

SUPREME COURT OF NIGERIA
14TH FEBRUARY, 1997. SC. 242/1991
CORAM:- S. M. A. BELGORE, M. E. OGUNDARE, E. O.
OGWUEGBU, S. U. ONU, A. I. IGUH, JJSC.

MRS. FELICIA ODEBUNMI & ANOR PLAINTIFFS/
APPELLANTS

AND
ALHAJI ABDULLAHI DEFENDANTS/
RESPONDENT

***APPEALS** - Findings of fact - In vicarious liability claim - Was wrongfully set aside by Court of Appeal.*

***TORTS** - Vicarious liability - Negligent driving that led to death of the deceased - Defendant's denial of ownership of the vehicle was not established.*

***TORTS** - Negligence - Res ipsa loquitur - Absence of defence to the principle - Means that plaintiffs' case was not controverted.*

FACTS

In 1980, one Augustine Odebunmi the (deceased) was in his vehicle driven by another person. The driver stopped at a narrow bridge to allow a motorcyclist get out of the bridge. While so stationed, a trailer tanker vehicle from the rear pushed the deceased person's vehicle into the river. The tanker exploded into fire which engulfed the other vehicle and the deceased was burnt to death. The two drivers did not die. The 1st plaintiff/appellant widow of the deceased together with the deceased person's mother (2nd plaintiff/appellant) filed an action before the then Kwara State High Court, Okene, under the Fatal Accident Law 1963. Plaintiffs sought to recover damages from the defendant who was the owner of the tanker on the principle of vicarious liability.

The defendant denied being the owner of the tanker, denied engaging services of the driver who died later, and denied any liability to the plaintiffs. The trial court found in favour of the plaintiffs and held the defendant vicariously liable. Defendant's appeal to the Court of Appeal was allowed. Plaintiffs being dissatisfied have now appealed to the Supreme Court.

HELD (Unanimously allowing the appeal per lead judgment of **BELGORE JSC**)

Findings of fact - In vicarious liability claim

1. It is therefore a grave error for the Court of Appeal to have set aside the clear findings of facts on the clear evidence of the plaintiff before the court. An appellate court must be wary of interfering with the findings of fact by the trial court except in certain circumstances, e.g. where the finding is not supported by any pleading or far from the claim of any party, where there is no evidence to support the pleadings, or where the evidence received in support of the findings is against any statute - being either against Evidence Act or any other statute prohibiting reception for such evidence or prescribing the procedure to receive such evidence which procedure is not followed; or given without jurisdiction. I find that the trial court came to correct conclusion to find for the plaintiffs and that the Court of Appeal was in error to venture to disturb the correct findings of fact by the trial court. I allow this appeal therefore for reasons given above.(p. 363 D & 364 G)

Torts - Vicarious liability

2. The interesting aspect of this case is that the defendant never contested that an accident occurred in the circumstances enumerated in the statement of claim and that the accident was caused by negligent driving of the tanker trailer whereby the deceased got killed in the resultant inferno. What was denied was that neither the vehicle i.e. the tanker trailer nor its driver had any link with the defendant. This defence was not pursued with any acceptable evidence in the light of clear evidence to support the statement of claim of the plaintiffs/appellants which the trial court accepted. (p. 364 B)

Res ipsa loquitur

3. The maxim Res Ipsa Loquitur means “things speak for themselves”. It is a convenient way to explain an unusual accident and it is entirely a rule of evidence, not of law. In the absence of any defence to this principle, the plaintiffs/appellants’ case was not controverted. (p. 364 F)

NOTABLE POINTS OF INTEREST

IGUHJSC

1. Averment in pleadings must be proved by credible evidence

The law has long been settled that an averment in pleadings is not tantamount to evidence and cannot be so construed. An averment in pleadings to be worthy of consideration by the court must be established or proved by credible evidence subject, however, to any admissions by the other party. The

defendant's denial in his pleadings that he knew Albasa or that the said Albasa was his driver in the absence of any supporting evidence became valueless. (p. 369 D)

2. Registration - Is prima facie evidence of ownership of vehicle

Where there is a registration of a motor vehicle in the Register of Motor vehicle in the name of a person, as in the present case, this is prima facie evidence of ownership by that person. This is because ownership of vehicle may inter alia only be proved by the registration particulars of a vehicle or the receipt for its purchase. (p. 370 G)

3. Presumption that vehicle is being driven by agent of the owner

Be that as it may, where the facts of the relationship between the owner of a vehicle and the driver are not fully known, proof of ownership may give rise to a presumption that the driver was acting as the owner's agent. In other words, there is the presumption that a vehicle is being driven by the servant or agent of the owner which presumption may, of course, be rebutted. The defendant was unable to rebut this presumption in the instant case and I think the court below was, with respect in gross error to have interfered with the trial court's finding that Albasa was at all material times the driver and agent of the defendant. (p. 371 B)

4. Accident - Presumption of negligence

In this regard, the principle is basic that if a defendant's vehicle leaves the road and falls into an embankment, in this case into a river, and this without more is proved, then *res ipsa loquitur*, there is a presumption of negligence and the plaintiff succeeds unless the defendant rebuts this presumption. (p. 371 G)

REPRESENTATION

Yusuf O. Alli, Esq., with Egbewole, Esq., and K. K. Eleja Esq., for the Plaintiffs/Appellants

Mohammed Gafar, Esq. with Yaqub Esq. for the Respondent

CASES REFERRED TO

Agbonifo v. Awerioba (1988) 1 NWLR (Pt 70) 325

Ajuwa v. Odili (1985) 2 NWLR (Pt. 9) 710

Ekwunife v. Wayne (W.A.) Ltd. (1989) 5 NWLR (Pt. 102) 422

Osarawu v. Ezeiruka (1978) 6-7 S.C. 135 at 154

Jibowu v. Kuti (1970) 2 All N.L.R. 182

Nwabuokeyi v. Iwenjiwe (1978) 2 S.C. 61 at 70

James v. Mid-West Motors Nig. Ltd (1978) 11-12 S.C. 31 at 51

Akanmu v. Adigun (1993) 7 N.W.L.R. (Part 304) 218 at 231

Honika Sawmill Nig. Ltd. v. Hoff (1994) 3 KLR 57

Ogunmuyiwa v. Solanke (1956) 1 F.S.C. 53

B Kuti v. Balogun (1978) 1 S.C. 53 at 58

STATUTE REFERRED TO

Fatal Accident Law 1963

C

LEAD JUDGMENT BY BELGORE JSC

The first plaintiff, now appellant, is the widow of the late Augustine Oyewole Odebunmi who died in an accident whereby he got burnt. She brought this action, in the High Court of Kwara State (former Kwara State) under the Fatal Accidents Law 1963. She therefore represented herself and her children to wit, Folashade, Femi, Wunmi and Bukola. Joining her as co-plaintiff is the mother of the deceased, Madam Adebuse Odebunmi. According to the final amended statement of claim, the defendant, Alhaji Isa Abdullahi, also known as Alhaji Abdullahi Ibrahim Isa, was the registered owner of a tanker-trailer vehicle registration number KN 5645 K and registered at Motor Registry, Kano. The plaintiffs' case is that on the 5th day of November, 1980 Augustine Oyewole Odebunmi (hereinafter called and referred to as "the deceased") was in his vehicle of Volkswagen make, being driven by one Raymond Orifunmise along the highway between Okene and Ogaminana (both now in Kogi State). On getting to a narrow bridge, the vehicle halted to allow a motorcyclist to get out of the bridge. While so stationary, the vehicle No. KN 5645 K aforementioned, driven by one Mohammed Ibrahim Albasa, coming from the rear ran into the deceased's vehicle. As a result of this crash into the stationary vehicle of the deceased, the trailer-tanker pushed the volkswagen vehicle into the river. Thus both vehicles ended up in the river and the tanker immediately exploded into a ball of fire which engulfed the volkswagen vehicle with the deceased inside. As the deceased was trapped inside the wreckage he was burnt to death. The case for the plaintiff clearly was that the tanker-trailer driver was in the employment of the defendant and he drove the vehicle with the authority of the defendant, that is to say, in the course of his employment.

It took a long time to get the defendant served with the writ of summons. He rejected service initially and had to be served through the High Court, Kano. Finally the court made an order for pleadings which were duly filed and exchanged. The defendant's statement of defence was filed on 12th

November, 1985. The plaintiff however filed another amended statement of claim which was filed with leave of the court and not objected to by the defendant on 14th August, 1986 when hearing was actually in progress. The answer of the defendant in his statement of defence was a complete denial of all the averments in the statement of claim. He denied ownership of the tanker-trailer that caused the fatal accident, he denied knowing any driver of the said vehicle or any driver by the name Mohammed Ibrahim Albasa. He therefore on the premises of these denials dissociated himself from any liability as the owner of the vehicle or the employer of its driver. He also denied his name being Alhaji Ibrahim Isa in whose name the vehicle was registered in Kano. Thus he denied any vicarious liability for the accident that led to the death of the deceased. He then raised the issue that at any rate the action was statute barred for the reason that it was filed more than three years after the accident giving rise to the action. He also denied liability because the writ was served on him outside the jurisdiction of Kwara State High Court etc.

The evidence for the plaintiff was clear as to how the fatal accident occurred. The vehicle occupied by the deceased stopped before entering a narrow bridge to allow a motorcyclist to cross the bridge. While so stationary, the tanker-trailer No. KN 5645 K came from the rear, hit it and pushed it whereby the two vehicles ended up in the river over which the bridge stood. The tanker-trailer, apparently carrying inflammable material, on landing in the river with the deceased in the vehicle it pushed along, burst into flames and was in no time engulfed in a ball of fire. The deceased was trapped in his own Volkswagen vehicle even though its driver and the driver of the erring tanker-trailer escaped. The deceased died in the fire as he was burnt to death. Upon all this evidence, and with the plea, aside from Fatal Accident Law, of *res ipsa loquitur*, the defendant never gave evidence but sent one Alhaji Husman who lived at Okene in the then Kwara State to testify. This witness never claimed to know all the defendant's vehicles and the main plank of his evidence is clear, i.e.

"DW1: Moslem, sworn on Holy Quran speaks Yoruba. I am Alhaji Usman of 36 Laftiya Street Okene and 21 Unity Road Kano. I am the supervisor in the business of Alhaji Isa Abdullahi.

I do not know of any vehicle with registration number KN 5645 K belonging to Alhaji Isa Abdullahi. I am aware that Alhaji Isa Abdullahi is sued in respect of the vehicle but he denies any knowledge of the vehicle. We went to Licensing office at Kano for clarification and we sent the findings to our Lawyer. This is the document obtained from the licensing office, Kano."

Therefore it is not difficult for the trial court to come to the conclusion that the defendant's defence was based on total denial. He denied the vehicle was his own, "and that it was registered in his name. However, the plaintiffs" evidence that the vehicle was his own could not be contradicted on the meagre evidence of D.W.1 which at best is hearsay. He denied knowing any driver by the name Mohammed Ibrahim Albasa, much less employ that person as a driver. The writ originally bore the name of Mohammed Ibrahim Albasa as co-defendant. When the case finally came to court after several efforts to serve the defendants failed, the present defendant accepted service and told the bailiff that Mohammed Ibrahim Albasa had died. As a result of this information from the defendant the name of Mohammed Ibrahim Albasa was struck out by the court on the plaintiffs application.

Learned trial Judge, after considering the pleadings and all the evidence before him finally found:

"(i) that the vehicle of the defendant, the tanker-trailer No. KN 5645 K was driven negligently and hit the vehicle in front in which the deceased was a passenger

(ii) that as a result of the negligent driving of the aforementioned tanker-trailer the vehicle carrying the deceased was pushed from the rear whereby both the tanker-trailer and the vehicle carrying the deceased, with the deceased inside crashed, into the river as a result of which the tanker-trailer burst into flames which engulfed the vehicle occupied by the deceased.

(iii) that the deceased unable to extricate himself from the wreckage of the two crashed vehicles, was consumed by the resultant inferno and he there and then died as a result

(iv) that the erring tanker-trailer was driven by Mohammed Ibrahim Albasa, now said to be dead, and that at the time of the accident he was driving in the employment and with the authority of the defendant and that the defendant was therefore vicariously liable for the negligence which resulted in the death of Augustine Oyewole Odebunmi.

The defendant was therefore found liable and plaintiff was awarded lump sum damages as claimed and proved. This led to the appeal to the Court of Appeal.

Court of Appeal, in an unanimous decision allowed the appeal. The Court of Appeal's reversal of the trial court's decision was based on

(i) failure to identify with certainty the driver of the offending tanker-trailer

(ii) the identification of the registration number of the tanker-trailer was not clear, and

(iii) *the identity of the owner of the tanker-trailer was not properly established.*

Trial Court, however, on the clear evidence of P.W.1 (first witness for plaintiff) being an eye witness of the accident, believed the registration number is that pleaded, i.e. KN 6545 K. The court also, on the evidence before it, found that both Alhaji Isa Abdullahi and Alhaji Abdullahi Ibrahim Isa are one and the same person and refer only to the defendant as the owner of the tanker driver. It also found that the registration number of the offending tanker-trailer is KN 5645 K and also found that it was on the fateful day in question driven by Mohammed Ibrahim Albasa, an employee of the defendant and that the said driver was in the course of his duty as employee of the defendant. The best person to deny all the findings of facts by the trial court in the clear circumstances of this case was the defendant, but he chose not to give evidence. He was perfectly entitled to adopt this line of defence and the court was equally obliged to make its legal conclusions on the failure of the defendant to testify in person. Unfortunately, his sole witness, D.W.1, never saw the accident occurred, he only testified that he never knew Mohammed Ibrahim Albasa as one of the drivers employed by the defendant, and he never claimed to know all his drivers either. **It is therefore a grave error for the Court of Appeal to have set aside the clear findings of facts on the clear evidence of the plaintiffs before the court. An appellate court must be wary of interfering with the findings of fact by the trial court except in certain circumstances, e.g. where the finding is not supported by any pleading or far from the claim of any party, where there is no evidence to support the pleadings, or where the evidence received in support of the findings is against any statute - being either against Evidence Act or any other statute prohibiting reception for such evidence or prescribing the procedure to receive such evidence which procedure is not followed; or given without jurisdiction.** Also findings of fact that offend any of the aforementioned may be perverse and lead to miscarriage of justice in circumstances like not hearing all the parties on the point by denying one party the opportunity to be heard. The category of such perverse circumstances remains open. [See this court's decisions in Agbonifo v. Aiwereoba (1988) 1 NWLR (Pt.70) 325; Ajuwa v. Odili (1985) 2 NWLR (Pt.9) 710; Chukwueke v. Nwankwo (1985) 2 NWLR (Pt.6) 195; Oilfield Supply Centre Ltd. v. Johnson (1987) 2 NWLR (Pt.58) 625; Kimdey v. Governor of Gongola H State (1988) 2NWLR (Pt.77) 445; Ekwunife v. Wayne (WA.)Ltd. (1989)5 NWLR(Pt.122) 422].

This action was also brought under Fatal Accidents Law of Northern Nigeria 1963 (Cap. 43 LN 1963) by the "immediate family" of the deceased as

defined in section 2 of the statute. The Law was the applicable law in Kwara State at the time of the action. This was not challenged by the defendant either in the pleadings or by evidence. S. 3 of the statute confers right of action in respect of death caused by wrongful act, neglect or default of another person for the benefit of the immediate family of the deceased (see S. 4 of the Law]. **The interesting aspect of this case is that the defendant never contested that an accident occurred in the circumstances enumerated in the statement of claim and that the accident was caused by negligent driving of the tanker-trailer whereby the deceased got killed in the resultant inferno. What was denied was that neither the vehicle i.e. the tanker-trailer nor its driver had any link with the defendant. This defence was not pursued with any acceptable evidence in the light of clear evidence to support the statement of claim of the plaintiffs/appellants which the trial court accepted.**

The plaintiffs also relied on the rule of *res ipsa loquitur*. It is a rule of practice and not rule of law; it is to assert the right of a party claiming injury and damages due to negligence. There must be evidence of negligence in a reasonable way. Thus where a thing is shown to be under the management of the defendant or his servants and an accident occurs in the process, and that accident is such as does not occur in the ordinary course of things if those who are thus in the management exercise proper care or diligence, in the absence of any explanation by those in the aforementioned management as to how the accident occurred, the accident is, presumed to occur due to lack of care. Thus negligence is presumed in such cases; for in such cases negligence is inferred to have resulted from the want of care by the persons in the management of their agents or servants. **The maxim *res ipsa loquitur* means “things speak for themselves”. It is a convenient way to explain an unusual accident and it is entirely a rule of evidence, not of law. In the absence of any defence to this principle, the plaintiffs/appellants case was not controverted.**

I find that the trial court came to correct conclusion to find for the plaintiffs and that the Court of Appeal was in error to venture to disturb the correct findings of fact by the trial court. I allow this appeal therefore for the reasons given above. I set aside the decision of the Court of Appeal and I hereby reinstate the judgment of the High Court of Kwara State. I award N500.00 as costs in the Court of Appeal and N1,000.00 as costs in this court in favour of the appellants against the respondent.

OGUNDARE JSC

I have had the privilege of a preview of the judgment of my learned brother Belgore, J.S.C. just delivered. I agree with his conclusion that the appeal be allowed and the reasoning leading thereto which I hereby adopt as mine. I have nothing more to add.

I too allow the appeal, set aside the judgment of the court below and restore the judgment of the trial High Court awarding total damages of N141,140.00 and N500.00 costs to the plaintiffs against the defendant. I also abide by the order for costs of the proceedings in this court and in the court below as contained in the lead judgment of my learned brother, Belgore, J.S.C.

C

OGWUEGBU JSC

Having had the advantage of reading earlier the draft of the judgment just read by my learned brother Belgore, J.S.C. with which I am in entire agreement, I would also allow this appeal for the reasons stated in the said judgment; and I endorse the orders made inclusive of the order as to costs.

E

ONU JSC

I had the benefit of a preview of the judgment of my learned brother Belgore, J. S. C. just delivered. I am in complete agreement with his reasoning and conclusion that this appeal is meritorious and should therefore succeed.

F

The uncontradicted and unchallenged evidence of P.W.1 who had known the respondent since 1975, long before the accident giving rise to the case in hand in 1979, along with other antecedent matters such as the address of the respondent (owner of the trailer-tanker driven by his deceased driver by name Mohammed Ibrahim Albasa who was earlier joined in the action but had his name struck out upon being withdrawn after his death), being 21 Unity Road, Kano, with the premises being said to be exclusively his; his forwarding address having been identified as 36 Lafiya Road, Okene along with dovetailing pieces of evidence vide Exhibits 4, 5, 6, D6, 8 and 11, indicating that the respondent is the same Alhaji Abdullahi Ibrahim Isa or Alhaji Isa A. Abdullahi, H the owner of the vehicle, made the conclusion arrived at by the trial court inescapable. The respondent having led no evidence in denial of the appellants pleading and evidence that he was the registered owner of the offending vehicle, the court below was clearly wrong to have held that there was no

evidence to support the appellants assertion that Alhaji Isa Abdullahi was also known and called Alhaji Abdullahi Ibrahim Isa - a well known Kano-based business-man and transporter. Thus, the fact that P.W.1 was a friend of the deceased would not detract from the logical, un rebutted and uncontradicted evidence he gave and given support in the evidence of P.W.3, to need any B corroboration whatsoever.

The court below was therefore wrong, in my view, to have held as follows:

“Therefore the learned trial Judge relied solely on the evidence of P.W.1 in finding the appellant liable. He did not consider it unsafe to rely solely on the evidence of a witness who is closely connected with the victim. C Such evidence if not rejected should be carefully tested on its veracity. The witness took up the investigation right from the time of the accident. He testified that he knew the appellant since 1975 in the course of his insurance business. Therefore he will no doubt have the particulars of the appellant on his fingertips from his records.....I have indicated earlier in this judgment D “all that this witness had done in making the evidence appear neat for the case to succeed.”.....

In his testimony in chief he stated that the deceased was his town mate and a very close childhood friend. They are from the same compound and they grew up together. In my opinion this evidence should sound a word E of warning that it will be dangerous to accept the testimony of this witness without any support or scrutiny. I am of the opinion that evidence of this witness who stated in evidence at page 106 of the record that he was prepared to do anything to assist the widow and children.”

Moreover, the respondent never contested that an accident in fact F occurred in the circumstances set out in the Amended Statement of Claim and evidence led thereon; nor that the accident was caused by the negligent driving of the tanker-trailer driver resulting in the death of the deceased who died in the fire that engulfed him. What the respondent denied in his Statement of Defence was that neither the vehicle nor its driver had any connection G with him. This defence was not pursued with any seriousness to debunk the Amended Statement of Claim of the appellants and evidence led thereon which the trial court accepted. See *Osawaru v. Ezeiruka* (1978) 6-7 S.C. 135 at 154 in which this court held inter alia thus:

“Chief Akinyemi had argued that the respondent had not proved H that the appellant was using the premises as a brothel maintaining that he did not call witnesses to that effect. We are however satisfied that in the special circumstances of this case, the learned trial Judge was entitled to make the finding he made on the evidence before him. As provided in section 178 of the Evidence Act, except as specially provided in that section, no

particular number of witnesses shall in any case be required for the proof of any fact, special provisions in the section were made for treason, and treasonable offences, perjury, exceeding speed limit, sedition and sexual offences.”

As in the instant case there has been no explanation forth-coming from the respondent in the nature of a defence of the negligence or want of care exhibited (see *Jibosu v. Kuti* (1970) 2 All NLR 102 his deceased driver (Albasa), were he to be alive, should have been sued together with him (respondent) for both of them to be held directly and primarily liable for causing the death of late Odebunmi who was burnt to death in the fire which engulfed him as a result of the accident. (See *Ossai Nwabuokeyi v. Iwenjiwe* (1978) 2 S.C. 61 at 70). Unless the respondent could otherwise explain his non-liability and this he had failed to do: he as employer of the deceased driver (Albasa), is vicariously liable for the negligence of his servant in the performance of his duty which negligence occurred in the normal course of his business. See *Ayodele James v. Mid-West Motors Nigeria Ltd.* (1978) 11-12 S.C. 31 at 51 and *Kuti v. Balogun* (1978) 1 S.C. 53 at 58. See also *Benson v. Otubor* (1975) NSCC 49 where it was held that the defendant therein should not be allowed to deny the negligence of his driver in the special circumstances of the case but should be regarded as being vicariously liable for the tort of his servant.

The evidence of D.W.1 was essentially hearsay and not probable; thus it was rightly rejected by the trial court. The testimony of P.W.1 having not been disbelieved nor discredited under cross-examination was rightly believed and acted upon by the trial court. To have required corroboration of the unchallenged evidence of that witness or to have regarded it with suspicion on the ground that it emanated from a friend of the deceased victim of a grisly and unfortunate accident, the court below, having regard to all the circumstances, in my view, was wrong to have dismissed the case of the appellants.

For the reasons given and those elaborately articulated in the lead judgment of my learned brother Belgore, J.S.C. this appeal succeeds and is allowed by me. I make the same consequential orders inclusive of those as to costs as contained therein.

IGUHJSC

I have had the privilege of reading in draft the leading judgment just delivered by my learned brother, Belgore, J.S.C., and I entirely agree that this appeal is meritorious and should be allowed.

The facts of the case have been adequately set out in the leading judgment and no useful purpose will be served by my recounting them all over again. It suffices to state that at the material time and place, one Oyewole Odebunmi, then aged 38 years, was a passenger in a Volkswagen bus No. KW 3178 E. While this bus stopped at a narrow bridge in Okene to give right of B way to an on-coming motor cyclist, a Trailer No. KN 5645K driven by one Mohammed Ibrahim Albasaran into it from the rear, pushed the bus into the river down below and went up in flames. Oyewole Odebunmi who was entrapped in the bus died in the resulting conflagration.

In an action filed by the dependants of the deceased against the C registered owner and driver of the trailer under the Fatal Accidents Law, 1983, the High Court of Kwara State found for the plaintiffs. On appeal, the Court of Appeal, Kaduna Division, set aside the judgment of the trial court and dismissed the plaintiffs claim. The court below had held that there was no credible evidence in support of the identities of the owner D and driver of the offending Trailer as well as the proper identification of the registered number of the said Trailer. The plaintiffs have now appealed to this court.

On the question, of the identity of the driver of the Trailer, the plaintiffs in paragraph 3 of their amended Statement of Claim averred as E follows:-

“.....and one Mohammed Ibrahim Albasa (dead) drove the vehicle, (i.e. the Trailer) at the material time being the agent, servant and authorised driver of the said vehicle on behalf of the defendant.”

(Words in brackets supplied for clarity)

F There are also further clear averments in paragraphs 4 and 5 of the said Amended Statement of Claim to the effect that the collision in issue was caused by the negligence of the deceased driver, servant and agent of the defendant at all material times.

The defendant, the alleged owner of the said Trailer, in paragraph G 2, of his Statement of Defence, replied as follows:-

“2. The defendant avers with respect to paragraph 3 of the statement of claim that he does not own the Vehicle Registration No. KW 5645K and avers further that he did not and does not know anybody or “driver called by the name Mohammed Ibrahim Albasa nor does he have any agent H so called.”

I think it ought to be observed that two defendants were originally sued in this action. The 1st defendant was said to be the owner of the Trailer. He is the appellant before this court. The 2nd defendant, known as and called Mohammed Ibrahim Albasa, was said to be the driver of the 1st defendant’s

Trailer at all material times. It was after the death of the said Mohammed Ibrahim Albasa was disclosed by the defendant himself, that the action against the driver was discontinued. Said P.W.1

“When we went to serve the summons the defendant was very hostile and it was at the Kano High Court that he accepted service. He refused to accept service for his driver saying that he had died in 1982.....I was personally involved in serving the writ of summons. We served him at the second attempt.”

The relevant fact to be noted is that all references to the defendant’s driver in the evidence of the plaintiffs and/or their witness clearly referred to the said deceased Mohammed Ibrahim Albasa or Albasa, for short.

Although the defendant, now the respondent, in his Statement of Defence, denied knowing his said driver, Albasa, there was no evidence whatsoever in support of this denial. The appellants testimony to the effect that Albasa was at all material times the defendant’s driver, therefore, remained unchallenged and uncontroverted by any evidence from the defendant.

The law has long been settled that an averment in pleadings is not tantamount to evidence and cannot be so construed. An averment in pleadings to be worthy of consideration by the court must be established or proved by credible evidence subject, however, to any admissions by the other party. See *Akinfosile v. Ijose* (1960) SCNLR 447; *Muraina Akanmu v. Adigun and Another* (1993) 7 NWLR (Pt.304) 218 at 231; *Obmiami Brick and Stone Ltd. v. A.C.B. Ltd.* (1992) 3 NWLR (Pt.229) 260 at 293; *Honika Sawmill(Nig.)Ltd. v.Mary Hoff*(1994) 2 NWLR (Pt.326) 252 at 266 etc. The defendant’s denial in his pleadings that he knew Albasa or that the said Albasa was his driver in the absence of any supporting evidence became valueless. So too, where, as in this case, the plaintiff’s testimony that Albasa was the driver of the defendant was neither challenged nor controverted by the defendant who had the opportunity to do so, the trial court, as it did, was entitled to act on such unchallenged evidence as established. See *Isaac Omoregbeev.Daniel Lawani*(1980)3-4SC108at117;*Odulaja v.Haddad*(1973)11S.C 35; *Nigerian Maritime Services Ltd. v. Alhaji Bello Afolabi* (1978) 2 S.C 79 at 81 etc.

There is also the abstract of Police report of the accident, Exhibit 3, which was tendered by the plaintiffs without objection. Exhibit 3 disclosed the name of Mohammed Ibrahim Albasa as the driver of the Trailer at the time of the accident. I entertain no doubt that the trial court was right when it found that Albasa was the driver of the Trailer at all material times and that the court below, with respect, was in definite

error to reverse that finding.

Turning now to the identity of the owner of the Trailer, the plaintiffs in paragraph 3 of their Amended Statement of Claim pleaded thus:-

“3. *The defendant was at all material times of the cause of action apart from being called Alhaji Isa Abdullahi was also known and called B Alhaji Abdullahi Ibrahim Isa, a popular and famous transporter in Kano.*

He was the Registered owner of the Tanker/frailer vehicle Registration Number KN 5645K and one Mohammed Ibrahim Albasa (dead) drove the vehicle at the material time being the agent, servant and authorised C driver of the said vehicle on behalf of the defendant. “

By paragraph 2 of the defendant’s Statement of Defence above reproduced, the defendant denied ownership of the accidented Trailer No. 5645 K. Also by paragraph 5 of the said Statement of Defence, the defendant simply averred:-

D “5. *The defendant is not Alhaji Ibrahim Isa.*”

The testimony of P.W.1 in support of facts averred in paragraph 3 of the Amended Statement of Claim was after thorough evaluation accepted by the trial court as impressive and reliable. On the other hand, no evidence was led by the defendant in respect of the averment in paragraph 5 of his Statement of Defence. Accordingly that averment, as I have already pointed out, must be treated as not established. On the averment that he was not the owner of the Trailer in issue, the defendant gave no evidence himself to establish this claim. All he did was to call D.W.1, one of his employees who testified that he did not know any vehicle with registration number KW 5645 K belonging F to the defendant. His evidence was dismissed by the trial court as untruthful. I should perhaps add that the trial court having disbelieved D.W.1, the sole witness called by the defendant, the position must be that there is no credible evidence to support any of the averments in the defendant’s Statement of Defence.

G Reference must also be made to Exhibit 3 which reflected the defendant as the owner of the accidented Trailer No. KN 5645 K. The defendant, as I have indicated, did not himself deny this allegation of fact that he was the registered owner of the Trailer. Where there is a registration of a motor vehicle in the Register of Motor Vehicle in the name of a person, as in the present case, H this is prima facie evidence of ownership by that person. See *Lasisi Ogunmuyiwa v. Solanke* (1956) 1 F.S.C. 53; (1956) SCNLR 143. This is because ownership of vehicle may inter alia only be proved by the registration particulars of a vehicle or the receipt for its purchase. See *Allied Trading Co. Ltd. v. GBN Line* (1985) 2 NWLR (Pt.5) 74; *Baumwoll Manufacturer von carl Scheibler v. Furness*

(1893) A.C. 8 at 17 etc.

In the present case, the Trailer was registered in the name of the defendant and in the absence of any rebuttal evidence, the trial court was right when it held that the defendant was the owner of the Trailer in issue.

The defendant in his Statement of Defence averred that the driver, Albasa, was not only unknown to him but that the said driver was not his agent. He however led no credible evidence in that regard. Be that as it may, where the facts of the relationship between the owner of a vehicle and the driver are not fully known, proof of ownership may give rise to a presumption that the driver was acting as the owner's agent. See *Kuti v. Balogun* (1978) 1 S.C. 53 at 58; *Okeowo v. Sanyaolu* (1986) 2 NWLR (Pt.23) 471; *Yesufu C Maduga v. Hamza Bai* (1987) 3 NWLR (Pt.62) 635 at 641; *Bernard v. Sully* (1931) 47 T.L.R. 557; *Morgans v. Launchbury* (1973) A.C. 127 at 139; *Hewitt v. Bonvin* (1940) 1 K.B. 188. In other words, there is the presumption that a vehicle is being driven by the servant or agent of the owner which presumption may, of course, be rebutted. See *Lasisi D Ogunmuyiwa v. Solanke*, *supra*; *Onuchuku v. Williams* 12 NLR 19; *Bernard v. Sully*, *supra*. The defendant was unable to rebut this presumption in the instant case and I think the court below was, with respect, in gross error to have interfered with the trial court's finding that Albasa was at all material times the driver and agent of the defendant. E

The issue of negligence is exhaustively considered in the leading judgment of my learned brother Belgore, J.S.C., I entirely agree with the findings therein made. The facts of this case clearly admit the application of the maxim, *res ipsa loquitur*. In the present case, the defendant's Trailer collided with a stationary bus on the highway in broad day and no explanation was proffered as to why this happened. This *prima facie*, is clear evidence of negligence on the part of the defendant's driver. See *Randall v. Tarrant* (1955) 1 All E.R. 600 at 605. F

The situation did not end there. The defendant's Trailer after the said collision proceeded to push the bus forward with both vehicles falling into a river; the Trailer having somersaulted into the river resulting in a conflagration from which the deceased died on the spot. G

In this regard, the principle is basic that if a defendant's vehicle leaves the road and falls into an embankment, in this case into a river, and this without more is proved, then *res ipsa loquitur*, there is a presumption of negligence and the plaintiff succeeds unless the defendant rebuts this presumption. See *Barkway v. South Wales Transport Co.* (1948) 2 All E.R. 460. The defendant in the present case has failed to rebut this presumption and I entirely agree with the trial court when it concluded as follows:- H

“I therefore hold that the defendant was the registered owner of the tanker/trailer and the employer of Albasa, whose negligence caused the death of Mr. Odebunmi. In the circumstance, the defendant is vicariously liable for the negligence of his servant.”

The court below, with profound respect, was in gross error when it
B held otherwise.

It is for the above and the more detailed reasons contained in the
leading judgment of my learned brother, Belgore, J.S.C., that I, too, allow this
appeal, set aside the decision of the court below and restore the judgment of
the trial court. I abide by the order as to costs contained in the leading judg-
C ment.

Appeal allowed

D

E

F

G

H