IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2020

CORAM: YEBOAH, CJ (PRESIDING)
BAFFOE-BONNIE, JSC
APPAU, JSC
PWAMANG, JSC
AMEGATCHER, JSC

CIVIL APPEAL
SUIT NO. J4/42/2019

22ND JANUARY, 2020

KWADWO APPIAH ……. PLAINTIFF/APPELLANT/RESPONDENT

VRS

KWABENA ANANE ……. DEFENDANT/RESPONDENT/APPELLANT

JUDGMENT

AMEGATCHER, JSC:-

We have been called upon as judges of the apex court of the land to have a second look on appeal at this personal injury case. It started from the High Court, Kumasi; was reviewed and ruled upon on appeal by the first intermediate appellate court sitting at Kumasi; and has again on appeal been assigned to us for a final and conclusive resolution. The defendant in the High Court suit who is now the appellant shall hereafter be referred to in this opinion as defendant. The respondent, Kwadwo Appiah, who was plaintiff in the High Court, will hereafter maintain his designation as the plaintiff.

The facts of this appeal have the temptation of arousing the sympathy of any trier of fact. It is not surprising that one of the hard-hitting areas of attack by counsel for the defendant against the learned and respected judges of the Court of Appeal is that they

were swayed by sentiments in reaching a decision in this matter. However, those who ply their trade as Barristers and Advocates as well as those of us who act as referees in the competing claims presented to the court know or are deemed to know that a court of law does not make decisions based on emotions, sympathy or sentiments. The time-tested rule for sifting evidence and testing the credibility of the respective cases presented by parties before the court and making a decision one way or the other is evidence. It is against this background that this case was fought in the High Court and Court of Appeal; and it is by the same yardstick that the case, now on appeal before the apex court will be considered.

The events, giving rise to this case, started on 28th April, 2009. The plaintiff, a timber merchant of 39 years at the time of the incident acting through his friend and business partner called Sammy hired the defendant's truck numbered AS 5471-X to cart his timber logs from Diaso near Dunkwa to Mim in the then Brong Ahafo Region. On reaching a place called Kwabena Kumah, the vehicle was involved in an accident. The plaintiff, Sammy and the driver of the vehicle sustained serious injuries and were sent to Goaso Government Hospital. Because of the seriousness of the injuries suffered, the plaintiff was later transferred to the Komfo Anokye Teaching Hospital in Kumasi for further treatment where he received intensive care from 30th April, 2009 to 4th September, 2009 before being discharged to continue his treatment as an outpatient.

The plaintiff on 20th June, 2012, after seeking extension of time within which to file a writ sued the defendant, owner of the vehicle for the sum of Gh¢400,000.00, special and general damages for the negligence of defendant's driver, servant and employee resulting in the injuries suffered in the accident. According to the plaintiff, the vehicle was not insured, did not have a road worthiness certificate and the driver was also not licensed by law to drive the vehicle at the material time.

The defendant did not deny the fact that he owned the vehicle and that the road worthiness certificate and insurance had both expired. The defendant, however, denied the fact that the driver in control of the vehicle at the material time was his driver or servant. According to the defendant, one Kudjar Sumiala rented the timber truck for two

days and gave him his driver to assist him with the carting of the logs. However, the said Kudjar Sumiala ended up using the truck for four days without his knowledge, consent or approval. During the four-day period, defendant's driver left the truck in the care of the hirer after the two days to attend to an emergency call concerning his mother's illness at the Sunyani hospital. According to the respondent, it was Kudjar Sumiala who failed to return the vehicle to him and rather asked a driver called Kwame Paul to drive the vehicle and continue with the cutting of the logs. The defendant, therefore, contended that the said Kwabena Paul was on a frolic of his own when the accident occurred and, therefore, he cannot be vicariously held liable for the tort of Kwabena Paul. The defendant also contended that he had no contract with the plaintiff and that the plaintiff neither rented the truck nor was he a paid passenger at the time of the accident and at best could be described as someone on a frolic of his own.

After trial at the commercial division of the High Court, Kumasi, the learned trial judge delivered his judgment on 30th October, 2015. The trial court found that the accident was not caused by the negligent driving of the servant of the defendant because the evidence of the police was that the vehicle developed a fault and fell down. The judge, however, held that by permitting a vehicle to ply the road without valid documentation i.e., road worthiness certificate and insurance as well as authorising an unlicensed driver to drive the truck, the defendant should be held vicariously liable for the plaintiff's claim. The trial judge at the end of the day awarded the plaintiff general and special damages in the sum of Gh¢20,000.00 because there was no evidence before him that the plaintiff incurred expenses on medication; and also the plaintiff failed to call the medical doctor who examined him and gave him the medical report as a witness.

Dissatisfied with the award of damages by the trial court, the plaintiff appealed to the Court of Appeal. The defendant, however, did not cross-appeal against the findings of fact made by the trial court. On 22nd May, 2018, the Court of Appeal reversed the award on the assessment of damages made by the trial judge. The Court of Appeal awarded the plaintiff non-pecuniary losses in the sum of Gh¢140,000.00, pecuniary loss to the tune of Gh¢10,000.00 and costs of Gh¢10,000.00. The defendant was dissatisfied with

the award by the Court of Appeal and has appealed to this court on a number of grounds. The defendant is requesting us to reverse the decision of the Court of Appeal and restore the award made by the trial court.

The grounds of appeal canvassed in the defendant's notice of appeal were:

1. The judgment of the Court of Appeal is against the weight of evidence on record.
2. The Honourable Court of Appeal erred in upholding the learned trial judge's holding that the Defendant/Respondent/Appellant was negligently liable because his truck, at the time of the accident had no valid document and/or the driver in charge of the vehicle on the day of the accident had no license.
3. The quantum of damages awarded by the Honourable Court of Appeal was not only excessive but also the awards are not supported by the totality of the evidence placed before the trial court.
4. The Honourable Court of Appeal erred when it attributed the Plaintiff/Appellant/Respondent's alleged 100 percent loss of genital functions to the accident dated 28th day of April 2009.
5. The Honourable Court of Appeal erred when it held by implication that the Plaintiff/Appellant/Respondent had a contract with the Defendant/Respondent/Appellant for him to be held liable vicariously.
6. The Honourable Court of Appeal erred when it held by implication that the accident dated 28th day of April 2009 was negligently caused by the driver in charge of the Defendant/Respondent/Appellant's vehicle.
7. The cost awarded against the Defendant/Respondent/Appellant was harsh and excessive.
8. Additional Grounds of Appeal to be filed upon the receipt of the record of proceedings.

In his submissions before this court, counsel for the defendant first argued grounds 1, 3 and 4 together and then grounds 2, 5 and 6. We intend to take all the six grounds together since they are all subsumed under the omnibus ground 1, i.e., the judgment was against the weight of evidence.

In summary, counsel for the defendant submitted that the evidence on record did not support the conclusion reached by the Court of Appeal because the plaintiff's case was so sweeping, unsubstantiated, doubtful and unreliable that it cannot be said to be reasonably probable. In particular counsel submitted that the accident was not negligently caused by the driver who drove the truck as held by the trial judge and that the plaintiff did not lead concrete evidence to support matters he was challenged on such as the expenses of Gh¢60,500.00 allegedly being medical expenses when the total receipts tendered was below Gh¢2,000.00; and no evidence was led to show that the plaintiff incurred more than what is contained in the receipts he tendered. According to the defendant, the 100% loss of the function of plaintiff's genital organ or penis was not a direct causation from the accident because the medical report exhibit 'A' did not say so or make that connection. Counsel for the defendant also faulted the plaintiff for failing to call the neurosurgeon Dr Kofi Vowotor who authored the medical report exhibit 'A' to explain how he came by his findings. Finally, counsel attacked the award of the lump sum of Gh¢140,000.00 for non-pecuniary loss as purely sentimental.

The Court of Appeal rejected the findings of the trial court that the accident was not negligently caused by the driver of the defendant. This is what the trial judge concluded in his judgment:

"No where did the Police indicate that the Driver of the vehicle drove negligently on that day. In fact, they stated "the truck developed a fault and fell down". This was what the Police told the Court caused the accident. In the circumstances I hold that the accident was not negligently caused by the one who drove the car on that day."

It appears to us that the learned trial judge got confused and contradicted himself in the course of reviewing the evidence placed before him. After making that finding, further down the judgment, the trial judge came to a firm conclusion that the plaintiff had a contract with the defendant for the hire of the truck and that the driver who drove the truck that fateful day was the agent of the defendant. The trial judge then castigated the

defendant for permitting an unlicensed driver to drive the truck which in itself did not have an insurance and a road use certificate. The trial judge concluded that:

"In sum, I hold that since the defendant knew at the time he gave out the truck that there were no valid documents covering the same, and also authorized an unlicensed Driver to drive the truck, he cannot turn round to say he is not liable to Plaintiff's claim, since he should not have put the car on the road in the first place. I therefore find him vicariously liable in the circumstances."

From the passage above, the contradiction in the trial judge's judgment was that if the accident was not caused by the negligence of the driver of the defendant, then no tort would have been committed for the defendant to be vicariously held liable and be mulcted in damages. It is this obvious contradiction which weighed on the Court of Appeal in reversing the finding of fact absolving the defendant's driver of negligence.

We have reviewed the evidence and the law on the tort of negligence. Our opinion is that the conclusion arrived at by the Court of Appeal holding the driver of the defendant liable in negligence cannot be faulted. We wish at this juncture to restate that vehicle owners and their servants or agents have a duty to comply with the laws governing the operation and use of their vehicles on the road. On the peculiar facts of this case, the applicable law for use of vehicles on the road is the Road Traffic Act, 2004 (Act 683) and its regulations, the Road Traffic Regulations, 2012, L.I. 2180. The laws forbid an owner and a person who has control or custody of a vehicle from permitting an unlicensed driver to drive a vehicle on the road. The law also bans the use of vehicles which do not have a road use certificate from plying a road. The relevant provisions are sections 94 and 112 of Act 683. Section 94 provides as follows:

"(1) A person shall not

(a) drive or use; or

(b) permit any other person to drive or use

any motor vehicle on a road unless there is in force in respect of the motor vehicle a road use certificate provided for under this Act."

Section 112 provides:

"(1) A person shall not drive a commercial vehicle unless that person obtains in respect of that vehicle the relevant licence issued by the Licensing Authority.

(2) A licence issued under this section shall be valid for the period specified in the licence and may be renewed upon application."

In the case of insurance, the applicable law is The Motor Vehicles (Third Party Insurance) Act, 1958 (NO 42). Section 3 provides that no person shall use, or cause or permit any other person to use, a motor vehicle unless there is in force in relation to the user of that motor vehicle such a policy of insurance or such security in respect of third party risks as complies with the provisions of the Act.

Laws passed by Parliament are there to be obeyed by all citizens and residents. Otherwise they become useless, lose their significance and defeat the mischief the passage of the law sought to cure. Our society is regrettably plagued by indiscipline, impunity and recklessness by drivers on the roads. This accounts for the reasons why this jurisdiction is classified as high risk in vehicular accident. It appears the defendant and his driver joined the bandwagon and flouted the mandatory laws regulating the use of vehicles on the road in the hope, possibly to escape the monitoring eye of the authorities. Unfortunately for the defendant, luck escaped him and he fell into the long arms of the law. He was fortunate to have escaped being banned from holding a driver's licence as provided for in the law and sentenced to pay only a small fine after his prosecution. Despite the criminal prosecution, his liability under civil law was unaffected.

The fact that the vehicle which caused the accident had no road use certificate implies its tyres, brakes, engine, lamps, mirrors, wheels, axles, steering, suspension, wings, fenders, mud guards, wheel, mud flaps and trailer among others have not been tested

and certified to be worthy for use on the road. An owner or the person in control of such a vehicle who places it on the road endangers the motoring public and when an accident occurs cannot escape blame albeit caused by mechanical failure. In the absence of any explanation why the defendant's unlicensed driver drove a vehicle which was not road worthy, we will agree with the Court of Appeal and hold the defendant vicariously liable for the tort of his driver.

Counsel for the defendant further attacked the Court of Appeal for its acceptance of the evidence adduced at the trial that the plaintiff lost 100% of the function of his genital organ or penis as a result of the accident. The defendant argued that the loss was not a direct causation of the accident because the medical report exhibit 'A' did not say so or make that connection. Further, the neurosurgeon Dr Kofi Vowotor who authored the report was not called to explain how he came by his findings.

It is a basic legal proposition in admissibility of evidence, though, subject to some exceptions which do not apply in this case that where evidence is tendered and not objected to the party who should have objected would be deemed to have admitted it. Again, if evidence is tendered and a party fails to cross examine so as to challenge its veracity, the party, subject to some exception which are inapplicable here would be deemed to have admitted the contents of the evidence. In this appeal, evidence on record from the testimony of the plaintiff reveals that he was admitted at the hospital for 4 months and after his discharge he was issued with a medical report by the doctor. The record further shows that plaintiff tendered the medical report which was admitted without any objection to its admissibility and was marked exhibit "A". During the cross-examination of the plaintiff on 10th July, 2015 and his recall on 31st August, 2015, not a single question was put to the plaintiff challenging or discrediting the medical report. The question which came close to the medical report was that put to the plaintiff that it was not correct his genital organ was no longer functioning correctly which he denied. Caught in between a terse question that plaintiff's organ was functioning properly and a medical report which described in vivid form the injuries suffered by the plaintiff as assessed by medical professionals from the Komfo Anokye Teaching Hospital which was tendered in

evidence without objection and was not discredited in cross-examination, we would opt for, accept and rely on the medical report exhibit "A". The report concluded that:

"We assess his loss of genital functions as one hundred percent (100%). Loss of mobility as fifty (50%) and psychological injury as sixty percent (60%)."

Having accepted the medical report in evidence without objection and having failed to discredit the report, its authenticity and credibility cannot be put in doubt by the defendant at this appellate stage. In this regard, the failure to call the neurosurgeon who authored the report is not fatal to the plaintiff's case as the report in evidence speaks for itself. The Court of Appeal in its appraisal of the evidence accepted the assessment in the medical report and stated as follows:

"Clearly the Appellant has no hope at all about performing any sexual activity to wit, having sexual intercourse……One may take judicial notice of the cultural environment in which we live where sexual performance or ability to use one's genital organs is very crucial. Indeed, some people believe that when one is deprived of the genital functions, as the Appellant has in the instant case, then there is no reason to live."

In our opinion, the Court of Appeal had a basis from the evidence adduced at the trial in coming to that conclusion on exhibit 'A' and cannot be faulted in its opinion on the total loss of sexual capacity by the plaintiff.

Another dissatisfaction by counsel for the defendant against the judgment of the Court of Appeal is the assessment and award of a lump sum of Gh¢140,000.00 for non-pecuniary loss and Gh¢10,000.00 for special damages. According to the defendant, the award was purely sentimental. In the opinion of counsel for the defendant, no concrete evidence was led to support matters the plaintiff was challenged on such as the expenses of Gh¢60,500.00 allegedly made as medical expenses when the total receipts tendered was below Gh¢2,000.00.

This leg of the submissions by the defendant had to do with the assessment of damages. The trial judge awarded Gh¢20,000.00 general and special damages against the defendant. The reasons given by the trial court for this award was because the consultant neurosurgeon who was not called was the best person to tell the court why the plaintiff is entitled to Gh¢400,000.00. The Court of Appeal relied first on the evidence adduced at the trial that after the accident, the plaintiff was trapped in the truck for several hours before gaining his freedom by which time he had sustained severe injuries, could not walk and use his left wrist again, unable to achieve an erection and suffered incontinence. Secondly the Court of Appeal relied on the medical report exhibit "A" which stated clearly that the plaintiff was involved in a road traffic accident and was rushed to the Goaso Government Hospital and later transferred to the Komfo Anokye Teaching Hospital. The condition in which he was brought was stated in the report, the findings of the health professionals and the assessment of incapacity. Thirdly, the court of Appeal took into consideration the age of the plaintiff at the time of the incident, his expected working life for another 21 years in the timber industry and awarded him a non-pecuniary loss of GH¢140,000.00. In our view, there was nothing sentimental about the factors which influenced the Court of Appeal in the award it made.

However, in assessing the damages, the trial court failed to consider heads of damages which by law ought to have been considered in such personal injury claims. The Court of Appeal citing the case of **Bradford v Pickels [1895] AC 587** considered some of the heads of damages which it classified into pecuniary and non-pecuniary loss before making its award. It is our opinion that having regard to the injuries, the award by the Court of Appeal is manifestly low. It is our further opinion that if the Court of Appeal had considered all other heads in personal injury claims, its award would have been commensurate with the injuries sustained by the plaintiff. We are, therefore enjoined to correct what the two courts failed to do.

In the decision of this court in **Standard Chartered Bank (Ghana) Ltd v Nelson [1998-99] SCGLR 810 at 824** Hayfron-Benjamin JSC restated the

circumstances under which an appellate court will interfere with an award of damages by lower courts as follows:

"In reference to the authority immediately cited above, it is clear that an appellate court may reverse or vary the award of damages on the grounds (a) "that the Judge acted on some wrong principles of law" or, (b) "that the amount awarded was so extremely high or so very small as to make it, in the judgment of this court an entirely erroneous estimate of the damage to which the plaintiff is entitled." See also Zik's Press Ltd v Ikoku (1951) 13 WACA 188 at 189 and Frabina Ltd v Shell Ghana Ltd, [2011] SCGLR 429

We think the grounds stated in the dictum above form the basis for us to take a second look at the damages awarded by the trial and intermediate appellate courts.

Admittedly, awarding damages in the form of monetary compensation for personal injury claims is not an easy task. One cannot conjure any figure at all or have a table with some guidelines or by any arithmetic exactitude establish what is the amount of money which would represent pain and suffering which a person like the plaintiff has been occasioned in an accident. No two claims in such injuries can be compared and figures of one cannot be imposed on the other. This is where the dilemma and challenge lie. It is a similar challenge Lord Morris was confronted with in the English case of **H. West & Son, Ltd. v Shephard [1963] 2 All E.R 625 at p. 631, H.L**. when he opined that **"so far as possible comparable injuries should be compensated by comparable awards".** Adding to these words of Lord Morris above, we believe the facts of each case should determine which compensation the court should award in claims for personal injuries.

In the past, the courts in this jurisdiction have been frugal in the award of general damages for the loss of vital organs in running down actions, serious motor accident claims, other negligence related actions such as industrial injuries, medical malpractice injuries, and reckless as well as indisciplined behaviour on the roads in the country leading to permanent disfigurement of innocent persons. One justification cited by counsel for the defendant in his statement of case is this court's case of **Delmas Agency**

Ltd v Food Distributors International Limited [2007-2008] SCGLR 748 at 760 where Twum JSC discussing the quantum of general damages a plaintiff was entitled to in a breach of contract claim stated that **"the catch is that only nominal damages are awarded.**" While Twum JSC did not lay down any general rule that in all claims for general damages only nominal damages are awarded, it appears to us that Twum JSC's statement has been misread and taken out of context and therefore cannot be applied to personal injury claims.

In the dynamism of the present world, the time has come to be forward looking and award realistic and comparable compensation to comparable injuries to adequately compensate for the long-term deformity, mental torture and unimaginable losses suffered. This, we believe, will give affected persons hope that the State for that matter and the justice delivery system will not abandon them in their times of need. It will also serve as a deterrent to vehicle owners, drivers, professionals and workers into whose care precious lives of people are entrusted. It is precisely because of this that at common law, exemplary, punitive or aggravated damages are awarded in appropriate cases to demonstrate the court's disapproval of such outrageous conduct on the part of defendants. In this jurisdiction as well, damages sometimes must bite as one of the measures to fight the high rate of accidents and indiscipline on the roads.

In assessing the sum to which the plaintiff is entitled, we have taken guidance from the words of Cockburn C.J. in the case of **Phillips v. South Western Railway Co. (1879) 4 Q.B.D. 406,** where the learned Chief Justice expressed the general approach of the courts in the assessment of damages for personal injuries. At 407- 408 he stated:

"**But we think that a jury cannot be said to take a reasonable view of the case unless they consider and take into account all the heads of damage in respect of which a plaintiff complaining of a personal injury is entitled to compensation. These are the bodily injury sustained; the pain undergone; the effect on the health of the sufferer, according to its degree and its probable duration as likely to be temporary or permanent; the expenses incidental to**

attempts to effect a cure, or to lessen the amount of injury; the pecuniary loss sustained through inability to attend to a profession or business as to which, again, the injury may be of a temporary character, or may be such as to incapacitate the party for the remainder of his life".

In the English Court of Appeal case of **Roach v. Yates [1938] 1 K.B. 256** the following guidelines were laid down when assessing damages for personal injuries similar to those suffered by the plaintiff in this case as follows:

"(i) pecuniary losses and expenses down to the date of the action;

(ii) prospective loss of wages;

(iii) nursing attendance, a sum sufficient to cover a reasonable weekly payment for that purpose during the period of his life as shortened by the accident; and

(iv) past and future physical and mental pain and suffering, and the shortening of his life, a sum, in estimating which the following consideration should be kept in view, namely, that no amount of money, however large, could fully compensate the plaintiff for these injuries, and that the most that could be done was to award him such compensation as was reasonable in all the circumstances of the case"

Again in **H. West & Son Ltd. v Shephard (supra)** at page 636, Lord Devlin catalogued the various heads of damages a court may consider in a claim for personal injuries in the following words:

"The case raises a fundamental question on the nature of damages for personal injury. There must be compensation for medical expenses incurred and for loss of earnings during recovery; these are easily quantified, whether as special or as general damage. Then there is compensation for pain and suffering both physical and mental. This is at large. It is compensation for pain and suffering actually experienced. Loss of consciousness, however caused,

whether by the injury itself or produced by drugs or anaesthetics, means that physical pain is not experienced and so has not to be compensated for; and this must be true also of mental pain. Then there is or may be a temporary or permanent loss of limb, organ or faculty. Whether it is the limb itself that is lost or the use of it is immaterial. What is to be compensated for is the loss of use and the deprivation thereby occasioned. This deprivation may bring with it three consequences. First, it may result in loss of earnings and they can be calculated. Secondly, it may put the victim to expense in that he has to pay others for doing what he formerly did for himself; and that also can be calculated. Thirdly, it produces loss of enjoyment, loss of amenities as it is sometimes called, a diminution in the full pleasure of living. This is incalculable and at large. This deprivation with its three consequences is something that is personal to the victim. You do not, for instance, put an arbitrary value on the loss of a limb, as is commonly done in an accident insurance policy. You must ascertain the use to which the limb would have been put, so as to ascertain what it is of which the victim has actually been deprived."

Armed with these heads of damages, we ask ourselves what the appropriate level of compensation that this court acting as the last hope of the citizens should award to adequately compensate the plaintiff in this personal injury claim will be? Fortunately for us, a similar question was posed by Lord Devlin in **H. West & Son, Ltd. v Shephard (supra).** At page 638 he asked: "What is meant by compensation that is fair and yet not full?" His answer was:

"I think it means this. What would a fair-minded man, not a millionaire, but one with a sufficiency of means to discharge all his moral obligations, feel called on to do for a plaintiff whom by his careless act he had reduced to so pitiable a condition? Let me assume for this purpose that there is normal consciousness and all the mental suffering that would go with it. It will not be a sum to plumb the depths of his contrition, but one that will enable him to

say that he has done whatever money can do. He has ex hypothesi already provided for all the expenses to which the plaintiff has been put and he has replaced all the income which she has lost. What more should he do so that he can hold up his head among his neighbours and say with their approval that he has done the fair thing?"

There could not have been any better answer than this and we wholly adopt it.

On the basis of the authorities cited above we now proceed with our assessment under the various heads of damages and the justification for so awarding.

The plaintiff was a timber merchant of 39 years in 2009 when the accident occurred. He will be 50 years this year, 2020. He is unmarried but a father of one child. He has no prospects of fathering any child again. Marrying a woman who will permanently be with him as a wife is out of the question as he pleaded that no woman will marry him. It is not in doubt that as a result of the accident, he became paralysed and this condition is likely to remain for the rest of his life. He went on the truck as a whole human being and after the accident came out on a stretcher and has been so ever since.

The learned trial judge described the paralysis of the plaintiff in his judgment that he saw him **"in court carried in and out of the court room anytime the case was called".** In addition, plaintiff has gone through considerable pain and suffering, cannot work as a timber merchant again and has no prospects of getting any paid job from any employer. It is not out of place to describe plaintiff as a total wreck and a citizen of this country with reduced capacity to enjoy the pleasures of life again. He is incapable of doing anything by himself, cannot get an erection again and is totally incontinent for the rest of his life. The plaintiff 's condition is the worst that can happen to any human being. It could have been avoided but for the recklessness on our roads, coupled with impunity, indiscipline and lack of value for human life by drivers who ply the roads in this jurisdiction.

The medical report put his "**loss of genital functions as one hundred percent (100%). Loss of mobility as fifty (50%) and psychological injury as sixty percent (60%).**" All these factors must be taken into account in the award. Added to this is inflation, i.e., the purchasing power of money and the economic factors of the day. In June, 2012 when the action was instituted claiming GH¢400,000.00, the exchange rate of the United States Dollars to the Ghana Cedis was US$1=GH¢ 1.89. In January 2020, the value is US$1=GH¢5.60. The value of the initial claim made by the plaintiff has diminished over the eight years that the case had lingered on in the courts. This will be a factor in our final award.

On the award of GH¢10,000.00 special damages, the law is clear. Special damages must be specifically proved and aimed at compensating the affected person for actual loss suffered. The plaintiff tendered quite a number of receipts in evidence during the trial. However, examining the record reveals that most of the receipts were ineligible and the actual amount could not be ascertained. It is however not in doubt that the plaintiff incurred expenses on hospital bills, drugs, transportation and caregivers who carried him up and down. The trial court awarded GH¢20,000.00 to the plaintiff for general and special damages to cover some of the expenses incurred on his medication. The defendant did not appeal against this award by the trial judge.

The Court of Appeal after reversing the trial judge's findings and award on the non-pecuniary damages awarded the sum of GH¢10,000.00 for pecuniary losses such as his medical expenses and travelling cost in and out of the hospital. Since the trial court had the benefit of reviewing the evidence tendered and having regard to our present predicament in putting the actual receipts and invoices together, the justice of the case warrants that we do not disturb the award of GH¢10,000.00 made by the Court of Appeal out of the original figure of GH¢20,000.00 awarded by the trial Court.

After considering all the factors discussed above, we will award plaintiff the following damages under the following heads:

Pre-trial loss of earnings----------GH¢ 5,000.00

Special damages for Medical expenses, etc----------GH¢ 10,000.00

Future loss of earnings for twenty-one years
at GH¢ 800.00 per month----------GH¢ 201,600.00

Nursing attendants for two nurses at GH¢ 500.00
per month for 21 years----------GH¢ 126,000.00

General damages for pain, suffering, mental agony,
loss of amenities, loss of expectation of life, physical
disabilities & loss of sexual pleasures----------GH¢ 280,000.00

Total----------GH¢ 622,600.00

We note that the total figure being awarded to the plaintiff far exceeds what the plaintiff has claimed on his writ of summons. The question is do we have jurisdiction to award a higher amount than what was claimed by the plaintiff. While we believe that as the final court of the land we have jurisdiction to make any award and grant any relief as the justice of the case warrant, there is authority to justify that we have power to make the award beyond the claim on the writ of summons. In the case of **Amakom Sawmill & Co. v Mansah [1963] 1 GLR 368, at 375-376, Akufo-Addo JSC** faced with a similar dilemma when re-assessing on appeal damages for personal injuries resolved it as follows:

"There is a point of procedure to which I would like to avert. It will be observed that the learned trial judge assessed the damages at £G3,100, but felt obliged to enter judgment for £G3,000 because the respondents claimed £G3,000 on their writ. The practice in this country is that in all money claims, whether they be for liquidated or unliquidated amounts. a specific figure must, for revenue purposes, be claimed. It seems such a pity that a plaintiff in the

circumstances of this case should be awarded less damages than a court has found to be due, merely because of the technicality of having claimed a lesser figure on the writ. In such circumstances the ends of justice will be much better served if the court exercises its powers under Order 28, r. 12 of the Supreme [High] Court (Civil Procedure) Rules to amend the figure claimed to coincide with the figure to which in its view the plaintiff is entitled."

Order 16 Rule 7(1) of High Court Civil Procedure Rules, 2004, C.I. 47 is the equivalent of Order 28, r. 12 of LN 120 A. It provides as follows:

"**For the purpose of determining the real question in controversy between the parties or of correcting any defect or error in the proceedings, the Court may, at any stage of the proceedings either of its own motion or on the application of any party, order any document in the proceedings to be amended on such terms as to costs or otherwise as may be just and in such manner as it may direct**."

We, therefore, exercise our powers by invoking Order 16, r. 7 of C.I. 47 and amend the claim in the indorsement to the Writ of Summons filed on 20th June, 2012 from GH¢ 400,000.00 to GH¢ 622,600.00.

Since ground 7 on costs was not argued, the conclusion is that it has been abandoned. In the result, the appeal lacks merit and is dismissed in its entirety.

We vary the award of pecuniary and non-pecuniary damages awarded by the Court of Appeal from GH¢150,000.00 to GH¢ 622,600.00. The plaintiff shall recover the sum of GH¢ 622,600.00 from the defendant.

N. A. AMEGATCHER

(JUSTICE OF THE SUPREME COURT)

ANIN YEBOAH
(CHIEF JUSTICE)

P. BAFFOE-BONNIE
(JUSTICE OF THE SUPREME COURT)

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

COUNSEL

CHARLES AGBANU WITH NANA BOSOMPEMAA ANTWI FOR THE PLAINTIFF/APPELLANT/RESPONDENT.

IBRAHIM ADAMS WITH CHARLES LESBAN FOR THE DEFENDANT/RESPONDENT/APPELLANT.