

IN THE MAGISTRATES' COURT OF RIVERS STATE
IN THE PORT HARCOURT MAGISTERIAL DISTRICT
HOLDEN AT PORTHARCOURT BEFORE HIS WORSHIP. G.C.AMADI ESQ.
SITTING AT SMALL CLAIMS COURT AT CHIEF MAGISTRATE COURT 8, ON THE 2nd
FEBRUARY 2024.

SUIT NO. PMC /SCC/218/2023

VICTOR U.UZOUCHUKWU ESQ

}

CLAIMANT

AND

EVELYN CHINYERE EGBUJOR

}

DEFENDANT

JUDGMENT

This is the final judgment in this suit wherein the claim before the court, dated and filed on the 22ND December, 2024 is for:

- i The sum of N235, 000 being the balance of the cost of the parts.
- ii The sum of N130, 000 being the cost for the penal beating of the entire frame and the repainting of the entire body of the car.
- iii The sum of #500,000 as damages for lost of Jobs, inconveniences suffered, loss of time and loss of money.

In proof of their case, the Claimant called one witness and the defendant never appeared in this matter.

On the 12th January, 2024, an application to enter plea of not liable for the Claimant was granted and the matter was set down for hearing.

On the 16th of January, 2024, the Claimant testified as CW1 and stated that he is the Claimant. He applies to adopt his witnesses deposition on oath filed on the 15th of January, 2024. In the said deposition on oath the CW1 stated thus that the Defendant operates a construction block manufacturing business and is the owner of a truck with registration number (ABUJA) ABC-549-XR

That on Friday the 1st of December 2023, the Defendant's business truck with registration number (ABUJA) ABC-549-XR lost its brake and rolled back into his Toyota Corolla car with registration number (Anambra) AWK-419RQ. That the Defendant's truck upon rolling into his car damaged his car's bonnet, one headlamp and completely destroyed the front paint of the said car.

So, he approached and requested that the Defendant repair his said car which was damaged but instead the Defendant only paid the sums of N40, 000 and N10, 000 which is a total of N50,000 only and has refused to make further payments.

That due to my urgent need for the use of his car, and the Defendant's refusal to restore his car, he had to purchase the parts of his car that she damaged of which she paid the following;

- a. The sum of N65,000 to replace the damaged bonnet,
- b. The sum of N23,000 to replace the damaged headlamp,
- c. The sum of N7, 000 to replace the bonnet inches damaged.

Testifying further, the CW1 stated that after he made these purchase, he was issued with a receipt with a total cost of N95, 000 and he has a copy of the receipt. That after he purchased these car parts, he took my damaged car to a mechanic workshop where he was further charged the following;

- i. The sum of N30,000 for penal beating to straighten the damaged frame of the car,
- ii. The sum of N30,000 to re-spray the paints of the replaced bonnet and the affected parts of the front of the car.

That he was also issued with an invoice of a total of N60, 000 and I have a copy of the receipt.

That however, after the car was repainted, it was discovered that car's main frame is not straight as the impact caused by the Defendant's car affected the entire firm of the car. That this caused the mechanic to penal beat the entire frame and body of the car and he had to pay an additional cost of N130,000 (One Hundred and Thirty Thousand Naira) and a receipt was issued to him. That however and due to lots of activities that occurred during the end of the year, he has lost the receipt and all effort to recover same or even a counter copy from the mechanic has proved abortive.

That I spent a total of N235, 000 (Two Hundred and Thirty Five Thousand Naira) on the cost of parts and repairs.

Further, the CW1 testified that he has consistently contacted the Defendant through her whatsapp number 08064572473 of which she only read and only responded by sending a payment receipt of the N10,000 she sent to him. That he took a snapshot of my whatsapp conversation with the Defendant using my Samsung S8 smart Phone and printed it out using his HP printer and that both machines were at that time in their working conditions and he did confirm the snapshot and will rely on it during trial.

That the Defendant is not bothered at all about the damages she caused him despite knowing that the damage of his car is occasioning him several difficulties, inconvenience, loss of time, loss of money and job. That apart from the N50, 000 she paid to him, she has not made any further payments till date and that that since the 1st of December, 2023, the Defendant damaged his car, the car became operational on the 10th of January, 2024 more than 40 days after the accident.

That he is a private practicing legal practitioner and heavily rely on his said car in his everyday activities and work. That the non-availability of the car which was due to the damage caused by the Defendant, have made him to suffer significant loss of jobs and money and as he could hardly attend courts to represent his numerous clients.

Further, the CW1 deposed that he served the Defendant with a letter of demand filed on the 05/12/2023 through a bailiff of the court and that notwithstanding receiving the letter, the Defendant has refused to make any payment.

The said cash credit invoice dated 2nd December, 2023, and another dated 4th December, 2023 printout of whatsapp messages, four pictures and a demand letter was identified in evidence and is marked as Exhibit A, B, C and D1, D2, D3, and D4 and E respectively. In conclusion, the CW1 stated that she wants the Court to grant their claim as follows:

- i The sum of N235, 000 being the balance of the cost of the parts.
- ii The sum of N130, 000 being the cost for the penal beating of the entire frame and the repainting of the entire body of the car.
- iii The sum of #500,000 as damages for lost of Jobs, inconveniences suffered, loss of time and loss of money.

At the end of the evidence of CW1, in the light of the affidavit of service before the Court dated the 12th day of January, 2024, the defendant was foreclosed from cross examining the CW1 and from defence and the matter was adjourned for judgment.

That said, I will proceed to consider the case of the parties in the light of the relevant laws. I have noted the essence of the claim have also taken cognizance of the evidence before the court. I have couched a lone issue for determination and that is:

Whether The Claimant Have Discharged The Burden of Proving His Claim Before The Court.

Suffice is to say that before the court adjourned the matter for hearing and heard the matter, the court always satisfied itself that:

1. The processes have been duly served on the defendant
2. That the time before the date of service and the date of hearing was sufficient for the defendant to have appeared had he intended to do so.

It is also important to note at this point that none of the facts stated by the Claimant's witness above was controverted in evidence or denied by the defendant and so will be deemed by this court as admitted. The law is that facts admitted need not be proved by evidence. Please refer to the case of Ayoke V. Bello (1992)10 NWLR (Pt 218) pg 380 Ratio 2; O.A.A Cooperative Society Vs. NACP Ltd (1999) 2NWLR (Pt 590) Pg 234, Ratio 4 to the effect that what is not denied is deemed admitted and what is admitted need not be proved.

On the undisputed and clear evidence before the court, the court will hold that the claimant has discharged the burden of proving that she is entitled to his 1st and 2nd Claim before the Court.

On the Claim for general damages: The correct assessment for general damages remains an award that compensates the injured party and restores it to the position it would have been had the breach or injury not occurred. As a result, the assessment of damages is based purely on damages flowing naturally from the breach. *Stephen Okongwu V NNPC* (1989) 4 NWLR (Pt 115) 296 @ 306h-307a; *GFK Investment Ltd V Nigeria Telecommunications Plc* (2009) 15 NWLR (Pt 1164) 344; @ 384D-E.

The award is quantified by what in the opinion of a reasonable person is considered adequate loss or inconvenience which flows naturally, as generally presumed by law, from the act or conduct of the Defendant. It does not depend upon calculation made and figure arrived at from specific items. See *Odulaja v Haddad* (1973) 11 SC 357; (1973) 11 S.C. (Reprint) 216; *Lar v Stirling Astaldi Limited* (1977) 11-12 SC 53; (1977) 11-12 SC (Reprint) 106 and *Osuji v Isiocha* (1989) 6 S.C. (Part II) 158; (1989) 3 NWLR (Part 111) 623

To buttress the inconveniences and harm flowing therefrom, the CW1 had testified that the damage of his car is occasioning him several difficulties, inconvenience, loss of time, loss of money and job. That apart from the N50, 000 the defendant paid to him, she has not made any further payments till date and that that since the 1st of December, 2023, the Defendant damaged his car, the car became operational on the 10th of January, 2024 more than 40 days after the accident.

That he is a private practicing legal practitioner and heavily relies on his said car in his everyday activities and work. That the non-availability of the car which was due to the damage caused by the Defendant, have made him to suffer significant loss of jobs and money and as he could hardly attend courts to represent his numerous clients.

The award is quantified by what in the opinion of a reasonable person is considered adequate loss or inconvenience which flows naturally, as generally presumed by law, from the act or conduct of the Defendant. It does not depend upon calculation made and figure arrived at from specific items. See *Odulaja v Haddad* (1973) 11 SC 357; (1973) 11 S.C. (Reprint) 216; *Lar v Stirling Astaldi Limited* (1977) 11-12 SC 53; (1977) 11-12 SC (Reprint) 106 and *Osuji v Isiocha* (1989) 6 S.C. (Part II) 158; (1989) 3 NWLR (Part 111) 623

It is obvious from the unchallenged testimony of the CW1, that he has suffered some inconveniences arising from the refusal of the defendant to pay for the cost of the damage on the car caused by the defendant.

IT IS THUS ADJUDGED that the Defendant to pay the Claimant the sum of **N235, 000** being the balance of the cost of the parts.

IT IS THUS ALSO ADJUDGED that the Defendant to pay the Claimant, the sum of **N130,000** being the cost for the panel beating of the entire frame and the repainting of the entire body of the car.

IT IS FURTHER ADJUDGED that the defendant do pay to the Claimant, the sum of **N100,000** as general damages.

AND IT IS ORDERED that the defendant to pay the Claimant, the aforesaid sum of **N235,000** and **N130,000** and **N100,000** representing the balance of the cost of repairs, cost of panel beating of the entire frame and the repainting of the entire body of the car and general damages respectively.

AND IT IS FURTHER ORDERED that the defendant do pay to the Registrar of this court, the total sum of **N465,000 (Four Hundred And Sixty Five Thousand Naira only)** representing the total sum on the balance of the cost of the parts; the cost for the panel beating of the entire frame and the repainting of the entire body of the car and the award for general damages.

TAKE NOTICE –That if payment is not made as above ordered, a warrant or warrants may issue requiring an officer of the court to levy the sum above mentioned, to the Claimant together with further costs.



G.CHINYERE AMADI. ESQ.
CHIEF MAGISTRATE G.D.I