

**SUPREME COURT OF NIGERIA**  
25TH SEPTEMBER, 1998. SC.83/1994  
**CORAM:- A. B. WALI, M. E. OGUNDARE, E. O. OGWUEGBU,**  
**U. MOHAMMED, A. I. IGUH, JJSC**

ALPHONSUS IBEANU & ANOR ..... APPELLANTS  
AND  
PETER A. OGBEIDE & ANOR ..... RESPONDENTS

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***ACCIDENT** - Negligence - Where established from the evidence - Doctrine of res ipsa loquitur will not apply.*

***DAMAGES** - Assessment - Given by an expert automobile engineer as to value of damaged vehicle - Cannot be questioned - As the issue of the vehicle being old now raised was never pleaded.*

***DAMAGES** - Accident - Where the vehicle is a total loss - Plaintiff is entitled to the pre accident market value less the scrap value.*

***EVIDENCE** - Contradictions - Alleged in respect of evidence of some witnesses - Is unfounded.*

***PRACTICE & PROCEDURE** - Pleadings - Issue of ownership of vehicle - Where no emphasis was laid on it by counsel during trial - Mere denial in general traverse - Is not sufficient.*

***PLEADINGS** - Traverse - Simple denial of a major issue of ownership of vehicle in a traverse - Without pleading more facts - Lower courts rightly held that 1st respondent was owner of the vehicle.*

**FACTS**

The respondents filed a suit before the Agbor High Court against the appellants jointly and severally claiming N700,000.00 being special and general damages. The 2nd appellant (servant of the 1st appellant)

drove a luxury bus owned by the 1st appellant. The bus collided with a diesel tanker vehicle owned by the 1st respondent. The tanker was set ablaze and all the fuel in it destroyed. Second respondent joined in filing the suit because he sold the vehicle to the 1st respondent who not having completed the payment has not been granted change of ownership.

The trial court found in favour of the respondents and awarded the sum of N529,455.00 as special damages and N168,545.00 as general damages. Appellants' appeal to the Court of Appeal succeeded in part as the appeal against award of general damages was allowed whilst the special damages was reduced to N507,455.00 still dissatisfied, appellants have further appealed to the Supreme Court raising 5 issues.

**ISSUES FOR DETERMINATION**

*"1. Whether the plaintiffs proved ownership of vehicle No. BD 2426 BF.*

*2. Whether on the pleadings and on the preponderance of evidence, it was the negligence of the 2nd defendant that caused the accident on the 4th of January, 1988.*

*3. Whether where the defence to an action in negligence is that of unavoidable accident caused by a third party, there is still a need to allege negligence against the 2nd plaintiff.*

*4. Whether on the preponderance of evidence the item of damages claimed by the plaintiff was not challenged.*

*5. Whether the judgment of the Court of Appeal is against the weight of evidence."*

**HELD** (Unanimously dismissing the appeal per lead judgment of **MOHAMMED JSC**)

***Pleadings - Issue of ownership of vehicle***

1. It is evidently clear that the appellants' counsel before the High Court laid no emphasis on the issue of ownership of the vehicle. In fact when the learned counsel addressed the court he did not refer to the question about proof of ownership of the vehicle. Furthermore when the 1st respondent testified before the court during trial he was not cross-examined about the issue in spite of the fact that the 1st respondent had given clear evidence on how he possessed the vehicle. In the pleadings, the

issue was only denied in general traverse. A proper traverse must be a specific denial or a specific non-admission. A general traverse ought not to be adopted in respect of essential and material allegations in the Statement of claim. Lewis and Peat (N.R.I.) Ltd. v. Akhimien (1976) All NLR 365 at 369 and Akintola v. Solano (1986) All NLR 395 at 421.(p. 2288 C)

### ***Pleadings - Traverse***

2. The appellants in this case, in their Statement of Defence simply denied, in a traverse, the averment of the respondents in paragraph 1 of the Statement of Claim wherein the 1st respondent pleaded that he owned the vehicle. Since this is a major issue in this case the appellants are bound to plead more facts showing that the vehicle belonged to someone else. Rather than doing that in paragraphs 5,6, 9 and 15 of the Statement of Defence the appellants referred to the oil tanker as "Plaintiff's vehicle." I have no doubt that the Court below considered the submissions of the appellants on the ownership of the vehicle. The lower courts were right that the 1st respondent was the owner of the oil tanker. (p. 2288 F)

### ***Evidence - Contradictions***

3. Learned counsel submitted that there were material contradictions and inconsistencies between the testimonies of PW 2 and PW3 on the one hand and PW4 on the other hand. I have perused the testimonies of these witnesses and with respect to the learned counsel I do not see any such contradictions between the evidence they adduced before the court. (p. 2289 B)

### ***Accidents - Negligence***

4. All the three witnesses, PW2, PW3 and PW4 agreed that the accident occurred when the driver of the luxury bus attempted to overtake the peugeot 504 at a sharp bend and in excessive speed. It is evidently obvious and clear from the facts that the 2nd appellant, who was the servant of the 1st appellant, had the management and control of the luxury bus and the accident could not have happened if he had used proper care. Ogundere JCA is however in error to say that the doctrine of re ipsa

loquitur applied to this case. Since there is evidence from the witnesses on how the accident occurred it is inappropriate to apply the doctrine. The question of the 2nd appellant's negligence must be determined from the evidence of the witnesses. (p. 2291 C)

B

**Damages - Assessment**

5. The issue of damages has been considered adequately by the court below. The value of the tanker was given as N400,000.00. The assessment was made by PW5 an expert automobile engineer. Learned counsel for the respondents submitted that PW5 could assess the value of automobiles in whatever condition, whether whole or burnt. I do not see where the appellants' pleaded that the oil tanker was an old vehicle. The submission of the learned counsel for the appellants that the tanker was an old one will be disregarded and ignored. Idahosa v. Oronsaye (1959) 4 FSC. 166 I think this case fits in very well with the decision of this court in A.G. Oyo State v. Fairlakes Hotels (No.2) (1989) 5 NWLR, part 121, 255 at 277 wherein it was held that party claiming damages should establish his entitlement to that type of damages by credible evidence of such character as would suggest that he indeed is entitled to award of damages. (p. 2291 E)

**Damages - Accident**

6. The decision of the Court of Appeal on the assessment of damages is, in my view, unimpeachable. Normally where the vehicle which is involved in an accident through the negligence of another is a total loss "or write off" the plaintiff is entitled as 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 Armel's Transport Ltd. v. Madam Tinuke Martins (1979) All NLR. 27. It is plain therefore that the issue formulated by the appellants' counsel in the Appellant's Brief on the assessment of damages must also be resolved in favour of the respondent. (p. 2292 C)

**NOTABLE POINTS OF INTEREST****WALI JSC***1. When a defendant is deemed to admit plaintiff's evidence*

Where there is essential and material allegation of facts, general form of denial as pleaded in paragraph 1 of the amended statement of claim should not have been adopted. See Wallerstein v. Mork (1974) 1 WLR 991 at 1002; and a defendant who fails to adduce evidence in challenge of the plaintiff's evidence is deemed to have admitted the facts notwithstanding his general traverse - Mana v. Robenson (1979) 3 - 4 SC 1. (p. 2299 F) C

*2. General rule as to driving on the Highway*

The general rule is that a vehicle should be driven on the highway or road at such a speed that will enable its driver to stop within the limits of his vision, particularly having regard to weather condition and/or state of the road. Failure to do so will very likely result in such a driver being held responsible wholly or partly for an accident and its resultant effect. See Harvey v. Road Havlage Executive (1952) 1 K. B. 120 and Hill - Venning v. Benzant (1950) 2 ALL ER 1151. (p. 2301 H) D E

*3. Particulars of negligence of a non party to the action is irrelevant*

The appellants were shifting the blame on the P.W.2 the driver of peugeot 504 No. BD 8463 GB, who was not made a party to the action, but only called as a witness by the respondents. Without making him a party the issue of pleading particulars of his negligence as the cause of the accident would not arise. (p. 2302 E) F

*4. Duty on driver to take precaution against occurrence of accident* G

Where res ipsa loquitur is pleaded and the facts are accepted by the defence, the presumption is that there is a prima facie case and the burden of adducing rebuttal evidence that the defendant was not negligent is shifted on him. The duty is on him to establish inevitable accident and act of God. See Woods v. Duncan (1946) AC 419 at 439. The evidence of P.W. 2, P.W. 3 and P.W.4 established a clear case of negligence. While driving on the highway, there is common law duty on a driver to take all H

necessary and reasonable precaution against occurrence of accident. See Winole v. Bristol Tranways Co. (1917) 86 L. J. K.B. 936. (p. 2302 F)

5. *Res ipsa Loquitur not necessary where cause of accident is known*

- B In the present case the issue of pleading res ipse loquitur did not even arise since the cause of the accident was known see Bolton v. Stone (1951) A.C. 850 at 859. As stated in paragraph 267 at p. 180 of Charlesworth on Negligence [16th Edition] that "The res can only speak so as to throw the inference of fault upon the defender in some cases  
C where the act of the defender is unexplained. Again, "If the facts are sufficiently known, the question ceases to be one where the facts speak for themselves, and the solution is to be found by determining whether on the facts as established negligence is to be inferred or not." (p. 2303B)  
D

**REPRESENTATION**

A. I. Idigbe and Ralph Uwechie for appellants

P. C. E. Dunkwu for the respondents

E

**CASES REFERRED TO**

Armel's Transport Ltd. v. Martins (1979) All NLR. 27

Lewis and Peat (N.R.I.) Ltd. v. Akhimien (1976) All NLR 395 at 421.

- F Idahosa v. Oronsaye (1959) 4 FSC. 166

Armel's Transport Ltd. v. Madam Tinuke Martins (1979) All NLR. 27.

Wallerstein v. Mork (1974) 1 WLR 991 at 1002

Mana v. Robenson (1979) 3 - 4 SC 1.

Harvey v. Road Havlage Executive (1952) 1 K. B. 120

- G Hill - Venning v. Benzant (1950) 2 ALL ER 1151.

Winole v. Bristol Tranways Co. (1917) 86 L. J. K.B. 936.

Bolton v. Stone (1951) A.C. 850 at 859

H

**LEAD JUDGMENT BY MOHAMMED JSC**

This is an appeal from the judgment of the Court of Appeal, Benin Division. The suit originated from Agbor High Court of the then Bendel State. Agbor is now in Delta State. The respondents filed the suit

in Agbor High Court and claimed N700,000.00 being special and general damages against the appellants jointly and severally.

From the facts, both in pleadings and the evidence, the 2nd appellant who was the servant of the 1st appellant and driver of a luxury bus, with registration No. AN 7298 G, owned by the 1st appellant, drove the said vehicle along a public highway negligently and collided with a diesel tanker, owned by the 1st respondent. The tanker with registration number BD 2426 BF was set ablaze and all the fuel in it destroyed. The driver of the tanker gave evidence as PW4 and narrated how the accident happened in the following testimony:

*"I remember 4/1/88. I was loaded with petrol from Benin to Umunede with our tanker truck BD 2026 BF - trailer truck. When I got to Alifekede village, a 504 peugeot car with a luxurious bus was overtaking the 504, I then clear (sic) to my right. It hit the door of my vehicle .... My vehicle burst into flames. I managed to jump out of the vehicle with my conductor. As the vehicle was burning I ran to Agbor Police Station. The police followed me to the scene of accident. The vehicle was pushed to the bush before it went into flame (sic). There was no rain."*

The second respondent joined the 1st respondent in filling this suit because the 1st respondent bought the tanker from the 2nd respondent for the sum of N400,000.00. The 1st respondent paid N300,000.00 to the 2nd respondent and by the time of the accident the 1st respondent had not paid the balance of N100,000.00. The parties and earlier agreed that the ownership of the vehicle would pass to the 1st respondent when he completed the payment. Six witnesses, including the 1st respondent gave evidence for the plaintiffs.

The 2nd appellant who was the driver of the luxury bus testified for the defence. He described to the trial court how the accident happened in the following narrative:

*"On 4/1/88 I loaded my bus at Onitsha for Lagos. I got to Alifekede. There was market there and a sharp corner is there. A 504 Saloon was overtaking my bus, it was BD 8463 GB. A tanker trailer was coming in the opposite direction towards Asaba. The 504 did not over-*

take properly before it entered the lane of my bus. The 504 hit the front bumper of my vehicle. The tanker trailer was trying to avoid the 504, it turned to the right, then the tanker hit my bus. The tanker then ran into the bush and the 504 went to the right facing Benin, and off the road.  
 B The 504 caused the accident. I was unconscious and I was taken to the Hospital at Orifite."

The second defence witness was an assistant motor licensing officer and he was summoned to tender the motor Licensing register in which the tanker was registered and given the number BD 2426 BF.  
 C

The learned trial judge considered all the evidence adduced by the parties and found in favour of the respondents. In his judgment, he established that the appellants were jointly and severally liable to the respondents. He found that both special and general damages had been  
 D proved and awarded the respondents N529,455.00 as special damages and N168,545.00 as general damages.

Being dissatisfied with the decision of the trial High Court the appellants appealed to the Court of Appeal. The appeal succeeded in  
 E part. The Court of appeal allowed the appeal against the award of general damages and reduced the award of special damages to N507,455.00.

The appellants are still dissatisfied. They therefore brought this appeal against the decision of the Court of Appeal. Learned Counsel for  
 F the appellants identified the following five issues for the determination of the appeal:

- "1. Whether the plaintiffs proved ownership of vehicle No. BD 2426 BF.
2. Whether on the pleadings and on the preponderance of evidence,  
 G it was the negligence of the 2nd defendant that caused the accident on the 4th of January, 1988.
3. Whether where the defence to an action in negligence is that of unavoidable accident caused by a third party, there is still a need to  
 H allege negligence against the 2nd plaintiff.
4. Whether on the preponderance of evidence the item of damages claimed by the plaintiff was not challenged.
5. Whether the judgment of the Court of Appeal is against the

*weight of evidence."*

The three issues formulated by learned counsel for the respondents are the same as issues 1, 2, and 4 identified by the appellants' counsel in the Appellant's brief.

Starting with issue 1, learned counsel for the appellants, Mr. B Ogunseitan, in the appellant's brief, submitted that the evidence of the 1st plaintiff/respondent and the pleadings of the respondents as relating to the ownership of vehicle No. BD 2426 BF are in conflict. The learned counsel went further and argued that the 1st respondent, under cross-examination admitted that the vehicle was one of the assets of Konkon C Nigeria Petrol Limited whereas, in the pleadings it was stated that the 1st respondent bought the vehicle from the 2nd respondent. Learned counsel thereafter submitted that the learned trial judge ought to have rejected the evidence of the 1st respondent as to the ownership of the vehicle BD D 2426 BF. He referred to the cases of Morohunfola v. Kwara State College of Technology (1990) 4 NWLR part 145 at page 506 and African Continental Seaways v. Nigeria Dredging (1977) 5 S.C. 235. Mr. Ogunseitan concluded that the finding of the Court of Appeal on the state E of pleadings on the issue of ownership of the vehicle was therefore incorrect. As a result of the incorrect finding the Court of Appeal failed to consider at all the arguments of the defendants/appellants on the issue of ownership of the vehicle.

F I must pause here to explain that the learned counsel for the appellants Mr. Ogunseitan, is not correct to say that the Court of Appeal did not consider all the arguments of the appellants on the issue of ownership of the vehicle. Ogundare JCA, delivering his lead judgment, concurred in by Akpabio and Ogebe JJCA, considered the submission made G by the learned counsel for the appellants on the issue and held as follows:

*"In the respondents' brief it was submitted that ownership, was pleaded by the plaintiff which the defendant denied in a general traverse. The defendant did not specifically deny the issues of ownership of the vehicle but in that brief there was no submission on the relevant evidence. The evidence of the 1st plaintiff that he was the owner of the vehicle was not challenged. He tendered the vehicle licence Exhibit 2,*

*Third Party Insurance Exhibit 3 and the sale Agreement between 1st and 2nd plaintiff Exhibit - 4. The finding of the trial court at page 68 of the record would seem to answer that question. He said:*

*"First plaintiff was Peter Ogbeide. His business name was Konkon Petrol Nigeria Limited. Styr Tanker Trailer Registration No. BD 2426 BF was sold to him by second plaintiff for N400,000.00 (Four hundred thousand Naira) and had N100,000.00 (One hundred thousand Naira) to pay.*

*It was agreed that the vehicle would pass to him when the accident happened. The vehicle had vehicle Licence Exhibit 2 and Third Party Insurance Exhibit 3. The agreement was Exhibit 4. PW4 was his driver." This issue in the appeal also fails."*

**It is evidently clear that the appellants' counsel before the High Court laid no emphasis on the issue of ownership of the vehicle. In fact when the learned counsel addressed the court he did not refer to the question about proof of ownership of the vehicle. Furthermore when the 1st respondent testified before the court during trial he was not cross-examined about the issue in spite of the fact that the 1st respondent had given clear evidence on how he possessed the vehicle. In the pleadings, the issue was only denied in general traverse. A proper traverse must be a specific denial or a specific non-admission. A general traverse ought not to be adopted in respect of essential and material allegations in the Statement of claim. Lewis and Peat (N.R.I.) Ltd. v. Akhimien (1976) All NLR 365 at 369 and Akintola v. Solano (1986) All NLR 395 at 421. The appellants in this case, in their Statement of Defence simply denied, in a traverse, the averment of the respondents in paragraph 1 of the Statement of Claim wherein the 1st respondent pleaded that he owned the vehicle. Since this is a major issue in this case the appellants are bound to plead more facts showing that the vehicle belonged to someone else. Rather than doing that in paragraphs 5, 6, 9 and 15 of the Statement of Defence the appellants referred to the oil tanker as "Plaintiff's vehicle." I have no doubt that the Court below considered the submission of the appellants on the**

**ownership of the vehicle. The lower courts were right that the 1st respondent was the owner of the oil tanker.**

I will consider issues 2 and 3 together. Learned counsel for the appellants submitted that the court below was in error to affirm the decision of the trial High Court that the 2nd appellant, who was the driver of the luxury bus, drove the bus negligently, resulting in the accident in which the oil tanker was set ablaze. **Learned counsel submitted that there were material contradictions and inconsistencies between the testimonies of PW 2 and PW3 on the one hand and PW4 on the other hand. I have perused the testimonies of these witnesses and with respect to the learned counsel I do not see any such contradictions between the evidence they adduced before the court.** I have earlier in this judgment reproduced the evidence of PW4 and I believe that for a proper picture to be seen the evidence of PW2 and PW3 should also be reproduced. PW2, in his testimony, said as follows:

*"As myself and my wife were returning to Benin, through my inner mirror I saw a luxury bus coming behind me. It was coming in a terrific speed. Before I got off the road, the bus hit my car and pushed us off the road, my side was smashed and I was trapped inside the car. The on looker helped us out. There I saw a car burning in the opposite direction. The luxury bus was An 7298 G. The scene was a Alifekede. I was knocked off to the right. I made a statement to the police. I testified at the Chief Magistrate Court at Agbor.*

*Cross-examined by Ovrawa*

*The accident occurred at the bend. The driver's side of my vehicle was dented. The car was hit from behind and the door was jammed. The luxurious bus before the accident was behind my car. I was not overtaking the bus at a bend. It was not true that there I saw an on coming trailer. I did not overtake the bus. The bus was behind me. The bus rushed on me. I know the bus was coming. It happened in a second. When I was hit off the road I did not know what happened after wards."* PW3 who was a passenger in the luxury bus gave similar evidence. Being a driver by profession he told the trial court that he sat in the bus as a passenger and saw how the 2nd appellant was driving the bus. He went

on in his testimony thus:

"I am a driver, I know 2nd Defendant. I remember 4/1/88. On that day I was a passenger in 2nd defendant's luxurious bus with my family at Onitsha we were going to Lagos. After Asaba the driver 2nd B defendant was speeding. The passengers cautioned him to take it easy but he continued and that caused a quarrel between 2nd defendant and the passengers. When we got to a market place, there was a slow movement of vehicles the luxurious bus was following a 504 and it hit the 504, 2nd defendant to avoid smashing the 504 swerved to the left, it collided C with an on coming trailer. The trailer went on but started to burn. The police took me and my family 12 in number to Abudu General Hospital. Our bus was coming with excessive speed the driver applied his brake but the brake could not hold. There the bus hit the 504 we were D following. To avoid not to smash the 504, the bus swerved to the left and hit a trailer. It was an on coming trailer. After a short distance the tank trailer started to burn."

The learned trial judge evaluated all the evidence adduced before E him, including the three witnesses whose testimonies I reproduced above and concluded that peugeot 504 was in front of the luxury bus and that the accident occurred when the luxury bus was attempting to overtake the peugeot car at a sharp bend. The learned trial judge thereafter pointed F out that it was reckless to overtake at a sharp bend and close to a market. He supported his opinion by reference to the case of Hudson v. Viney (1921) 1 Ch. 98 at 104. Finally, Gbemudu J held that there was overwhelming evidence that the bus driven by the 2nd appellant was the cause of the accident.

G This decision of the trial High Court that the accident was caused through the negligence of the 2nd appellant was affirmed by the Court of Appeal in the following words:

"Having considered with close attention the submissions of the H parties on the issue of negligence, and consequential damages as to whether the Special or General Damages were excessive, my opinion is as hereunder. As to proof of negligence, the evidence adduced by the plaintiffs especially PW2 the driver of the 504 peugeot car, PW3 an on looker in

*the luxury bus, and the driver of the tanker, a clear case of res ipsa loquitur was established. The learned trial judge quoted above correctly found the second defendant not only negligent but reckless. The lower courts finding is unimpeachable. The more so as the appellants neither pleaded contributory negligence nor testified in that regard. Rather the driver of the tanker was impliedly praised for swerving to the right to avoid the collision with luxury bus driving straight at the tanker on its right lane. The issue of negligence is accordingly resolved in the respondents' favour."*

All the three witnesses, PW2, PW3 and PW4 agreed that the accident occurred when the driver of the luxury bus attempted to overtake the peugeot 504 at a sharp bend and in excessive speed. It is evidently obvious and clear from the facts that the 2nd appellant, who was the servant of the 1st appellant, had the management and control of the luxury bus and the accident could not have happened if he had used proper care. Ogundere JCA is however in error to say that the doctrine of re ipsa loquitur applied to this case. Since there is evidence from the witnesses on how the accident occurred it is inappropriate to apply the doctrine. The question of the 2nd appellant's negligence must be determined from the evidence of the witnesses.

The issue of damages has been considered adequately by the court below. The value of the tanker was given as N400,000.00. The assessment was made by PW5 an expert automobile engineer. Learned counsel for the respondents submitted that PW5 could assess the value of automobiles in whatever condition, whether whole or burnt. I do not see where the appellants' pleaded that the oil tanker was an old vehicle. The submission of the learned counsel for the appellants that the tanker was an old one will be disregarded and ignored. Idahosa v. Oronsaye (1959) 4 FSC. 166 . I think this case fits in very well with the decision of this court in A.G. Oyo State v. Fairlakes Hotels (No.2) (1989) 5 NWLR, part 121, 255 at 277 wherein it was held that party claiming damages should establish his entitlement to that type of damages by credible evi-

**dence of such character as would suggest that he indeed is entitled to award of damages.**

The burnt tanker was valued at N400,000.00 less N2,000.00 depreciation value. Part of this award has still not been paid by the appellants. The amount nowadays may not buy even a scrap of the vehicle. The value of the petrol in the burnt tanker as given by the 1st respondent during his testimony before the trial court, had not been challenged. He was not cross-examines on the assessed value of the destroyed fuel. Therefore any submission by the appellants' counsel on the value of the burnt petrol cannot be sustained now- see Adisa v. Julius Berger (Nig.) Ltd. (1994) 1 NWLR, part (318) 88 at 89. **The decision of the Court of Appeal on the assessment of damages is, in my view, unimpeachable. Normally where the vehicle which is involved in an accident through the negligence of another is a total loss "or write off" the plaintiff is entitled as 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 Armel's Transport Ltd. v. Madam Tinuke Martins (1979) All NLR. 27. It is plain therefore that the issue formulated by the appellants' counsel in the Appellant's Brief on the assessment of damages must also be resolved in favour of the respondent.**

In the result, this appeal fails and it is dismissed. The judgment of the Court of Appeal is hereby affirmed. I assess N10,000.00 costs in favour of the respondents.

G **WALI JSC**

I have been privileged to read in advance a copy of the lead judgment of my learned brother Uthman Mohammed JSC, and I entirely agree with it. I however wish to add the following by way of contribution and emphasis.

In the High Court of the then Bendel State of Nigeria, the plaintiffs filed an action against the defendants claiming as follows:-

*"On the 4th day of January, 1988, the Plaintiffs Driver of Ve-*

hicle No. BD 2426 BF. Steyr Diesel Tanker was driving the said Vehicle No BD 2426 BF along the Benin/Asaba Road a public highway, within the jurisdiction heading towards Asaba direction and keeping to his lane the right hand side when the second named Defendant the servant or agent of the first named Defendant so negligently drove, managed and controlled a Luxurious Bus No. AN 7298 G the property of the first named Defendant along the said road coming from Asaba direction that he caused or permitted the same to leave its own lane on to the lane of the said Vehicle No. BD 2426 BF and collided with and damaged and set the said Vehicle in flames.

Whereof the Plaintiffs claim N700,000 (Seven Hundred Thousand Naira) general and special damages for negligence jointly and severally."

In the joint statement of claim by the 1st and the 2nd plaintiffs it was averred in paragraphs 7, 8, 9 and 10 thereof as follows:-

"7. The 1st Plaintiff is owner of a Steyr Diesel Tanker with identification number BD 2426 BF and on the 4th January, 1988 the driver Henry Aigbiremolen, in the course of business was conveying a Tanker full of petrol from Benin City to Umunede to Konkon Petrol fuel Depot. This will be founded and relied upon at the hearing.

8. On the 4th day of January, 1988 the 1st Defendant by his servant and/or agent of the 2nd Defendant who was the driver thereof so negligently drove and managed on the Highway or road along Alifekide Village, Agbor within the jurisdiction of this Honourable Court, that the 2nd Defendant's said Vehicle number AN 7298 G Luxurious Bus coming from Onitsha direction going towards Benin direction that he caused or permitted the said Vehicle AN 7298 G to leave its own lane on to the lane of the 1st Plaintiff's Vehicle, BD 2426 BF driven by the 1st Plaintiff's servant/agent (Henry Aigbiremolen) and violently collided with the said Vehicle BD 2426 BF and damaged the contents of the said Vehicle and Vehicle was set ablaze and burnt beyond recognition.

9. That consequent upon the damage to the Tanker full of petrol, H the 1st Plaintiff being the transporter and owner of the Vehicle BD 2426 BF was debited with the cost of petrol carried. The way bill will be founded upon at the hearing.

10. *At the time of the said collision, the 1st Plaintiff's Vehicle which was being driven or managed by his driver or servant was being driven on the right and proper side of the road and at a moderate speed, it was being driven on the said road towards Onitsha direction enroute Umunede. The road was clear so too the weather, it being afternoon time bright and clear."*

In paragraph 13 of the Statement of Claim the particulars of negligence by the defendants were given as follows:-

"PARTICULARS OF NEGLIGENCE

"13. *The Plaintiffs say that the second Defendant was negligent in the driving and management of the Motor Vehicle Number BD 2426 BF on the 4th day of January, 1988 at the time and Place aforesaid in the following respect of particulars Viz:-*

- (i) *Driving at a dangerous, improper or excessive speed.*
- (ii) *Failing to keep to the right or proper side of the road.*
- (iii) *Failing to keep any or proper lookout and to give any or timely warning of approach of the said Vehicle.*
- (iv) *Failing to manoeuvre or sufficiently. The said Vehicle, so as to avoid running into, or colliding, and destroying the Vehicle number BD 2426 BF.*
- (v) *Failed to slow down or to stop in order to avoid the accident.*
- (vi) *Failed to apply the brakes of the Motor Vehicle, in order to avoid the accident.*
- (vii) *Failing to exercise good care, caution and skill to avoid the accident.*

*In the alternative, the plaintiffs will rely on the doctrine of Res Ipsa Loquitur."*

In the amended joint statement of defence by the defendants paragraphs 1, 2, 3, 4, 5 and 7 of the Statement of Claim were generally denied with an averment as follows:-

"1. *The defendants deny paragraphs 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12 and 13 of the Statement of claim and put the plaintiffs to the strictest proof thereof."*

In paragraphs 3 to 15 of the Amended Statement of Defence the

defendants pleaded as follows:-

"3. *The Defendants aver that contrary to paragraphs 8 to 13 of the Statement of Claim, on the 4th January, 1988, the 2nd Defendant carefully managed and drove the Luxurious bus AN 7298 G on his right side of the Highway en route Benin from Asaba.*

B

4. *Somewhere about Alifekide Village Agbor, along a curve on the road, a white Peugeot 504 Saloon Car with registration number BD 8463 GB attempted to overtake the 2nd Defendant.*

5. *Being a blind curve, the driver of the white Peugeot 504 Saloon car with registration number BD 8463GB was unaware that the plaintiffs' vehicle BD 2426 BF was approaching en route Asaba direction; i.e. from the opposite direction.*

C

6. *That at the last moment, the driver of the while Peugeot 504 Saloon car BD 8463 GB and the Plaintiff vehicle BD 2426 BF realized that a head on collision between them was imminent.*

D

7. *That the driver of the Peugeot 504 Saloon car BD 8463 GB swerved sharply in front of the 2nd Defendant in an attempt to get back on to his correct lane.*

E

8. *That the 2nd Defendant ran into the rear part of the white Peugeot 504 Saloon car BD 8463 GB as a result of this violent maneuver, but luckily the 504 Saloon Car BD 8463 was able to veer off the road without much damage.*

F

9. *That the Plaintiff's Vehicle, being a Tanker/Trailer, was less maneuverable and easy to control.*

10. *That at the time the Plaintiff vehicle sighted the imminency of a head on collision with the white 504 BD 8463 GB, the driver applied his brakes and swerved to the right to avert the accident.*

G

11. *That the cab portion of the Tanker/Trailer did in fact veer to the right, but the main body remained on the road and brushed with the white Peugeot 504 BD 8463 GB and the 2nd Defendant.*

12. *That owing to his inability to control the vehicle, and the explosive nature of the goods he was carrying, the Tanker/Trailer went off the road and burst into flames.*

H

13. *The Defendants shall rely upon the Police Accident Report*

and sketches of the accident signed by all the parties involved in the accident.

14. The Defendants aver that the cause of the accident was the reckless driving exhibited by the driver of the white Peugeot 504 Saloon B car with registration number BD 8463 GB, the unwieldy nature of the Plaintiff's vehicle and misadventure.

15. The Defendants shall also contend at the trial of this action that the Plaintiff vehicle was not covered by the statutory vehicle particulars required of all law-abiding users of a public highway; including a current vehicle insurance policy at the time of the accident." C

After filing and exchange of pleadings, the case proceeded to trial at the end of which Gbemudu J, after reviewing and considering the evidence, gave judgment in favour of the plaintiffs as follows:-

D "The plaintiffs have proved the case conclusively. I find the defendants jointly and severally liable to the plaintiffs in the sum of N698,000. [N531,455.00 less N2,000.00 for scrap that is N529,455.00 special damages and N168,545.00 general damages].

E The plaintiffs are entitled to the costs of this suit which I assess at N1,000.00 (one thousand Naira)."

Not satisfied with judgment of the trial court, the defendants appealed to the Court of Appeal and the Court of Appeal after considering the appeal allowed it in part and reduced the amount awarded by the trial F court to N507,455.00.

The defendants still not satisfied, have now appealed to this court. Henceforth the defendants and the plaintiffs will be referred to as the appellants and the respondents respectively in this judgment.

G The appellants and the respondents filed and exchanged briefs of argument.

In the brief filed by the appellants the following five issues were formulated while the respondents formulated three issues in the brief. H Those formulated by the appellants are:-

"1. Whether the plaintiffs proved ownership of Vehicle No. BD 2426 BF.

2. Whether on the pleadings and on the preponderance of evi-

*dence, it was the negligence of the 2nd defendant that caused the accident on the 4th of January, 1988.*

*3. Whether where the defence to an action in negligence is that of unavoidable accident caused by a third party, there is still a need to allege negligence against the plaintiff.* B

*4. Whether on the preponderance of evidence the item of damages claimed by the plaintiff was not challenged.*

*5. Whether the judgment of the Court of Appeal is against the weight of evidence."* C

The issues formulated by the respondents are also as follows:-

*"1. Whether the ownership of Vehicle No. BD 2426 BF was made an issue in the case, and if so, whether same was proved by the Respondents.*

*2. Whether the trial Court and the Court of Appeal correctly found negligence as against the Appellants.* D

*3. Whether the Court of Appeal correctly applied the principles in regard to the award of damages."*

The simple facts of this case as accepted by the parties are as follows:- E

The 2nd Respondent Mr. Benson Edokpany was the owner of the motor vehicle Steyer Diesel Tanker bearing registration No. BD 2426 BF and by an agreement dated 15th June, 1987 (Exhibit 4) entered into F between the 2nd respondent and Peter Ogbeide the 1st Respondent the latter agreed to buy and the former agreed to sell the said Diesel Tanker at a price of N400,000.00 on the following condition:-

*"..... Mr. Benson Edokpany sold one Steyer Diesel Commercial Tanker Vehicle with registration No. BD 2426 BF to Mr. Peter Agbonkon Ogbeide G for the sum of N400,000.00 (Four Hundred Thousand Naira only) of which N300,000.00 (Three Hundred Thousand Naira) has been paid to Mr. Benson Edokpayi by Mr. Peter Ogbeide.*

*It is also agreed that the balance of N100,000.00 (One Hundred Thousand Naira) will be paid within one year of this agreement and until this amount is fully paid by Mr. Peter Ogbeide, the particulars will bear the name Mr. Benson Edokpayi and change of ownership cannot be made."* H

Following this agreement, the Vehicle was delivered to the 1st Respondent. On 4th January, 1988 the Vehicle, in the course of 1st Respondent's business was loaded with petrol worth N11,455.00 for delivery to konkon Petrol Fuel Depot, Umunede, from Benin City. At that time the Vehicle was being driven by Henry Aigbiremonlen [P.W. 4], the 1st Respondent's servant.

Paragraph 8 of the joint Statement of Claim [supra] pleaded the facts of the accident leading to the destruction of the 1st Respondent's Vehicle, while the particulars of negligence and the damages suffered were itemized in paragraph 13 of joint statement of claim which has been reproduced earlier.

The three issues formulated by the respondents are adequately covered and subsumed in the appellants five issues raised in the appellants brief.

In arguing issue 1 it was the contention of the appellants that the evidence led by the respondents as regards the ownership of Vehicle Steyr Diesel Tanker No. BD 2426 BF is contrary to the pleadings and learned counsel for the appellants referred to Exhibit 2 which he argued shows that the vehicle is the property of 2nd respondent in contrast to the averments in paragraphs 1, 2 and 7 of the statement of claim and the evidence of 1st Respondent. Learned counsel further submits that both the trial Court and the Court of Appeal are wrong in their conclusion on the evidence that the vehicle is the property of the 1st appellant and relied on Morohunfolu v. Kwara State College of Technology (1990) 4 NWLR (Pt. 145) 506; Ehimare & Anor. v. Emhonyan (1985) 1 NSCC 163; African Continental Seaways v. Nigeria Predging (1977) 5 SC 235 and Aderemi v. Adedire (1966) NNLR 398 among others cited.

In reply learned counsel for the Respondents submits that the appellants in paragraph 15 of the amended statement of Defence admitted ownership of the Vehicle by the 1st respondent and therefore no further proof of that fact is required. It is his contention also that the respondents filed a joint statement of claim in which it was averred that the 2nd respondent sold the vehicle to the 1st respondent for the sum of N400,000.00 in which there was a down payment of N300,000 leaving a

balance of N100,000. Learned counsel further argued that the issue of non-ownership of the vehicle was generally raised which he said is vague and scanty. He cited and relied on Otapo v. Sunmonu (1987) 2 NWLR (Pt. 58) and Akintola v. Solano 2 NWLR (Pt. 24) 598. The complete reference to these cases have not been supplied. B

Learned counsel for the appellants has over-looked the point that the 1st and the 2nd respondents filed a joint statement of claim. The 2nd respondent is part and parcel to the facts pleaded therein. If he had any objection to the 1st respondent's claim that he owns the vehicle notwithstanding the last paragraph of Exhibit 4, he would have appropriately reacted by following the normal procedure. This he has not done up to today. C

At any rate and as argued by learned counsel for the respondents the issue of non-ownership of the vehicle by the 1st respondent was not specifically raised by the appellants in their amended statement of Defence. It was not specifically denied by the appellants to make it an issue. An issue of fact is said to be raised when same is specifically denied as a material fact and not by an evasive and an insufficient denial. E See Lewis & Peat v. Akhimien (1976) 7 SC 157; L.C.C. v. Ogunbiyi (1969) 1 ALL NLR 297 and Harris v. Gamble (1878) 7 CH.D 877. D

As I have opined earlier in this judgment, even if the appellants had succeeded in raising the issue of ownership of the vehicle by the 1st respondent, it would not be open to them to contend on the settled pleadings that the said vehicle was not owned by the 1st respondent when the 2nd respondent had been joined as co-plaintiff in the action. Where there is essential and material allegation of facts, general form of denial as pleaded in paragraph 1 of the amended statement of claim should not have been adopted. See Wallerstein v. Mork (1974) 1 WLR 991 at 1002; and a defendant who fails to adduce evidence in challenge of the plaintiff's evidence is deemed to have admitted the facts notwithstanding his general traverse - Mana v. Robenson (1979) 3 - 4 SC 1. F G H

All the cases cited by the appellants are not helpful to his case and are not apposite. Issue 1 is therefore resolved against the appellants.

Issues 2 and 3: These two issues can be conveniently taken

together as they deal with the question of negligence. Learned counsel for the appellants after referring to paragraphs 8, 11 and 13 of the statement of claim and paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the amended statement of defence submitted that following the plaintiffs account as to how the accident happened, the evidence given in support of the facts pleaded by the respondents is contradictory and therefore unreliable. He said both the trial court and the Court of Appeal were wrong in putting reliance on the contradictory evidence in preference to the appellants' evidence as regards the cause of the accident which he also said is cogent and fully supported his pleading. Learned counsel relied on the following cases in support of his submission - Asuoquo Williams v. The State (1975) 9 - 11 SC 139 at 151; Onubolu v. The State (1974) 9 SC 1; Muraina Akahmu & Anor. v. Fasasi Adigun & Anor. (1993) 7 NWLR (Pt. 304) 221 paragraph 7; Aderemi v. Adedipe (1966) NNLR 398; Egonu v. Egonu (1978) 11 - 12 SC. 111; Woluchem v. Gudi (1981) 5 SC 291; James v. Mio - Motors (1978) 11 - 12 SC 31; Ehimare & Anor. v. Emhonyon (1985) NSCC Vol. 16 (Pt. 1) and Benson v. Otubor (1975) 3 SC 9.

It was also further submitted by learned counsel for the appellants that the defence of unavoidable accident pleaded by the appellants was available to them since the accident was caused by the driver of 504 peugeot vehicle No. BD 8463 GB and that the inference drawn by the Court of Appeal on the appellants' failure to plead negligence by the respondents was based on a wrong appreciation of the state of the pleadings. Learned counsel referred to page 1228 of Bullen and Leake and Jacobs, Precedents and pleadings (12th Edition), South Port Corps v. Esso Petroleum Co. Ltd. (1956) 218 at 231; Amos Bamgboye & Ors. v. Raimi Olanrewaju (1991) 4 NWLR (Pt. 184) 132 at 151 in support of his arguments.

In reply to the arguments on these issues, learned counsel for the respondents submitted that no material contradictions existed in the evidence presented by the respondents' witnesses, nor was there any variance between the pleadings and such evidence. He urged this court not to disturb the concurrent findings of fact on the issues.

I have painstakingly read through the evidence of the respondents in support of their pleading on issue of negligence, particularly that of P.W. 1, P.W. 2, P.W. 3 and P.W. 4 and I am unable to spot any material contradiction. The facts pleaded in paragraphs 8, 11 and 13 of the statement of claim is well supported by the plaintiff's evidence. The learned B trial judge, after a meticulous consideration and evaluation of the evidence by both sides to the litigation, rejected the appellants evidence and came to the following correct conclusion:-

*"The most reliable evidence was that the peugeot was in front of C the luxury bus. It was the luxury bus that was overtaking the peugeot when the accident occurred. It was reckless to overtake at a sharp bend and close to a market. Recklessness was defined as an attitude of mental indifference to obvious risk as per Ev. J. in Hudson v. Vinex (1921) 1 CH D 98, 104.*

*There is overwhelming evidence that the bus driven by second defendant was the cause of the accident."*

The Court of Appeal was equally right when in confirming the findings of the trial court on negligence, it opined thus:-

*"Having considered with close attention the submissions of the parties on the issue of negligence, and consequential damages as to whether the Special or General Damages were excessive, my opinion is as hereunder. As to proof of negligence, the evidence adduced by the plaintiffs F especially P.W.2 the driver of the 504 Peugeot Car, P.W. 3 an on looker in the Luxury Bus, and the driver of the Tanker, a clear case of res ipsa loquitur was established. The learned trial judge as quoted above correctly found the second defendant not only negligent but reckless. The G lower Courts finding is unimpeachable. The more so as the appellants neither pleaded contributory negligence nor testified in that regard. Rather the driver of the Tanker was impliedly praised for swerving to the right to avoid the collision with a luxury Bus driving straight at the Tanker on its right lane. The issue of negligence is accordingly resolved in the H respondents' favour."*

The general rule is that a vehicle should be driven on the highway or road at such a speed that will enable its driver to stop within the

limits of his vision, particularly having regard to weather condition and/or state of the road. Failure to do so will very likely result in such a driver being held responsible wholly or partly for an accident and its resultant effect. See Harvey v. Road Haulage Executive (1952) 1 K. B. 120 and Hill - Venning v. Benzant (1950) 2 ALL ER 1151.

The question now is whether the 2nd appellant was negligent in not taking reasonable care and precaution to avoid the accident. I agree with the learned trial judge and the learned Justices of the Court of Appeal that a plethora of evidence exists that the 2nd appellant was not only negligent but reckless in the way and manner he drove his vehicle. On the facts of the case, I am unable to acquit 2nd appellant of negligence pleaded by the respondents. I do not think the reason given by the 2nd appellant explaining the circumstances the accident happened is tenable and satisfactory. He did not take the necessary action and precaution appropriate to the circumstances in order to avoid the accident. See Blyth v. Birmingham Waterworks (1856) 11 Ex. 784 and Pinn v. Rew (1916) 32 TLR 451.

The appellants were shifting the blame on the P.W.2 the driver of peugeot 504 No. BD 8463 GB, who was not made a party to the action, but only called as a witness by the respondents. Without making him a party the issue of pleading particulars of his negligence as the cause of the accident would not arise.

Where res ipsa loquitur is pleaded and the facts are accepted by the defence, the presumption is that there is a prima facie case and the burden of adducing rebuttal evidence that the defendant was not negligent is shifted on him. The duty is on him to establish inevitable accident and act of God. See Woods v. Duncan (1946) AC 419 at 439; Ducland v. Ginrux (1969) 1 ALL NLR 26 and Barkway v. S.W. Transport (1950) A. G. 185. The evidence of P.W. 2, P.W. 3 and P.W.4 established a clear case of negligence. While driving on the highway, there is common law duty on a driver to take all necessary and reasonable precaution against occurrence of accident. See Winole v. Bristol Tranways Co. (1917) 86 L. J. K. B. 936.

The facts of the accident as pleaded by the respondents were

virtually accepted by the appellants in paragraph 14 of the Amended Statement of Defence wherein it was averred:-

*"14. The defendants aver that the cause of the accident was the reckless driving exhibited by the driver of the white peugeot 504 Saloon Car with registration Number BD 8463 GB, the unwieldy nature of the plaintiffs vehicle and misadventure."* B

In the present case the issue of pleading res ipse loquitur did not even arise since the cause of the accident was known see Bolton v. Stone (1951) A.C. 850 at 859. As stated in paragraph 267 at p. 180 of Charlesworth on Negligence [16th Edition] that "The res can only speak so as to throw the inference of fault upon the defender in some cases where the act of the defender is unexplained. Again, "If the facts are sufficiently known, the question ceases to be one where the facts speak for themselves, and the solution is to be found by determining whether on the facts as established negligence is to be inferred or not." D

Both issues 2 and 3 are therefore resolved against the appellants.

Issue 4 and 5: Under issue 4 the appellants complained against the damages awarded. Learned counsel submitted that the mere tendering of Exhibit 1 coupled with evidence of P.W. 5 was not evidence to prove the value of the respondent's vehicle tanker at the time of the accident, particularly when P.W.5 had said in his evidence that he could not state the age of the said vehicle. Learned counsel argued that the Court of Appeal was equally wrong in holding that the evidence of 1st plaintiff/respondent was not challenged when the basis of the valuation was successfully challenged both in cross examination and by virtue of Exhibit 1. F

As regards the value of the contents of the petroleum the vehicle tanker was carrying on the day of accident, learned counsel contended that since 1st plaintiffs/respondents did not know the cost of a litre of petrol on 4/1/88 the value stated in Exhibit 5 could not be accepted as proof of such value as its purpose as a waybill was only to show that there were goods in transit at the time of such accident. He submitted that the Court of Appeal erred on the facts in holding that the evidence adduced by the respondents to prove the items of damages was not challenged and also in calculating loss of earnings based on 49 days instead G H

of 38 days. Learned counsel concluded by submitting that it was the respondents' duty to strictly prove his claim on the items for special damage which they had failed to do and cited in support, the following cases - A. G. Oyo State v. Fairlakes Hotel [No. 2] (1989) 5 NWLR (Pt. 121) 255 at 277; Ratcliffe v. Evans [1892] 2 QB 524 at 528; Duruji v. Azie [1992] 7 NWLR (Pt. 256) 690; Kerewi v. Odegbesan (1965) 1 ALL NLR 95; Ubani-Ukoma v. Nicol [1962] SC NLR 176; East African Shipping Agency [Nig.] Ltd. v. Kalla [1978] 3 SC 21; F.H.A. v. Sommer [1988] 1 NWLR 533 at 544; Sommer v. F.H.A. [1992] 1 NWLR (Pt. 219) 548 and West African Shipping Agency [Nig.] Ltd. v. Kalla (1978) 3 SC 21.

In reply, learned counsel for the respondents submitted that both the trial court and the Court of Appeal were right in accepting the respondents' evidence and also in the way and manner they assessed the value of the vehicle tanker at the time of the accident in which it was destroyed. As regards the other items of damages he contended that the Court of Appeal had ably dealt with them and urged the Court to affirm the Court of Appeal decision and dismiss the appeal. Learned counsel cited NEPA v. Alli (1992) 8 NWLR (Pt. 259) 279 at 298 and 304 to buttress his submissions.

The duty of the respondents is to adduce evidence to show the value of the petrol the tanker was carrying at the time of the accident in which it was destroyed. Exhibit 5 gave the evidence of such value, notwithstanding that it is a waybill. The value of the petrol was claimed in Respondents' pleading and the fact that the oral evidence in support thereof was extracted from the 1st respondent during cross examination would not affect its credibility or weight. The respondents would not be expected to show evidence of the value of the petrol the destroyed tanker was carrying other than by the production of Exhibit 5 and the oral evidence. The burden on them is strict proof and not proof beyond reasonable doubt.

As regards the value of the destroyed tanker, P.W. 5, an automobile engineer and hence an expert, assessed the value of the scrap at N2,000.00. There is complete and credible evidence that the value of the

vehicle tanker was N400,000.00 before its destruction. These pieces of evidence were accepted by both the trial court and the Court of Appeal. The appellants were not able to discredit or fault the evidence. The Court of Appeal after a careful consideration of the evidence adduced on the damages claimed came to the unimpeachable conclusion that the value of the tanker before and after the accident was N400,000 and N2,000 respectively while the value of the petrol destroyed was N11,455.00

The Court of Appeal then finally concluded:-

*"Defence Counsel in cross-examination elicited that the Tanker was in use for 6 days a week but not on Sundays, that is (sic) loss days. Also that the vehicle was serviced every three weeks, say 3 days in 8 weeks. Thus 60 days less 11 days is 49 days which the lower Court allowed, that is #2,000.00 times 49 i.e. #98,000.00. Defence counsel at the lower court did not cross-examine the Plaintiff on the cost of maintenance and service of the vehicle per day, the arguments in the brief in that regard were not based on any evidence. I agree with the submission of the appellants that no sum should otherwise be awarded for general damages. In sum, the total damages are:-*

*#398,000.00*

*11,455.00*

*98,000.00*

*Total =*

*#507,455.00*

*There is no appeal on Costs.*

*The appeal on the issue of damages succeeds in part, the appellant having failed on two other issues. The appellant shall therefore pay a total of #507,455.00 as damages to the respondent with #750.00 costs."*

The appeal Court will only interfere with award of damages based on wrong principles. Osuji v. Isiocha (1989) 3 NWLR (pt. 111) 623. I have not been convinced by the appellants arguments that the Court of Appeal was wrong in its conclusion (supra) and therefore no reason for me to interfere with it.

Both Issues 4 and 5 are resolved in favour of the respondents. The appeal fails and is dismissed with N10,000.00 costs to the Respondents.

**B OGUNDARE JSC**

I was privileged to read in advance the judgment of my learned brother Mohammed JSC just delivered. I agree with his reasonings and the conclusion reached by him that this appeal be dismissed.

**C** On the pleadings and evidence led at the trial I can see no justification to interfere with the concurrent findings of the two Courts below on the issues of ownership of the tanker vehicle registration number BD 2426 BF and negligence. The two Courts below came, in my respectful view, to correct conclusions on both issues. I unhesitatingly affirm  
**D** their findings on these issues.

Neither can the finding of the Court of Appeal be faulted on the issue of damages. The evidence led by the Plaintiffs/Respondents support the award by the Court of Appeal and I affirm it too.

**E** In conclusion, this appeal is totally lacking in substance. It is accordingly dismissed by me with costs as assessed in the lead judgment of my judgment of my brother, Mohammed JSC .

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**F OGWUEGBU JSC**

I have read in draft the judgment just delivered by my learned brother Mohammed, J.S.C. I agree with his reasoning and conclusion and I adopt them as mine. I accordingly dismiss the appeal with N10,000.00 costs to the respondents.

**G IGUH JSC**

I have had the privilege of reading in draft the leading judgment just delivered by my learned brother, Mohammed, J S C. and I entirely  
**H** agree that this appeal lacks substance and ought to be dismissed.

For the same reasons as are contained in the said judgment, I too, dismiss this appeal and abide by the order for costs therein made.