peenok Invest. Ltd v. Hotel Presidential Ltd (1982) 12 SC I* where the Supreme Court held that the Third Party would be a Defendant in the main suit, but a Defendant to the party at whose instance he is joined as Third Party, who is to be bound by the ultimate decision of the Court in the main action. He also referred to the case of *Green v. Green (1987) 3 NWLR (Pt. 61) 480*.

He said that considering the aforesaid decision of the Supreme Court and a plethora of others, the Third Party’s defence against the Claimant, including its final written address should be discountenanced and rendered inapplicable to these proceedings as far as it concerns the Claimant.

He referred to the case of *Onikoyi & ors v. Onikoyi & Ords (2018) LPELR – 43680 (CA) (Pp. 20-21 paras c)* where the Court of Appeal held that the mere service of a Third Party Notice does not make the person on whom it is served a Defendant to the main suit, but makes him only a Defendant vis-à-vis the person serving the notice.

In conclusion, the learned counsel urged the Court to give judgment in favour of the Claimant as per the pleadings and reliefs sought and to resolve the three issues formulated in favour of the Claimant.

I am of the view that the Issues for Determination in this suit are as follows:

- 1) *Whether the Defendants are liable for the alleged accident involving the Claimant;*
- 2) *Whether the Claimant is entitled to the reliefs claimed in this suit; and*
- 3) *Whether the Third Party is under a legal obligation to indemnify the 1<sup>st</sup> and 2<sup>nd</sup> Defendants under the Insurance Policy.*

I will proceed to resolve the three issues seriatim.

### **ISSUE 1:**

#### ***Whether the Defendants are liable for the alleged accident involving the Claimant?***

It is settled law that in civil cases, the burden of proof is on the party who asserts a fact to prove the fact. The burden of proof of negligence is upon the Claimant who alleged negligence. This is because negligence is a question of fact, not law, and it is the duty of the party who asserts it to prove same. By virtue of **Section 135(1) of the Evidence Act, 2011** 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. See: **NB PLC V. AUDU (2009) LPELR-8863(CA) (PP. 27 PARAS. C); ABUBAKAR & ANOR V. JOSEPH & ANOR (2008) LPELR-48(SC) (PP. 31-32 PARAS. F).**

From the totality of the evidence adduced at this trial, the substratum of this suit is on the tort of negligence.

In the case of **OKWEJIMINOR V GBAKEJI & ANOR (2008) LPELR-2537(SC)**, the apex Court while expositing on negligence referred to the old English case of **Blyth v. Birmingham Waterworks Co. (1856) 11 EXCH. 781 at 784**, where the English Court defined negligence as: **"... the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do."**

Again, in the old English case of **Lochgelly Iron and Coal Co. v. M'mullan (1934) A.C. 1 at P. 25**, Lord Wright exposit as follows: **"In strict legal analysis, negligence**

*means more than heedless or careless conduct, whether in omission or commission. It properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom the duty was owed."*

This latter definition spells out for us the three basic components of the tort of negligence, to wit: *[a] duty of care [b] breach of the duty of care; and [c] damage caused by the breach.*

In every case of negligence, the burden is on the Claimant to plead and lead evidence to prove these three basic components of the tort of negligence.

Once a Claimant fails to establish by credible evidence on all or any of these three key ingredients of the tort of negligence, such a claim must fail. See *B. J. Ngilari V. Mothercat Ltd (1999) 13 NWLR (Pt. 636) 626*. See also the cases of *Oyidiobu V. Okechukwu (1972) 5 SC 191*; and *Orhue V. NEPA (1998) 7 NWLR (Pt. 557) 187*.

In the instant case it is expedient to examine the evidence adduced by the Claimant to determine whether he has established these three salient ingredients.

First on the issue of duty of care. The apex Court has given a guide on how to determine the duty of care in the case of *I.M.N.L. v. NWACHUKWU (2004) LPELR-15269(SC)* where they stated thus: *"The recent decision of the House of Lords has summed up the law admirably in Ann v. Merton London Borough Council (1978) AC 728 where Lord Wilberforce stated as follows:- "Through the trilogy in this house: Donoghue v. Stevenson (1932) AC 562; Hedley Byrne & Co. Ltd. v. Heller Partners Ltd. (1964) AC 465; and Dorset Yacht Co. Ltd. v. Home Office (1970) AC 1004, the position has now been reached that in order to establish that a duty of care arises in a particular situation, it is not necessary to bring the facts of that situation within those of previous situations in which a duty of care has been held to exist. First one has to ask as between the alleged wrong doer and the person who has suffered damage if there is a sufficient relationship of proximity or neighbourhood such that in the reasonable contemplation of the former, carelessness on his part may be likely to cause damage to the latter in which case a prima facie duty of care arises ..."* Per *MUSDAPHER, J.S.C.*

See also the cases of: *AGBONMAGBE V CFAO (1996) 1 ALL NLR 140 at 145*; *MAKWE V NWUKOR (2001) 7 NSCQR 435*; and *FIRST BANK OF NIGERIA PLC V ASSOCIATED MOTORS CO. LTD (1998) 10 NWLR (Pt.750) 441 at 464*.

Going by the proximity test as suggested by the apex Court, I must determine whether the relationship between the parties herein is such that the driver of the truck could

reasonably have contemplated that any act of carelessness on his part may likely cause damage to the Claimant.

In the determination of the issue of negligence, I will first consider the status of the driver of the Dangote Cement Truck with Registration Number KBT 99 XA. From the totality of evidence adduced at the trial it is an undisputed fact that the alleged truck was driven by one Abubakar Saidu (3<sup>rd</sup> Defendant), a staff member of Dangote Cement Transport Company. The original copies of his two staff identity cards and his UBA ATM card which were recovered from the truck were tendered without any objection and admitted in evidence as Exhibits “C”, “C1” and “D” respectively.

At the trial, one Muhammed Adesiyan Adegboyega, who is presently the Fleet Manager of Dangote Cement Transport admitted that he is the Fleet manager of the Defendant and that he is aware of the accident involving the said Defendant’s truck. He however said that he is not aware of the whereabouts of the driver of the said truck.

The evidence before the Court is that the driver of the Dangote Cement truck absconded after the accident and has not been seen ever since. Incidentally, the Defendants did not offer any explanation for the absence of the said driver. In this suit, the Claimant has maintained that the Defendants are vicariously liable for the acts of the absconding driver.

Furthermore, the liability of the master is dependent on the Claimant being able to establish the servant's liability for the tort. It is only when it is established that a tort has been committed, who committed it and that the tortfeasor is an employee or agent of a principal and that the tort was committed in the course of his employment that the issue of vicarious liability can arise. So, unless the servant is liable, the master cannot be liable for his acts. See the case of *FIRST BANK V. AZIFUAKU (2016) LPELR-40173(CA) (PP. 23-24 PARAS. A)*.

From the foregoing, the first thing to determine is whether the driver of the truck is liable for negligence.

The generally accepted principle of negligence is that a person owes a duty of care to his "neighbour" who would be directly affected by his act or omission. The word "care" means serious attention or heed. Under the law of negligence or of obligation, it means the conduct demanded of a person in a given situation. Typically, this involves a person, giving attention both to possible dangers, mistakes and pitfalls and ways of minimizing those risks. See: *Nigerian Ports Plc Vs Beecham Pharmaceutical PTE Ltd (2013) 3 NWLR (Pt 1333) 454, Kabo Air Ltd Vs Mohammed (2015) 5 NWLR (Pt 1451) 38*.

There is a legal duty owed to take reasonable care to avoid acts or omissions which can be reasonably foreseen as likely to injure a neighbour. Who then in law can be described as the neighbour of a Claimant in a claim for negligence? In the Holy Bible, the parable of the Good Samaritan aptly demonstrates who is a neighbour! However, in legal parlance, as far back as 1932, in England, *Lord Atkin* had provided an answer as to who in law can be described as a neighbour to a Claimant in a claim for negligence. In the classical case of *Donoghue V. Stevenson (1932) AC 580* he stated thus: "*You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbor. Who then is my neighbor? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.*" See also the English case of *Anns V. Merton London Borough Council (1977) 2 All ER 492 @ 498*; and the Nigerian case of *Abusomwan V. Mercantile Bank of Nig Ltd (1987) 3 NWLR (Pt. 60) 180 @ 198*, where the court held that the doctrine of proximity is the foundation of duty of care in the tort of negligence.

The question to ask on the "neighbour" and "duty of care" principle is whether between the Driver of the truck and the Claimant, there is sufficient relationship of proximity or neighbourhood such that in the reasonable contemplation of the former, carelessness on his part may likely cause damage to the latter? See the cases of *Abusomwan Vs Mercantile Bank of Nigeria (supra) and Anya Vs Imo Concorde Hotels Ltd (2002) 18 NWLR (Pt 799) 377*.

It is settled law that a person driving a vehicle on the highway owes a duty of care to other road users just like they also owe the same duty to him. See the cases of *HAMZA VS KURE (2010) 42 NSC QR 592* and *REYNOLDS CONSTRUCTION CO. LTD V. ODIGIE (2018) LPELR-44776(CA) (PP. 27-30 PARAS. E)*.

Upon the above authorities, I hold that the 3<sup>rd</sup> Defendant owed the Claimant a duty of care under the particular circumstances of this case.

Having determined the existence of duty of care between the 3<sup>rd</sup> Defendant and the Claimant, the next relevant consideration is whether there was a breach of the duty of care. Although negligence is a question of fact, each case must be decided in the light of its own facts and circumstances. The established principle of law is that the degree of care which the duty involves must be proportional to the degree of risk involved if the duty of care should not be fulfilled. See the cases of *North Western Utilities Ltd V. London Guarantee & Accident Co. Ltd (1936) AC 108*; and *U.T.B (Nig.) V. Ozoemena (2007) 3 NWLR (Pt. 1022) 488*. The test is that of a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs.

The established facts in this suit are that on the 14th of November 2013, the Claimant was traveling in his Range Rover SUV Car along Uromi/Agbor Road in the company of his brother and his personal aides.

According to the Claimant, during the journey, at a place called Ekpon, a trailer truck branded (Howo Sno Truck) with registration No: KBT 99 XA belonging to the Defendants and driven by the 3rd Defendant was coming from the opposite direction and heading towards Uromi.

He alleged that suddenly, without warning, the trailer truck sharply swerved off its lane at high speed and collided first with the Claimant's 2010 Range Rover HSE Armoured (SUV) car with Reg. No: BP 998 GWA and in the same momentum also rammed into the Mercedes Benz Saloon car Reg. No: BJ 900 GWA despite the Claimant's driver's efforts to avoid the Defendant's truck which had apparently gone out of control. He said that the point of impact was on the owner's side of the vehicle where he was seated.

The Claimant alleged that he suffered severe injuries to his spine, rib cage, arms and the whole of his body. He said that he was traumatized and has been in serious pains till date. He tendered several documents to prove the extent of his injuries.

Curiously, the Driver of the truck never showed up in Court to contradict the Claimant's evidence. The 1<sup>st</sup> Defendant's lawyer tried to shake the evidence of the Claimant with some rigorous cross-examination, but the Claimant maintained his story that the truck driver, who was coming from the opposite direction, left his side of the road and collided with them on their own side of the road. The truck driver never came to the Court to contradict the assertion of the Claimant.

The established legal position is that the onus of proving negligence is on the Claimant who alleges same; but where the Claimant has adduced evidence of how the accident occurred, the onus shifts to the Defendant to offer an explanation about how the accident happened and to show that the Defendant was not at fault. See the cases of ***IFEANYI IBEKENDO VS. IKE (1993) 4 SCNJ 50***; and ***UBA PLC VS. ACHORU (1990) 9 - 10 SC 115***.

The only witness called by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants (the D.W 1), who is their Fleet Manager, did not have much to say about how the accident occurred. He admitted under cross examination that Exhibit "C1" was issued by their company to the 3rd Defendant and that before a truck leaves their yard it must be driven by the driver assigned to drive that truck.

He admitted that their truck with registration number KBT 99XA was involved in the accident with the Claimant's vehicles on the day in question.

In the case of *MOSES V. STATE (2006) 11 NWLR (pt. 992) 458, 497 paragraphs D - E*, the Supreme Court, *per EJIWUNMI, JSC*, held inter alia:

*".... There can be no doubt that it is settled law that where the driver of a vehicle left his own side of the road to collide with another vehicle coming on the opposite direction and was being driven properly on its own side of the road, that driver who left his own side of the road to cause the collision drove his vehicle negligently and dangerously ..."*

Similarly, in the case of *ABDULLAHI V STATE (1985) 1 NWLR (pt. 3), p. 523* the Supreme Court, *per KAWU, JSC* approved of the finding of the trial Judge to the effect that to leave one's lane for another when another vehicle is approaching from the opposite direction and to cause an accident is a dangerous piece of driving.

In the instant case, the Defendants did not adduce any evidence whatsoever to explain why the 3<sup>rd</sup> Defendant suddenly swerved from his lane to collide with the Claimant's vehicles. Thus, they failed to discharge the onus on them to prove that the 3<sup>rd</sup> Defendant was not at fault. I hold that the 3<sup>rd</sup> Defendant was in breach of the duty of care which he owed to the Claimant and other road users plying the road at that time.

The third consideration is to determine whether there was any damage or injury arising from the breach of the duty of care.

In the instant case, the Claimant adduced copious evidence to show that the accident caused serious damage to the Mercedes Benz S550 and the Range Rover Armored cars and that the occupants of the two cars including him sustained serious life-threatening injuries. He tendered several documents to substantiate his oral evidence.

From the totality of the evidence adduced by the Claimant, I hold that he has established the fact that the negligence of the 3<sup>rd</sup> Defendant caused the accident on the day in question.

The next thing to determine is whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are vicariously liable for the negligence of the 3<sup>rd</sup> Defendant.

At this stage, it is pertinent to observe that although there are three Defendants sued in this suit, it is only the 1<sup>st</sup> and 2<sup>nd</sup> Defendants that filed a Statement of Defence and adduced evidence in defence of this suit. The 3<sup>rd</sup> Defendants did not file any defence.

From the totality of the evidence before the Court, there was no defence raised on behalf of the 3<sup>rd</sup> Defendant in this suit.

The question now is whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are vicariously liable for the negligence of their driver, the 3<sup>rd</sup> Defendant in this suit?

The term vicarious liability has been defined by the Apex Court in the case of *Ifeanyi Chukwu (Osondu) Company Ltd. v. Soleh Bonieh (Nig.) Ltd. (2000) LPELR-1432 (SC)* as follows:-

*"---the case of one person taking the place of another in so far as liability is concerned."*

See also the case of *NPF & ANOR V. STATE (2020) LPELR-50330(CA) (PP. 9 PARAS. A)*.

However, a *sine qua non* for the invocation of the doctrine of vicarious liability is that a Master would only be held liable for the wrongs of his Servant while acting in the course of his employment. See *Ifeanyi Chukwu (Osondu) Ltd V. Soleh Boneh Ltd (2000) supra*.

The legal concept of vicarious liability requires three parties. First is the injured party, second is the person whose act or default caused the injury and the third is the person who is vicariously liable for the latter's act or default. See the case of *BOYLE V KODAK (1986) NWLR 661*.

Furthermore, I must reiterate that the liability of the master is dependent on the Claimant being able to establish the servant's liability for the tort. It is only when it is established that a tort has been committed, who committed it and that the tortfeasor is an employee or agent of a principal and that the tort was committed in the course of his employment that the issue of vicarious liability can arise. So, unless the servant is liable, the master cannot be liable for his acts. See *FIRST BANK V. AZIFUAKU (2016) LPELR-40173(CA) (PP. 23-24 PARAS. A)*.

Already, in the instant case, I have made a finding that the driver, the 3<sup>rd</sup> Defendant, was negligent.

From the available evidence, the driver was in the employment of the Defendants at the time of the accident and there is nothing to show that he was on a frolic of his own when the accident occurred. Under cross examination, the D.W. 1, the sole witness of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants identified Exhibits "C" and C1" as the staff identity cards of the 3<sup>rd</sup> Defendant. He admitted that Exhibit "C1" was issued by their company to the

3rd defendant and that before a truck leaves the company premises, it must be driven by the driver assigned to drive that truck. He identified the truck with registration number KBT 99XA as the truck driven by the 3<sup>rd</sup> Defendant on the day in question.

From the foregoing, I find as a fact that at the time of the accident, the 3<sup>rd</sup> Defendant was a servant of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants carrying out a lawful assignment for them.

Consequently, I hold that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are vicariously liable for the negligence of the 3<sup>rd</sup> Defendant. Issue one is therefore resolved in favour of the Claimant.

### **ISSUE 2:**

#### ***Whether the Claimant is entitled to the reliefs claimed in this suit?***

In this suit, the Claimant is seeking declaratory reliefs and damages as follows:

1. A DECLARATION that the 3rd Defendant was negligent and in breach of his duty of care to the Claimant when he recklessly and dangerously drove a trailer truck (branded Howo Sino Truck) with Reg. No: KBT 99 XA, belonging to the 1st – 2nd Defendants, without warning or notice, sharply swerved off its lane and collided with Claimant’s 2010 Range Rover HSE Car (Armoured SUV) with Reg. No. BP 998 GWA with the Claimant and Mercedes Benz S.550 Saloon car with Reg. No. BJ 900 GWA at Ekpon, along Uromi/Agbor highway within the jurisdiction of this Court and damaged the said vehicles beyond repairs, while inflicting severe bodily and internal injuries on the Claimant;
2. A DECLARATION that at the time of the accident involving the said trailer truck (branded Howo Sino Truck) driven by the 3rd Defendant, belonging to the 1st – 2nd Defendants and the Claimant’s said Range Rover and Mercedes Benz Car, the 3rd Defendant was an employee of the 1st – 2nd Defendants and drove the said trailer truck in the course of his employment and within the scope of his authority;
3. A DECLARATION that the 1st – 2nd Defendants are vicariously liable for the damage and loss of the Claimant’s cars and the personal injury inflicted on the Claimant from the wrongful act of the 3rd Defendant;
4. The sum of \$165,525 US (One Hundred and Sixty-Five Thousand Five Hundred and Twenty-Five US Dollars) being the cost of 2010 Range Rover HSE (Armoured SUV) with Reg No: BP 998 BWR and Vin No: WDCYC7BFXAX182653 (now junked at the Divisional Police Station Igueben);

5. The sum of \$85,486.90 (Eighty-Five Thousand, Four Hundred and Eighty-Six Dollars, Ninety Cents US) being the cost of Mercedes Benz S.550 Saloon car with Reg. No. BJ 900 GWA and Vin No: WDDNG86X39A238555 (now junked at the Divisional Police Station Igueben);
6. 35% of the cost of the said 2010 Range Rover HSE (Armoured SUV) and Mercedes Benz S. 550 Saloon car being custom duties paid on the said vehicle upon importation into Nigeria;
7. The sum of \$60, 090.98 being the difference between the cost of purchasing the said Mercedes Benz S.550 Saloon car at the time of purchase and the present cost of replacing same;
8. The Claimant claimed medical and ancillary expenses as follows:
  - (i) University of Benin Teaching Hospital Medical Expenses - N300,000.00.
  - (ii) Charter of air Ambulance to UK - US\$ 147,000.00.
  - (iii) Bupa Cromwell Hospital (London) - £33,000.00;
  - (iv) US Post Therapy Medical Bill - US\$ 200, 000.00;
  - (v) Charter of land Ambulance in London - £1,800.00;
  - (vi) Mark Rickman Orthopaedic - £1,000.00;
  - (vii) Cathrine Greville Anaesthetic Service - £750.00
9. AIR ticket for claimant, wife and kid - N1,941,000.00.
10. The sum of One Hundred Million Naira (N100,000,000) only being general damage for trauma, unquantifiable pains, sufferings and loss of amenities of life; and
11. The sum of Two Million Naira (N2,000,000.00) only being the cost of this action.

From the resolution of issues 1 and 2 above, the Claimant is entitled to the declaratory reliefs which he seeks in this suit.

I will consider his reliefs for special and general damages.

Essentially, reliefs 4 to 9 are for special damages.

It is settled law that to succeed in a claim for special damages, the Claimant must specifically plead and strictly prove that he suffered such damages as claimed. However, this does not mean that the law requires a minimum measure of evidence or that the law lays down a special category of evidence required to establish entitlement to special damages. What is required to establish entitlement to special damages is credible evidence of such a character as would suggest that he indeed is entitled to an award under that head, otherwise the general law of evidence as to proof by preponderance or weight as usual in civil cases operates. See the following cases: ***OSHINJIRIN V. ELIAS (1970) ALL NLR 153; WARNER INTERNATIONAL V. FEDERAL HOUSING AUTHORITY (1993) 6 NWLR (PT. 298) 148; and REGISTERED TRUSTEES OF PEOPLE CLUB OF NIGERIA V. REGISTERED TRUSTEES OF ANSAR-UD-DEEN SOCIETY OF NIGERIA & ORS (2019) LPELR-47523(CA) (PP. 68-69 PARAS. E).***

In the instant case, the Claimant's claims on special damages are in respect of his medical expenses incurred while receiving treatment for the life-threatening injuries which he sustained from the accident and the damages to his vehicles.

In respect of his medical expenses, the Claimant led evidence that immediately after the accident, he was first rushed to the Central Hospital at Agbor near the scene of accident and was referred from there to the University of Benin teaching Hospital (UBTH) for medical attention.

He said that he paid the sum of N300,000.00 to UBTH as part payment for the cost of his medical treatment. He said that while he was on admission at the UBTH, his condition grew worse, so he was referred to Bupa Cromwell Hospital, London, United Kingdom by the UBTH.

Apart from his viva voce evidence of the amount which he paid at the UBTH, the Claimant did not tender any document as evidence of payment.

Where the oral evidence of special damage is unchallenged, non-production of receipts may not be fatal to the claimant's claim. But where the claim for special damage has been challenged, there must be concrete proof. However, even where there has been no production of receipts to sustain unchallenged evidence of special damages, the Claimant must submit such proof that would readily lend itself to qualification or assessment. See the case of ***Illiya Audu v. Samuel Okeke (1998) 3 NWLR (Pt. 542) 373.***

Therefore, it is not in all circumstances that it is sufficient to prove special damage by mere ipse dixit, even if it is not challenged. The Claimant who asserts must prove. See

the cases of *Consolidated Breweries Plc. v. Aisowieren (2001) 15 NWLR (Pt. 736) 424 at 458-459*; and *Vodokanal Project (Nig.) Ltd v. Oladele (2004) ALL FWLR (Pt. 239) 883 at 909*.

In the instant case, apart from merely pleading and testifying that he paid the sum of N300,000.00 (Three Hundred Thousand Naira) as medical expenses at the UBTH, the Claimant did not give necessary particulars of the breakdown of his medical expenses at the UBTH to afford the Defendants the opportunity to verify his claims.

In the circumstances, I hold that the claim for the sum of N300,000.00 (Three Hundred Thousand Naira) as medical expenses at UBTH as special damages was not strictly proved and cannot be granted.

Coming to the claims for the sum of US\$ 147,000.00 for Charter of air Ambulance to the UK, the Claimant tendered original stamped copy of the receipt for the payment of the sum of \$147,000.00 was admitted in evidence as Exhibit “P”.

He led evidence that upon arrival at the United Kingdom by Air Ambulance, he was conveyed by land ambulance to Bupa Cromwell Hospital at the cost of £1,800 (One Thousand Eight Hundred British Pounds). The original copies of the two receipts amounting to the sum of \$1,800 were admitted as Exhibits “O1” and “O2” while the stamped copies of same were admitted as Exhibits “O3” and “O4” respectively.

He said that upon arrival at Bupa Cromwell Hospital, he was admitted and he paid the sum of £8,000 (Eight Thousand British Pounds) upon admission. The original copy of the receipt for the payment of the sum of £8,000 was admitted as exhibit “L” while the stamped copy of the same document was admitted as exhibit ‘L1”.

In respect of his medical expenses at Bupa Cromwell Hospital (London) where he spent the sum of £33,000.00, the Claimant tendered an invoice for the said sum of 33,000.00 which was admitted in evidence as exhibit “Q” while the stamped copy was admitted as exhibit “Q1”.

In respect of the payment of £1,000.00 to one Mark Rickman for Orthopaedic treatment, the original copy of the receipt for the payment of the sum of \$1,000 was admitted as exhibit “R” while the stamped copy was admitted as Exhibit “R1”.

In respect of the payment of the sum of £750.00 to one Cathrine Greville for Anaesthetic Services, the original copy of the receipt for the amount was admitted as exhibit “N” while the stamped copy was admitted as Exhibit “N1”.

In respect of the AIR ticket for Claimant, his wife and kid at the cost of N1,941,000.00, the Claimant tendered original copies of two receipts for the sum of N891,000 and N159,200.00 which were admitted as exhibits "V" and "V1" while the stamped copies were admitted as Exhibits "V2" and "V3" respectively. The receipts were for the total sum of N1,941,000.00.

From the foregoing, I hold that the above items of special damage were strictly proved by the Claimant in this suit.

In respect of the US Post Therapy Medical Bill for the sum of US\$ 200, 000.00, no receipts were tendered. Thus, this head of special damages has not been strictly proved.

The next head of special damages is in respect of the losses arising from the damage of the Claimant's vehicles.

Here, the Claimant is claiming as follows:

***4.The sum of \$165,525 US (One Hundred and Sixty-Five Thousand Five Hundred and Twenty-Five US Dollars) being the cost of 2010 Range Rover HSE (Armoured SUV) with Reg No: BP 998 BWR and Vin No: WDCYC7BFXAX182653 (now junked at the Divisional Police Station Igueben);***

***5.The sum of \$85,486.90 (Eighty-Five Thousand, Four Hundred and Eighty-Six Dollars, Ninety Cents US) being the cost of Mercedes Benz S.550 Saloon car with Reg. No. BJ 900 GWA and Vin No: WDDNG86X39A238555 (now junked at the Divisional Police Station Igueben);***

***6.35% of the cost of the said 2010 Range Rover HSE (Armoured SUV) and Mercedes Benz S. 550 Saloon car being custom duties paid on the said vehicle upon importation into Nigeria;***

***7.The sum of \$60, 090.98 being the difference between the cost of purchasing the said Mercedes Benz S.550 Saloon car at the time of purchase and the present cost of replacing same;***

In his testimony during the trial, the Claimant maintained that because of the accident his two vehicles were damaged beyond repair, hence the vehicles were left at the police station as totally written off. However, the Defendants are contending that the Claimant has not proved that the two vehicles were damaged beyond repair.

It is settled law that where the vehicle which is involved in an accident through the negligence of another is a total loss "or write off" the Claimant is entitled to damages

only to the pre-accident market value of the vehicle less the value of the vehicle as scrap (if any) plus damages for loss of earnings apart from any specific items of special damage proved. See the cases of *ARMEL'S TRANSPORT LTD V. MADAM TINUKE MARTINS (1970) 1 ALL NLR 27* and *IBEANU & ANOR V. OGBEIDE & ANOR (1998) LPELR-1387(SC) (PP. 15 PARAS. A)*.

In the instant case, the Claimant led evidence of the initial cost of purchase of the vehicles and the current cost of purchase of the said vehicles. He did not lead any evidence to prove the pre accident value of the vehicles and the scrap value, which are very essential for a claim of this nature.

In a claim for the total loss of the vehicle arising from the accident, the burden is on the Claimant to prove the pre-accident value of the vehicle and the value of its scrap. Without evidence adduced in proof of these it will be difficult for the Court to make an accurate award on such item claimed, especially since it must have depreciated with use from the time of purchase to the time of the accident. Any award of damages made on these items in the absence of such vital pieces of evidence would be speculative, arbitrary and unjustifiable.

To enable the Court properly and correctly determine the issue of damages in respect of the vehicles, the Court must know not only the pre-accident value of the car but also the exact state and value of the car after the accident, which can only be gathered from the evidence of the Vehicle Inspection Officer who inspected the vehicles after the accident. See the case of *ADENUGBA & ANOR V. OKELOLA (2007) LPELR-8290(CA) (PP. 16 PARAS. B)*.

At the trial, the Vehicle Inspection Officer testified as the C.W. 3 and he tendered two Vehicle Inspection Reports which were admitted in evidence as Exhibits "E" and "E1" respectively.

It is pertinent to note that in his viva voce evidence and from the Vehicle Inspection Reports which he tendered, the C.W. 3 did not give any evidence of the pre-accident value of the vehicles or the exact state and value of the vehicles after the accident.

From the foregoing, I hold that the Claimant did not lead sufficient evidence to strictly prove the heads of special damages in respect of the two vehicles which were purportedly damaged beyond repair. These heads of damages cannot be granted.

The next head of damages I will consider is for the sum of Two Million Naira (N2,000,000.00) only being the cost of this action. It is a notorious fact that litigation involves expenses by both parties. These expenses include amount spent on the

preparation and filing of processes and other documents, summoning of witnesses and of course, the legal practitioner's fees where one is engaged.

Costs are meant to compensate one of the parties, most often the successful party, for the expenses he has incurred in the litigation. However, it must be noted that costs rarely indemnify fully the party in whose favour it is ordered for the entire amount spent by him and it is not awarded to punish the unsuccessful litigant. See the case of *J. D. Inneh v. Chief Obaraye (1957) 2 FSC 58 at 59*.

The exercise of the power to award costs is at the discretion of the Court. See the cases of *Afribank (Nig.) Plc v. Geneva (1999) 12 NWLR Pt. 632 page 567*; and *OYEWO V. KOMOLAFE (2010) LPELR-4820(CA) (PP. 51-52 PARAS. E)*.

In the instant case, the Claimant was represented by a Law Firm headed by a Senior Advocate, I think the award of the sum of Two Million Naira (N2,000,000.00) being the cost of this action is quite moderate taking into consideration the trajectory of the suit which was first before the Ekpoma High Court before it was transferred to Benin for hearing and determination and the fact that the Claimant, his counsel and his witnesses were coming from far away locations. The Claimant is clearly entitled to the award of the entire sum as costs of this action.

Next is the claim for sum of One Hundred Million Naira (N100,000,000) only being general damages for trauma, unquantifiable pains, sufferings and loss of amenities of life.

It must be noted that general damages cover all losses which are not capable of exact qualification. It includes all non-financial losses (past and future). Items of general damages need not and should not be specially pleaded, but some evidence of such damages is required. The Courts have held that there is no fixed rule by which to assess general damages. The matter is therefore, at the discretion of the Court, to award a fair and reasonable compensation having regard to the circumstances of the particular loss. *See Okuneye V Lagos City Council (1973) 2 CCHCJ page 38, Mobil Oil Nig Ltd V Akinfosile (1969) NWLR (pt 11) 112, A.G Oyo State V Fairlakes Hotels Ltd (No. 2) (1989) 5 NWLR (pt 121) 355.*

Upon the evidence adduced by the Claimant, I am of the view that he actually suffered physical pain, psychological trauma, loss of business and income as a result of the accident. He is entitled to reasonable compensation for all that he suffered.

Issue two is therefore partially resolved in favour of the Claimant.

### **ISSUE 3:**

#### ***Whether the Third Party is under a legal obligation to indemnify the 1<sup>st</sup> and 2<sup>nd</sup> Defendants under the Insurance Policy?***

It is settled law that a Third Party by implication is a party brought in by a defendant to an action as one against whom he has a cause of action with respect to the main action. The Third Party is not a Defendant to the main action as the Claimant has no cause of action against him. The Claimant has no relief against a Third Party. See the case of ***EEDAY-NWANKWO V. WEMA BANK & ORS (2018) LPELR-45527(CA) (PP. 11 PARAS. B).***

In the present suit, it is pertinent to note that the Claimant did not institute this suit against the Third Party, and no allegation was made against the Third Party by the Claimant in this suit, neither is he seeking any relief against the Third Party.

From the record of proceedings, it was the 1<sup>st</sup> and 2<sup>nd</sup> Defendants who obtained the leave of this Court to serve a third-party notice on the Third Party.

The issue to be resolved now is to determine the status of the Third Party in this suit.

A third-party proceeding does not make the Third Party a party to the main claim; he is only a defendant as regards the defendant. See ***Okafor vs. A.C.B. Ltd (1975) 9 NSCC 276 at 282*** where the Apex Court stated the position thus:

***"The mere service of a third-party notice does not make the person on whom it is served a defendant to the main action but makes him only a defendant vis-a-vis the person serving the notice. In the main action the rights of the plaintiff and the defendant are determined without reference to the defendant's claim against the third party, but when those rights have been ascertained, it is then open to the person brought in as a third party to have all relevant disputes determined between him and the person serving the notice."*** See also, the case of ***ONIKOYI & ORS V. ONIKOYI & ORS (2018) LPELR-43680(CA) (PP. 20-21 PARAS. C).***

In practical terms, the purpose of a Third Party Proceedings such as was activated in the instant suit is to prevent multiplicity of actions and to enable the Court to settle the disputes between all the parties connected to the dispute, that is as between the Claimant and the Defendant(s) and between the Defendant(s) and the Third Party. This is to prevent the subject matter of the claim from being tried twice. See the cases of ***BANK OF IRELAND V. UNION BANK OF NIGERIA LIMITED & ANOR (1998) LPELR-744 (SC) PAGE 16, PARAGRAPHS B-C;*** and ***UNIVERSITY OF CALABAR V. AMCON & ORS (2019) LPELR-47309(CA) (PP. 28 PARAS. C).***

In the instant case, the learned counsel for the Claimant seriously contended that since the Third Party is only a defendant to the Defendant in the main case. He relied on the decision of the apex Court in the case of *Peenok Invest. Ltd v. Hotel Presidential Ltd (1982) 12 SC, I* and submitted that the Third Party's defence against the Claimant, including their final written address should be discountenanced and rendered inapplicable to these proceedings as far as it concerns the Claimant.

In the evidence which they adduced in this suit and in their final address, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants maintained that they have a valid insurance policy with the Third Party which imposes a contractual and a statutory duty on the Third Party to settle the claim in the event that judgment is obtained against the 1<sup>st</sup> & 2<sup>nd</sup> Defendants.

At the hearing of this suit, the Third Party actually entered appearance, joined issues with the Claimant and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and led evidence in defence of the suit.

I have carefully examined the provisions of *Order 13 Rules 22 and 23 of the Edo State High Court (Civil Procedure) Rules, 2018*, and I am satisfied that by virtue of the said provisions, the Third Party is entitled to enter appearance in this suit and file pleadings in response to the processes served on him. *Order 13 Rules 23 of the Edo State High Court (Civil Procedure) Rules, 2018*, categorically states that **"If the third party duly served with the order and all existing processes does not enter an appearance or makes default in filing any pleading, he shall be deemed to admit the validity of the claim and shall be bound by any judgment given in the action, whether by consent or otherwise"**(underlining, mine).

In view of the foregoing, I hold that the Third Party validly took part in the proceedings of this suit and the Court cannot close its eyes to the third party's processes or their participation. The most important thing is to bear in mind that the Third Party is at all times a defendant to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in this suit in relation to the contract of indemnity contained in the Insurance Contract between them.

In defence of the aforesaid Insurance Contract, the Third Party made some serious attempts to repudiate the contract on the ground *inter alia* that at the time of the alleged accident, the Defendants had a duty to forward all the Court processes to them, to enable them take over and conduct the defence of the suit or settle the claims in the name of the insured.

They said that contrary to the terms of the Insurance Contract, the 2<sup>nd</sup> Defendant failed and/or refused to forward the aforesaid processes. They said that they only became

aware of the pending suit upon receipt of the Third-Party Notice with the attached Writ of Summons and Statement of Claim.

The Third Party therefore maintained that they are not liable to the Claimant nor the Defendants in this suit.

From the totality of the evidence before me, I think the position taken by the Third Party is quite misconceived. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants obtained the leave of this Court to bring in the Third Party pursuant to the indemnity clause contained in the Insurance Policy. The Third Party was served with all the processes in this suit and gallantly fought side by side with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to ensure that damages are not awarded against them.

It is too late in the day for the Third Party to complain that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not inform them about the incident. I am of the view that since the Court has found the 1<sup>st</sup> and 2<sup>nd</sup> Defendants liable; the Third Party is under a contractual and statutory duty to indemnify them according to the terms of the Insurance Policy between them.

Issue three is therefore resolved in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

Having resolved Issues 1 and 2 in favour of the Claimant, I hold that the Claimant's suit succeeds in part, and he is granted the following reliefs:

- 1. A DECLARATION that the 3rd Defendant was negligent and in breach of his duty of care to the Claimant when he recklessly and dangerously drove a trailer truck (branded Howo Sino Truck) with Reg. No: KBT 99 XA, belonging to the 1st – 2nd Defendants, without warning or notice, sharply swerved off its lane and collided with the Claimant's 2010 Range Rover HSE Car (Armoured SUV) with Reg. No. BP 998 GWA with the Claimant and Mercedes Benz S.550 Saloon car with Reg. No. BJ 900 GWA at Ekpon, along Uromi/Agbor highway within the jurisdiction of this Court and damaged the said vehicles beyond repairs, while inflicting severe bodily and internal injuries on the Claimant;**
- 2. A DECLARATION that at the time of the accident involving the said trailer truck (branded Howo Sino Truck) driven by the 3rd Defendant, belonging to the 1st – 2nd Defendants and the Claimant's said Range Rover and Mercedes Benz Car, the 3rd Defendant was an employee of the 1st – 2nd Defendants and drove the said trailer truck in the course of his employment and within the scope of his authority;**
- 3. A DECLARATION that the 1st – 2nd Defendants are vicariously liable for the damage and loss of the Claimant's cars and the personal injury inflicted on the Claimant from the wrongful act of the 3rd Defendant;**

4. *The Claimant is granted the following medical and ancillary expenses:*
  - i. *The sum of US\$ 147,000.00 to Charter an air Ambulance to the UK;*
  - ii. *The sum of £33,000.00 for medical bills at Bupa Cromwell Hospital (London);*
  - iii. *The sum of £1,800.00 for Charter of land ambulance in London;*
  - iv. *The sum of £1,000.00 to Mark Rickman for Orthopaedic treatment; and*
  - v. *The sum of £750.00 to Cathrine Greville for Anaesthetic Services.*
5. *The sum of N1,941,000.00 for Air ticket for the Claimant, his wife and kid;*
6. *The sum of Twenty Million Naira (N20,000,000) only being general damages for trauma, unquantifiable pains, sufferings and loss of amenities of life; and*
7. *The sum of Two Million Naira (N2,000,000.00) only being the cost of this action.*

**P.A. AKHIHIERO**  
**JUDGE**  
**17/04/26**

**COUNSEL:**

**DR. EHIOGIE WEST IDAHOSA SAN-----CLAIMANT.**

**DAVID NKIRE ESQ-----1<sup>ST</sup> & 2<sup>ND</sup> DEFENDANTS.**

**O.O. ERHAHON ESQ-----THIRD PARTY.**