

SUPREME COURT OF NIGERIA
30TH APRIL, 2010, SC. 56/2003
D. MUSDAPHER, W. S. N. ONNOGHEN,
I. T. MUHAMMAD, C. M. CHUKWUMA-ENEH,
O. O. ADEKEYE, JJSC

MR. FELIX NWOYE ADIM CROSS-RESPONDENT/
APPELLANT

AND

1. NIGERIAN BOTTLING COMPANY LTD RESPONDENTS/
2. MICHAEL OCHEN CROSS-APPELLANTS

TORTS - Special damages - Claim for - Requirements - It must be specially pleaded and particularized in the pleading - And adequate evidence given - Which plaintiff failed to do in this case (H1)

DAMAGES - Quantum - Appeals - Attitude of appellate courts - An appellate court will not interfere with it - Unless trial judge acted upon wrong principle of law - Or the amount was extremely high or low (H2)

DAMAGES - Awards - General damages - Quantum - Propriety - Having awarded all properly pleaded and proved special damages - It amounts to double compensation - To award N200,000.00 as general damages (H3)

APPEALS - Issues - Not argued by appellant - Fate - Such issue is deemed abandoned by appellant - As is the case with the instant issue 2 - Dealing with reduction of costs awarded (H4)

TORTS - Special damages - Quantum - Proof of excessiveness - Though cross-appellants alleged excessiveness - They offered no evidence in support of the allegation (H5)

DAMAGES - General damages - Quantum - Propriety of N20,000.00 - In view of the evidence of hospitalization - Of appellant and his family members - The sum is reasonable (H6)

FACTS

The plaintiff/appellant/cross-respondent sued defendants/respondents/cross-appellants in the High Court of Lagos State holden at Ikeja. Against the respondents, jointly and severally, appellant claimed the sum of N1,640,043.95 (One million, six hundred and forty thousand, forty-three naira and ninety five kobo) as special and general damages caused to appellant by reason of 2nd respondent's negligent and reckless driving of 1st respondent's Lorry which consequently collided with appellant's Peugeot 504 Saloon car, damaging same and injuring the occupants thereof. Of the sum claimed, N300,000.00 (three hundred thousand naira) was claimed as general damages. Appellant also claimed N1,210,000.00 (one million two hundred and ten thousand naira) as damages for loss of use of car assessed at N2,500.00 (two thousand five hundred naira per day for 484 days, as well as the cost of action at N100,000.00 (one hundred thousand naira) or more. Respondents led no evidence at trial but rested their case on that of the appellant.

After hearing, trial court found for appellant in part. It awarded, inter alia, the sum of N200,000.00 (two hundred thousand naira) as general damages and N80,000.00 (eighty thousand naira) as cost of action while refusing the claim for loss of use of car on grounds of inadequate pleading and evidence. Aggrieved appellant appealed to Court of Appeal on the refusal of his claim for loss of use. Respondents also cross-appealed. That court dismissed the appeal and allowed the cross-appeal in part by reducing general damages to N20,000.00 (twenty thousand naira) and cost to N10,000.00 (ten thousand naira). Still dissatisfied, appellant has come on a further and final appeal to the Supreme Court. Respondents have also cross-appealed.

ISSUES FOR DETERMINATION

APPEAL:

“(1) Was the Court of Appeal right to have disallowed the appellant's claim for loss of use?

(2) Was the Court of Appeal right in reducing the general damages and costs awarded the appellant in this case?

CROSS APPEAL:

“(1) Whether the Court below rightly confirmed the awards of Special damages for the cost of the repairs of the appellant's car and

medical bills expenses for the appellant and three other occupants of the car.

(2) Whether Court below rightly awarded the sum of N20,000.00 in favour of the appellant as general damages.”

HELD (Unanimously dismissing both the appeal and the cross-appeal per MUSDAPHER JSC)

Special damages - Claim for - Requirements

1. The claim by the appellant for loss of use of his vehicle after the accident is clearly a claim in special damage which must be specially pleaded and proved. I have above reproduced the appellant’s pleading with reference to the claim. In the instant case the appellant is claiming loss of use as special damage by quantifying the amount he spent at the rate of N2,500.00 per day. But the pleading went too short to discuss the reasons for the expenditure whether the vehicle was used as a taxi and earned N2,500.00 per day or whether the appellant was forced to hire a vehicle at the rate of N2,500.00 per day for his business or for doing any thing of the like or for private personal use. As shown above, the law will not infer the damage, it must be properly and specifically particularized in the pleading and adequate evidence given. (p. 1410 G)

DAMAGES - Appeals - Quantum - Attitude of appellate courts

2. The principles upon which an appellate court acts in an appeal against the quantum of damages are well settled and were stated thus by Greer, LJ in FLINT VS. LOVELL (1935) 1 KB 354 at P. 360

"In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make, in the judgment of this court an entirely erroneous estimate of the damage to which the plaintiff is entitled." (p. 1413 A)

Awards - General damages - Quantum - Propriety

3. Now with reference to the issue of general damages in this case, the learned trial judge merely stated:

“General damages is assessed at N200,000.00.”

I am in total agreement with the decision of the Court of Appeal. The learned trial judge having awarded all the special damages claimed and proved, gave no reasons as to how he arrived at the high figure of N200,000.00 from the claim of N300,000.00 as contained in the appellant's Statement of Claim. I find no merit whatever in the complaint of the appellant, under the circumstances, the Court of Appeal is justified in reducing the amount. To award the sum of N200,000.00 in the circumstances of this case when all the properly pleaded and proved special damages were awarded will amount to double compensation. (pp. 1413 H/1414 C)

APPEALS - Issues - Not argued by appellant - Fate

4. As mentioned above, the appellant offered no argument in support of the part of issue No. 2 dealing with the reduction of the costs awarded by the learned trial judge by the Court of Appeal. I take it the appellant has abandoned the complaint. So issue No. 2 is resolved against the appellant and this means that the appellant's appeal fails in toto. (p. 1414 H)

Special damages - Quantum - Proof of excessiveness

5. An appellate court will only interfere with the award of damages if there was no evidence to justify the award or the appraisal of the facts was unrealistic. The cross-appellants in the instant case merely pleaded that the amount claimed were "excessive exaggerated and unreasonable" and offered no evidence in support of such a claim when they even averred that they would do so. Considering all the circumstances of the case, it cannot be correct to say that the appellants offered no credible evidence in support of the claims of special damages. (p. 1417 B)

General damages - Quantum - Propriety of N20,000.00

6. I do not think that the amount of N20,000.00 as general damages in addition to the proven special damages is too high under the circumstances. It is evident that the appellant and members of his family were hospitalized as the result of the accident. They had suffered inconveniences, injuries, pains and sufferings. The law allows general damages in addition to the special damages in such circumstances. I find no merit in this complaint. (p. 1418 E)

NOTABLE POINT OF INTEREST

MUSDAPHER JSC

1. Costs awarded by lower courts - When appeal may lie

The law is that there is a distinction between costs awarded according to settled principles, and costs awarded in the exercise of a discretion on particular facts. Whereas appeal lies in respect of the former, which is the exercise of discretion, there is no appeal in respect of the later even from the erroneous exercise of discretion which is based on private opinion of the Judge.

In any event, ordinarily, appellate Court does not interfere with the award or refusal of costs. (p. 1414 F)

REPRESENTATION

Fred Agbaje for the Appellant

T. A. Ojedokun for the Respondents/Cross-appellants

CASES REFERRED TO

IMAH VS. OKOGBE (1993) 9 NWLR (Pt. 316) 159

SHEHU VS. AFERE (1989) 7 NWLR (Pt. 556) P. 115

HAYAKI VS. DOGARA (1993) 8 NWLR (pt. 313) 586

SALEH VS. B. O. N. LTD (2006) 6 NWLR (Pt 976) 316

BOLA VS. BANKOLE (1986) 3 NWLR (Pt. 277) Page 141

EGBEDU VS. I. G. P. (2006) 5 NWLR (Pt. 972) P. 146 at 155

UBA PLC. VS. BTL IND. LTD (2006) 19 NWLR (Pt 1013) P. 61

OKORONKWO VS. CHUKWEKE (1992) 1 NWLR (Pt. 216) 175

SONS MOTORS LTD VS. IMMEH (1996) 8 NWLR (Pt. 465) 240

AJIKAWO VS. ANSALDO (NIG) LTD (1991) 2 NWLR (Pt. 173) 359

STEPHEN OKONKWO VS. NNPC (1989) 4 NWLR (Pt. 115) 296 at 319

UBN LTD VS. ODUSOTE BOOKSTORES LTD. (1995) 9 NWLR (Pt 421) p. 55

A. G. OYO STATE VS. FAIR LAKES HOTELS No. 2 (1989) 5 NWLR (Pt. 121) 255

ROCKONOH PROP CO. LTD. VS. NITEL (2001) 14 NWLR (Pt. 733) 468

ALLIED BANK OF NIGERIA LTD. VS. AKABUEZE (1997) 6 NWLR (Pt. 509) Page 374

LEAD JUDGMENT MUSDAPHER JSC

In the High Court of Justice of Lagos State, in the Ikeja Judicial Division and in suit No. ID/912/98, the plaintiff claimed against
B the defendants jointly and severally as follows:-

“(a) N1,640,043.95k (one Million, Six Hundred and Forty Thousand, Forty-Three Naira and Ninety Five Kobo) being special and general damages caused to the plaintiff's Peugeot 504 saloon car
C Registration No. AM 506 BDG and personal injury (ies) suffered by the occupants of the plaintiff's car as a result of the 2nd defendant's negligent and reckless driving along Apapa/Oshodi Expressway on the 29/10/1997.

(b) Costs of this action to be assessed but not below N100,000.00 (One Hundred Thousand Naira).”

D At the trial, the plaintiff filed a fifty paragraph (50) Statement of Claim, while the defendants filed a thirteen (13) paragraph Statement of Defence. The plaintiff testified in support of his claims and called two other witnesses, the defendants rested their case on the
E evidence adduced by the plaintiff and did not call evidence. With the consent of the parties written addresses were filed by the parties. In the judgment delivered by the trial judge, he partially found for the plaintiff as follows:-

“Judgment is hereby entered for the plaintiff against the two
F defendants jointly and severally as follows:-

(1) Special damage

Damage to property - Exhibit D U. T. C. Estimate N879,793.95.

(2) Medical bills - Exhibits E and EI N162,750.00

(3) General damages is assessed at N200,000.00.

G I am of the opinion that since the other occupants were paid for by the plaintiff and were hospitalized on his own account, he has the right to claim for their expenses without making them parties to this action. xxxxxxxxxx”

(4) Costs N80,000.00.”

H At the hearing, the plaintiff has claimed for loss of use of his damaged vehicle for 119 days from 29/10/97 to 24/2/98 and from then to the date of judgment at rate N2,500.00 per day, but the trial

judge did not make award for loss of use. The plaintiff felt unhappy and appealed to the Court of Appeal on that point. The defendants also felt dissatisfied with the judgment and also cross-appealed to the Court of Appeal. In its determination of the issues for the determination of the appeal and the cross appeal, the Court of Appeal, as per the lead judgment of Oguntade JCA (as he then was), which was concurred to by Galadima JCA and Aderemi JCA (as he then was) decided:-

“In the final conclusion, I make the following orders:

(1) The appeal by the plaintiff fails. It is dismissed.

(2) The appeal by the defendants partially Succeeds. The award of N200,000.00 as general damages is set aside in its place I award N20,000.00.

(3) The award of N80,000.00 as costs is set aside in its place, I award N10,000.00.

(4) The judgment of the lower Court is affirmed in other respects.

I make no order as to costs.”

The plaintiff still feels dissatisfied with the decision of the Court of Appeal and has further appealed to this Court. The Notice of Appeal filed against the judgment of the Court of Appeal contains two grounds of appeal. The defendants also felt unhappy and have filed a further appeal to this Court. The Notice of Cross-appeal filed on 12/3/2003 contains three grounds of appeal. In compliance with the rules of this court, the parties have filed briefs of argument. Now, in this judgment, the plaintiff shall hereinafter be referred to as the appellant or the cross respondent while the defendants as the respondents or the cross appellants. Issues for determination have been submitted in the appellant’s brief as follows:-

“(1) Was the Court of Appeal right to have disallowed the appellant’s claim for loss of use?

(2) Was the Court of Appeal right to in reducing the general damages and costs awarded the appellant in this case?

In their amended Respondents/Cross-Appellants’ brief the respondents/cross appellants more or less adopted the appellant’s issues for determination and have submitted two further issues for the determination of the cross-appeal:-

“(1) Whether the Court below rightly confirmed the awards of

Special damages for the cost of the repairs of the appellant's car and medical bills expenses for the appellant and three other occupants of the car.

(2) Whether Court below rightly awarded the sum of N20,000.00 in favour of the appellant as general damages."

B I will first consider the appeal by the appellant before dealing with the cross-appeal.

C Issue No. (1) of the appellant is the complaint whether the Court of Appeal is right in failing to make an award with reference to the claim of the loss of use of the appellant's vehicle as a result of the accident? There is no dispute whatever that the appellant pleaded and led evidence as to the loss of use. In paragraph 46 of the Statement of Claim the appellant pleaded:-

D "46. (c) Loss of use at N2,500.00 (Two thousand and five hundred Naira only) per day for One hundred and nineteen days 119 (29/19/97 - 24/2/98 = N297,500 (Two Hundred and Ninety-seven Thousand and Five hundred Naira).

(d) Loss of use from 24/10/98 to the time judgment will be given at N2,500.00 per day (to be determined after judgment.)"

E In support of the above averment, the appellant as P. W. 1 testified at page 21 of the printed record as follows:

F "I have suffered loss of the use of the car. I have lost four hundred and eighty four days (484 days) to date at N2,500.00 per day which gives a total of one million two hundred and ten thousand naira only N1,210,000.00). I communicated all these to the 1st defendant through the firm of my present solicitor. This is the letter written by counsel Exhibit F."

G The appellant was not cross-examined by the respondents on this point. In its judgment the trial Court did not refer to this claim as pleaded and the evidence adduced. The trial Court did not discuss this in its judgment. The Court of Appeal considered the evidence as grossly insufficient, it opined that the item of the damages for loss of use is in the category of special damages and must be strictly proved. It held that-

H "There was no evidence as to alternative means of transportation which the plaintiff used and which costs N2,500.00 per diem. There was no evidence as the places which the plaintiff had to go which necessitate the expenditure was it a private car that was hired

or a taxi? Where were the receipts for such expenditure as high as one million two hundred and ten thousand naira?"

The Court of Appeal held that the appellant had failed to prove that head of claim and accordingly disallowed the claim for loss of use.

It is submitted that the respondents did not even cross examine the appellant on his testimony on the loss of use of his vehicle and since the lower courts agreed that it was the fault of the respondents that caused damage to the appellant's car, the appellant needed not produce receipts. It is submitted that the appellant's evidence remained unchallenged and uncontradicted. It is argued that the Court of Appeal was in error to have descended into the arena and built a case for the respondents the court ought to confine itself to the issues raised by the parties vide *AJOWON VS. AKANNI* (1993) a NWLR (Pt. 316) 182 *HAYAKI VS. DOGARA* (1993) 8 NWLR (pt. D 313) 586. It is submitted that since the respondents did not raise the issue of receipts, the Court of Appeal has no right to demand that from the appellant. It is finally submitted that the evidence led by the appellant is sufficient proof of loss of use.

The Learned counsel for the respondents on the other hand submits that the issue of loss of use under the circumstances is a claim of special damages which must be specifically claimed and strictly proved. The appellant had failed to adduce any evidence of how he incurred or arrived at the sum of N2,500.00 per day, as loss of use. Learned counsel cites *S. P. D. C. (NIG.) LTD. VS. TIEBO VII* (2005) 9 NWLR (Pt. 931) P. 439. It is again submitted that the mere fact that the evidence is not challenged is not enough. Where a person claims an item of special damages the law requires him to prove the damage strictly and not leave the Court to guess or speculate. Failure of the defendant to challenge the items claimed does not lessen the requirement of the strict proof on the plaintiff see *S. P. D. C. VS. TIEBO* supra, *OKORONKWO VS. CHUKWEKE* (1992) 1 NWLR (Pt. 216) 175, *AGBAJE VS. JAMES* 1967 NMLR 49 *IMANA VS. ROBINSON* (1974) 3 - 4 SC 1. *A. C. B VS. NEKA B. B. B. MANUFACTURING CO. LTD* (1996) 4 NWLR (Pt. 444) 564. *SHEHU VS. AFERE* (1989) 7 NWLR (Pt. 556) P. 115.

It is again submitted that the question of damages in action and whether general or special is always in issue except when it is

admitted by the defendant. NGILARI VS. MOTHERCAT LTD. (1999) 13 NWLR (Pt. 636) P. 626 OSUJI VS ISIOCHA (1989) 3 NWLR (Pt 111) 623, PRODUCE MARKETING BOARD VS. A. O. ADEWUNMI (1972) 11 SC 111.

B It is further submitted that the appellant simply failed to specifically plead and lead evidence in strict proof of the claim of loss of use, the Court of Appeal is not making a case for the respondents or that it descended into the arena, it is merely illustrating the gap between the evidence and the pleading.

C Now, in law of tort, there is a distinction between special and general damages. A special damage is such a loss that will not normally be presumed as the natural consequence of the defendant's fault, but which depends on the special circumstances of the case and therefore it must be specifically pleaded and strictly proved by evidence. General damages on the other hand is such a loss which
D flows naturally from the defendant's act. It needed not be specifically pleaded, it arises by inference of law and need not be proved by evidence, it suffices if it is generally averred in the pleading. See INCAR VS. BENSON (1975) 3 SC 117. In the case of BRITISH TRANSPORT COMMISSION VS. GOURLEY (1956) A. C. Pg. 185 at Page 206
E GODDARD CJ stated:-

“xxxxxxx damages are always divided into two main parts. First, there is what is referred to as special damage, which has to be specially pleaded and proved. This consists of out- of - pocket expenses and loss of earnings incurred down to the date of trial, and
F is generally capable of substantially exact calculation. Secondly, there is general damage which the law implies and is not specially pleaded. This includes compensation for pain and suffering and the like, and, if the injuries suffered are such as to lead to continuing or permanent disability, compensation for loss of earning power in the
G future.”

See ODULAJA VS. HADDAD (1973) 11 SC 351. ODUMOSU VS. A. C. B. (1976) 11 SC 55. ROCKONOH PROP CO. LTD. VS. NITEL (2001) 14 NWLR (Pt. 733) 468.

H The claim by the appellant for loss of use of his vehicle after the accident is clearly a claim in special damage which must be specially pleaded and proved. I have above reproduced the appellant's pleading with reference to the claim. In the instant case the appellant

is claiming loss of use as special damage by quantifying the amount he spent at the rate of N2,500.00 per day. But the pleading went too short to discuss the reasons for the expenditure whether the vehicle was used as a taxi and earned N2,500.00 per day or whether the appellant was forced to hire a vehicle at the rate of N2,500.00 per day for his business or for doing any thing of the like or for private personal use. As shown above, the law will not infer the damage, it must be properly and specifically particularized in the pleading and adequate evidence given. See the case of B.E.O.O. VS. MADUAKOH (1975) 12 SC 91. It is improper for a court to award special damages on incomplete and inconclusive facts given from memory which have not been documented elsewhere. See AGBAJE VS. JAMES (1967) NMLR 49, AGUNWA VS. ONUKWE (1962) 1 ALL NLR 537. The particularity of the pleading and the evidence must be such that the losses are exactly known and accurately measured See IMANA VS. ROBINSON (supra).

It must be measurable and quantifiable. The nature of the pleading and the evidence must establish the entitlement to such damages which will immediately lend to the measurement and quantification of the losses. See DUMEZ VS. OGBOLI (1972) 3 SC 196. But where there has been a proper and adequate pleading, the unchallenged evidence, without more can constitute sufficient proof of special damage. See ADEL BOSHALI VS. ALLIED COMMERCIAL EXPORTERS LTD (1961) ALL NLR 917, ODULAJA VS. HADDAD (supra) N. M. S. L. VS. AFOLABI (1978) 2 SC 79. But clearly in the case at hand, the pleading and the evidence of the appellant, which I have reproduced above are not in the nature and character required in claims of special damages perhaps that might be the reason or reasons why the trial judge did not bother to refer to the claim in his judgment. I have referred to the judgment of the Court of Appeal on this matter and applying the principles recited above, I agree with the decision that the appellant had failed to adequately plead for the special damages in his Statement of Claim and the evidence led is clearly insufficient to ground a claim of special damages. I accordingly resolve the 1st issue against the appellant. The Court of Appeal was right to have disallowed the claim for special damages for loss of use as testified and pleaded by the appellant.

“Was the Court of Appeal right in reducing the general damages and costs awarded the appellant in this case?”

It is submitted that in a proper case an appellate Court has the power to review the award of damages granted by the trial Court. Learned counsel referred to the cases of ALLIED BANK OF NIGERIA LTD. VS. AKABUEZE (1997) 6 NWLR (Pt. 509) Page 374, HIS HIGHNESS UYO VS. NIGERIAN NATIONAL PRESS LTD (1974) 6 SC 103, in which case ZIK'S PRESS LTD VS. ALVAN IKOKU (1951) 13 WACA P. 188. It is submitted that the circumstances does not exist in this case to warrant the Court of Appeal to reduce the general damages from N200,000.00 to N20,000.00, learned counsel refers to IMAH VS. OKOGBE (1993) 9 NWLR (Pt. 316) 159 ONAGA VS. MICHU (1961) NSCLR page 101, IJEBU ODE LOCAL GOVERNMENT VS. BALOGUN & CO LTD. (1991) 1 NWLR (Pt. 166) P. 136. BOLA VS. BANKOLE (1986) 3 NWLR (Pt. 277) Page 141.

It is submitted that the respondents merely stated before the lower Court that the sum of N200,000.00 awarded as general damages was , excessive, they never gave any circumstances warranting the reduction of the damages, especially in a situation where the respondents did not even testify to question the suffering of the appellant and the other occupants of the car. Learned counsel referred to the case of STEPHEN OKONKWO VS. NNPC (1989) 4 NWLR (Pt. 115) 296 at 319.

For the respondents it is submitted that by their pleadings the appellants claimed special and general damages and that the award of N200,000.00 as general damages was too high having regard to the pleaded claim of N300,000.00. Learned counsel referred to the case of W. A. S. A VS. KALLA (1978) 3 SC 21.

It is submitted that it is trite law that an appellate Court will only interfere with award of general damages under certain conditions and learned counsel referred to UBA PLC VS. BTL IND. LTD (2006) 19 NWLR (Pt 1013) P. 61 OKAFOR VS. OKITIAPE (1973) 2 SC 49; UBN LTD VS. ODUSOTE BOOKSTORES LTD. (1995) 9 NWLR (Pt. 421) p. 55; OSUJI VS. ISIOCHA (1989) 3 NWLR (pt. III) P. 623.

It is submitted with reference to the issue of costs, that the appellant had failed to canvass any argument on the reduction of the costs from N80,000.00, as fixed by the trial judge, to the N10,000.00 as assessed by the Court of Appeal. The failure to advance any argu-

ment amounts to an abandonment of the complaint and this Court should discountenance it, vide EGBEDU VS. I. G .P. (2006) 5 NWLR (Pt. 972) P. 146 at 155, NWOSU VS. MBADUGBA (2000) 1 NWLR (Pt. 641) 486.

Now, the principles upon which an appellate court acts in an appeal against the quantum of damages are well settled and were stated thus by Greer, LJ in FLINT VS. LOVELL (1935) 1 KB 354 at P. 360 ***“In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make, in the judgment of this court an entirely erroneous estimate of the damage to which the plaintiff is entitled.”*** See EZEKWE VS. OTOMEWO (1958) WNLR 61 at 68.

An appellate Court may only interfere with an award of damages when the award is manifestly too high or too low or is based on the wrong principles of law. See AFRICAN NEWSPAPERS LTD VS. CIROMA (1996) 1 NWLR (Pt. 423) 156. It is also the law, that the appellate Court ought not upset an award of damages merely because if it had tried the matter it would have awarded a higher or lesser amount. See JAMES VS. MIDMOTORS (NIG) LTD. (1978) 11 - 12 SC 31 ZIK's PRESS LTD VS. IKOKU (supra) WILLIAMS VS. DAILY TIMES (1990) 1 NWLR (Pt. 24) 1 In the case of OLOTOTIMI VS. IGE (1993) 8 NWLR (Pt. 311) 257. This Court held that it is not enough for the trial Court (or the Court of Appeal) to simply award damages in action where damages are recoverable without giving any reasons as to how it arrived at what amounted to the reasonable damages. See also UMUNNA VS. OKWORAIWE (1978) 6 -7 SC 1., I. C. C. VS. AJANAKU (1969) 6 NSCC 44 at 50. But, before an appellate Court will interfere, it must be satisfied that the trial Court had acted upon a wrong principle of law in making the award or that the amount awarded is so ridiculously low or extravagantly high as to make an erroneous estimate of the damages see ONAGA VS. MICHOSUPRA.

Now with reference to the issue of general damages in this case, the learned trial judge merely stated:

“General damages is assessed at N200,000.00.”

dealing with the reduction of the costs awarded by the learned trial judge by the Court of Appeal. I take it the appellant has abandoned the complaint. So issue No. 2 is resolved against the appellant and this means that the appellant's appeal fails in toto.

I shall now deal with the cross-appeal. The cross-appellant has also identified two issues for the determination of the appeal as recited above. B

Issue 1

"Whether the Court below rightly confirmed the award of special damages for the cost of the repairs of the appellant's car and medical bills for the appellant and three other occupants of the car." C

It is submitted on behalf of the cross-appellants, that the cross-respondent's claims for repairs of his vehicle and the medical bills are claims of special damages which must be specifically pleaded and strictly proved. Learned counsel referred to the cases of SALEH VS. B. O. N. LTD (2006) 6 NWLR (Pt 976) 316, AJIKAWO VS. ANSALDO (NIG) LTD (1991) 2 NWLR (Pt. 173) 359. It is further argued that the onus of strict proof is always on the claimant even if the defendant did not challenge or contest the claim. Learned counsel referred to the cases S. P. D. C. (NIG) LTD VS. TIEBO VII (supra) E and A. C. B. VS. NEKA B. B. B. MANUFACTURING (SUPRA). It is submitted that the lower courts were in error to have accepted as strict proof, the mere estimate of the cost of repairs made by U. T. C. engineer who was not called as a witness. Learned counsel referred F to the case of A. G. OYO STATE VS. FAIR LAKES HOTELS No. 2 (1989) 5 NWLR (Pt. 121) 255. SOMMER VS. F. H. A. (1992) 1 NWLR (PART 219) 548, ADEDEJI AND SONS MOTORS LTD VS. IMMEH (1996) 8 NWLR (Pt. 465) 240.

It is further submitted that the cross-respondent had also G failed to give oral evidence of the cost of each item of treatment, the appellant merely pleaded medical bills without a break down of the items of treatment carried out on him and other occupants of the car.

Now, in this judgment I have discussed the circumstances H in which an appellate court may review the award of damages by a lower court. I do not think it is necessary for me to repeat the principles while dealing with this issue. It must be understood that the cross-appellant is not complaining on the adequacy of the pleading of the special damages for the repairs of the car and medical bills but

of the proof offered by the appellant/cross respondent. I have also discussed the principles of the law on this point.

Now, the Court of Appeal as per the judgment of OGUNTADE JCA (as he then was) affirmed the judgment of the trial court in that the cross-appellant did not challenge the evidence led by the cross-respondent in proof of the special damages. The learned justice stated, at page 126 of the printed record, thus:-

“The respondents under their second issue contend that the plaintiff did not prove special damages claimed for the repairs of the vehicle and hospital bills. xxxxxxxx

The plaintiff tendered the estimate from the U. T. C. Motors and hospital bills/receipts as Exhibits D-D1 and E-E1. Testifying in support of the claim the plaintiff said:

“I called UTC workshop Apapa and two engineers were sent to evaluate the damages. I reminded Dayo Dosunmu that some of us were still hospitalized and that a medical bill will be sent to them UTC Motors estimated the damages and issued an estimate of repairs to be done, xxxxxxxx I made an advance payment of N50,000.00 for medical treatment the balance of N112,000.00 plus has not been paid. xxxxxxxxxxxxxxxxxxxx.”

“The defendants did not even contest the amount claimed as estimates of repairs. This could have been done by showing that the estimates made were excessive. Now in NIGERIAN M. SHIPPING LINE VS. AFOLABI (1978) 2 SC 79, the Supreme Court at pages 81-82 discussed the Approach when a claim of Special damage is not disputed xxxxxxxxxxxx.”

The defendants in paragraph 6 and 7 of their Amended Statement of Defence had pleaded:-

“6. The defendants in answer to paragraph 26 of the Statement of Claim say that the said UTC estimate is exaggerated, excessive and unreasonable in the circumstances.

7. The 1st defendant being dissatisfied with the report of the UTC Engineers their own engineering MENS FOLA Engineering Consultants to inspect the vehicle and submit an estimate of repairs. The defendants will found and rely on the report at the trial of this suit.”

Through out the hearing, the defendants did not make the case that the amount claimed by the plaintiff for repairs was excessive

xxxxxxxxxxxxxxxxx.”

Thus, although the cross-appellant said the estimate was excessive and that they would tender another estimate at the hearing of the matter, they failed to do so. As a matter of fact, the appellant cross-respondent was not seriously cross-examined on the issues of the items of special damages. As mentioned above, an appellate court will only interfere with the award of damages if there was no evidence to justify the award or the appraisal of the facts was unrealistic. The cross-appellants in the instant case merely pleaded that the amount claimed were “**excessive exaggerated and unreasonable**” and offered no evidence in support of such a claim when they even averred that they would do so. Considering all the circumstances of the case, it cannot be correct to say that the appellants offered no credible evidence in support of the claims of special damages. See CHANRAI VS. KHAWAM (1965) 1 ALL NLR 182.

It has been held by this court, in the case of OSHINJINRIN & OTHERS VS. ALHAJI ELIAS & OTHERS (1970) 1 ALL NLR 153, that the “rule about special damages is that it must be strictly proved, this does not however mean that the law has set a minimum measure of evidence or that the law has laid down a special category of evidence required to establish special damages. What is required is that the claimant should establish his claim by credible evidence that he is entitled to special damages.”

On the issue of whether Exhibit E - E, the estimates of the UTC engineers were hearsay and inadmissible, this is clearly a new issue for which no leave of this court nor of the Court of Appeal was sought and obtained. It is raised for the first time in this court. I have discountenanced it. Both parties pleaded estimates by engineers, and both parties averred to rely on the estimates, the appellant’s estimates of repairs were admitted in evidence without objection and the cross-appellant failed to adduce any evidence to the contrary, in my view, it is unjust at this stage to object to the document. If an objection was raised at the trial, the appellant would have called the engineers to testify. Unchallenged evidence ought to be accepted by the court as proof of the facts contained therein. Under the circumstances documentary evidence may be admitted in court proceedings through any witness by consent of the parties or without any objection See IGBODIM VS. OBIANKE (1976) 9 - 10 SC 79. The wrongful

admission of evidence may not necessarily fatally affect the decision of a court unless the use of the evidence has brought about a miscarriage of justice or if the evidence is in any event inadmissible. See UGBALA VS. OKORIE (1975) 12 SC 1. I accordingly resolve issue No. 1 against the cross-appellant.

B Issue 2

“Whether the Court below rightly awarded the sum of N20,000.00 in favour of the appellant as general damages.”

C It is submitted that the further award of N20,000.00 as general damages amounts to double compensation. It is submitted that this court should reduce it or out rightly refuse it.

D I have in this judgment discussed the attitude of an appellate Court in relation to an appeal on award of damages. In BENSON VS. ASHIRU (1967) 1 ALL NLR 184 it was held that an appeal court can easily decide whether or not damages awarded by the lower court shall be upheld or reviewed only when such lower court has set out the reasoning by which it arrived at such estimate. The learned justice of the Court of Appeal considered the sum of N200,000.00 awarded by the trial judge as general damages on the high side after an award of special damages and thus reduced the amount of general damages to N20,000.00. I do not think that the amount of N20,000.00 as general damages in addition to the proven special damages is too high under the circumstances. It is evident that the appellant and members of his family were hospitalized as the result of the accident. They had suffered inconveniences, injuries, pains and sufferings. The law allows general damages in addition to the special damages in such circumstances. I find no merit in this complaint.

F In the result both the appeal and the cross appeal are rejected by me and both are dismissed. I make no order as to costs

G _____

ONNOGHEN JSC

H I have had the benefit of reading in draft the lead judgment of my learned brother MUSDAHPER JSC just delivered. I agree with his reasoning and conclusion that both the main appeal and cross appeal have no merit and should be dismissed.

I have nothing useful to add as my learned brother has dealt

with the issue for determination exhaustively.

I therefore order accordingly and abide by the consequential orders made in the said lead judgment including the order as to costs.

Appeal and cross appeal dismissed.

B

MUHAMMAD JSC

I read before now the judgment of my learned brother Musdapher, JSC. I agree with his reasoning and conclusion. I too dismiss both the main and the cross appeals. Each party shall bear his/its own costs. C

CHUKWUMA-ENEH JSC

D

I have read before now the judgment prepared by my learned brother Musdapher, JSC and just delivered. I agree with his reasoning and conclusion that the appeal and cross-appeal should be dismissed for want of merit. And I so dismiss the appeal and cross-appeal. I endorse the order of costs as stated in the lead judgment. E

ADEKEYE JSC

F

I was privileged to read in draft the judgment just delivered by my learned brother, D. Musdapher JSC. I entirely agree with his reasoning and conclusion.

My Lord had meticulously considered all the issues raised for determination - I therefore have nothing useful to add. I also conclude that the main appeal and cross appeal have no merit, they are therefore dismissed. I adopt the consequential orders particularly the order made as to costs as mine. G

H