

ORIGINAL ARTICLE

SAFETY AT WORK LAW AND NEGLIGENT BEHAVIOUR IN RELATION TO PUBLIC VEHICLE ACCIDENTS IN CAMEROON

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ABSTRACT

It is not unlikely in Cameroon to be involved in road accidents. The debate as to who is responsible has been a bone of contention among travellers for years. Some have put the blame on the government for inadequate laws and road unworthiness. Others blamed the drivers for being 'cash crazy' and reckless while others have blamed the companies for hiring drivers that are not qualified and not putting safety policies in place. In all these cases, the degree of accidents that had taken place on these roads is alarming and someone therefore has to shoulder the responsibility for there to be a change. This article reviews the concept of the law of negligence citing cases of negligent behaviours from all parties involved. The aim of this article is to create awareness on the ongoing cases of accidents, both reported and unreported for government intervention and to raise public awareness.

Key words: Law of Negligence, passengers, employers, employees, government

INTRODUCTION

Globally, it is approximated that 0.8 million road accident fatalities occur annually and 20 to 30 million people are injured yearly with many having to deal with disabilities for a long term (Jacobs & Aeron-Thomas, 2000). It is estimated that 70% of these accidents and fatalities take place in developing countries (Transport Research Laboratory, 2004). This shows that while the numbers of fatalities decrease in the developed countries, the reverse is the case in developing countries. Also, most of the victims that are involved in these fatalities (those reported) in developing countries, usually die from this tragedy as opposed to developed countries. Both the death rate and the percentage of people injured per vehicle are higher in developing countries than developed countries (Ghee, Silcock, Astrop, & Jacobs, 1997).

Developing countries like Cameroon have rapid urbanization; the growth rate of traffic is high leading to congestion. There is also limited regulation in public transportation. Because most of the inhabitants of Cameroon depend on public transportation, it is

important that safe, effective and efficient transportation services which are affordable and accessible are provided. Poliak, Forrest and Semanová (2012) iterated that public transport services provide inhabitants satisfactory basic transport needs for example travelling to schools, work and/or healthcare facilities. Also, Wallis et al. (2010) and Zhanbirov and Kenzhegulova (2012) posited that some of the necessities for public transport services is social and environmental factors.

According to (Vasconcellos, 2001), there are severe problems faced by public transport even though these problems vary across countries and cities. In the third world countries, public transport systems are plagued with high corruption rates, inefficiency, services that are overcrowded and undependable, roadways that are congested and slow down buses and an environment to operate in that is undeniably uncoordinated and chaotic (Pucher & Korattyswaroopam, 2004). Most of the problems facing Cameroon in public bus

transport has been characterised as negligent acts. While others have blamed the government, a vast number of people have also put the blame on public transport companies and public bus drivers.

LAW OF NEGLIGENCE

Based on the case of *Loghelly Iron & Coal v M'Mullan* [1934], Lord Wright defined negligence as such:

“Negligence means more than heedless or careless conduct.....it properly connotes the complex concepts of duty, breach and damage thereby suffered by person to whom the duty was owing.”

From the definition, there are three essential characteristics under the law of negligence. The first is the duty of care which is owed by the defendant to the plaintiff, the breach of the said duty, damage caused by the duty breached and lastly a connection that is reasonable close between the duty breached and damage which occurred (Haji Buang, 1990). The following question is then asked “Given the set of facts present in this situation, what would a reasonable person (for example, an administrator, management, bus driver, and passenger) have done or not done?” Cambron-McCabe, McCarthy and Thomas (2004) had added that persons can only be held accountable for the effect of their acts or omissions that cause injury to others.

One of the duties that is owed by the employer to his employees is to take reasonable care in providing a working environment that is safe. When the employer breaches this duty, he is then held liable at common law and statute through the law of tort. Adams (2003) had stated that actions related to injury suffered by the employee are not considered a breach of contract but an action brought under tort.

In the case of *Rock v. School District* [1986], it was said that in a school setting, teachers and administrators “are not the insurers of safety of students . . . and may be charged with reasonable care such as a parent of ordinary prudence would exercise under comparable circumstances.” And that the teachers and administrators can be held liable only for those things that are foreseeable. This means that foreseeability is an important element in the determination of negligence claims.

Duty of Care

a) Establishing a duty of care

The cardinal and most critical element in negligence is the duty of care. The plaintiff has to prove to the court that the defendant owed him a duty of care. In the case of *Donoghue v Stevenson* [1932], Lord Atkin introduced the “neighbour principle” being an obligation by law to all persons. According to this principle, every individual is required to take reasonable care when committing an act or omission which is reasonable foreseeable so it does not cause injury or harm to another person (Rogers, 1989). A neighbour is anyone who is close to the person committing the act that ought to take reasonable steps in his act or omission so the individual close to him is not affected (Rogers, 1989).

In the case of *Donoghue v Stevenson* [1932], the plaintiff, Donoghue had bought ginger beer as a gift to his friend manufactured by the defendant bottled in an opaque bottle. After the plaintiff’s friend consumed some of the beer, the remaining one was poured out and a decomposed snail was shockingly found in it. It was alleged that the plaintiff’s friend became ill. The argument the plaintiff had was that the manufacturer did not ensure the consumer’s safety and as such injuries were suffered. The defendant did argue that the appellant was not a party to the contract and therefore had no privity of the contract and had no right to bring an action under the contract. Moreover, in the law of contract, the plaintiff must prove all aspects of a contract have been fulfilled to bring an action under it.

But the decision of the House of Lords was that the plaintiff had to be compensated under the ‘neighbour principle’ as the defendant owed a duty of care towards the plaintiff which means the defendant must ensure that the consumers (his neighbour) suffers no injury after consuming his product.

b) Breach of Duty of Care

After the plaintiff has established a duty of care, he must then prove that the duty of care has been breached. This is done by the ‘reasonable man’. The plaintiff must prove that the acts and omissions of the defendant were below a “reasonable man” standard. A “reasonable man” was defined by Lord Macmillan in the case of *Glasgow Corporation v Muir* [1943] as “an ordinary competent man exercising that particular act. In the case of a medical man, negligence means failure to act

in accordance with the standard of reasonably competent medical men at the time. There may be one or more perfectly proper standards, and if he conforms with one of these proper standards, then he is not negligent.”

c) Causation

After the duty of care is established, the next important element to establish is that the breached duty of care caused damage to the plaintiff. In the case of the Government of Malaysia & Ors v Jumaat Mahmud & Anor [1977], Judge Raja Azlan Shah stated that “.....must be commensurate with her opportunity and ability to protect the pupil from dangers that are known.....It is not a duty of insurance against harm but only a duty to take reasonable care for safety of the pupil.....The sole question.....is a question of, causation.....the injury.....in fact caused by wrongful act of the teacher.....it cannot be said that it was reasonably foreseeable.” From the above statement;

- (i) the plaintiff must prove that the risk or damage was foreseeable,
- (ii) the plaintiff must also prove that the defendant did not take reasonable steps to prevent the damage, and
- (iii) after the plaintiff have been able to prove point 1 and 2, he has established an important element exist under the law of negligence which is damage caused due to the breach of duty by the defendant.

In establishing if the damage was caused by the breach of duty by the defendant, the court will use the “but for” test. In the case of JEB Fasteners Ltd. v Marks Bloom & Co. [1983], the plaintiffs, JEB Fasteners Ltd brought an action in court against Marks Bloom & Co, the defendants with a claim that the defendant prepared a report on the company negligently which caused the plaintiff loss and damage who had planned to take over the company.

The decision of the court after using the “but for” test was that even though the defendants had negligently prepared the report, it was not the cause of the loss and damage because the plaintiffs decision to take over the company was clearly shown and it did not depend on the report even if negligence was proven.

d) A Reasonable Close Connection between the Damage and the Breach of Duty

The final element to prove under the law of negligence is that there was a reasonable close connection between the duty breached and the damage. The test for this element was established in the Wagon Mound (1961) case. In this case, the defendant had oil spilled on the vessel of the plaintiff at the Sydney Harbour. The spilled oil flowed to the docks and after only 60 hours, it caught fire which caused damage to the docks where ships were undergoing repairs.

The supreme court of New South Wales held that the fire was a direct caused of the oil spilled and therefore ruled in favour of the plaintiff. During the appeal at the Privy Council, it was held that the plaintiff must show evidence that the damage he suffered was foreseeable to be able to recover damages. But the plaintiff unfortunately failed to prove that and the Privy Council ruled in favour of the defendant.

Law of Negligence on Occupational Safety and Health in Public transportation

According to Nolo (2019), most of the accidents in public transport companies are caused by driver’s negligence, poor road conditions or defect from the automobile. There are various ways the driver can be negligent in a car accident case. These ways include being under the influence of drugs or being intoxicated while driving. One of the most common causes of accident where the driver is held negligently responsible is inattention to the road. Once negligence has been proven under the conditions discussed above, damages can then be awarded to the injured party.

In Cameroon, public transport drivers are known as cash-crazy drivers. They drive vehicles which are not road worthy (though usually with road worthiness certificates), and jam pack helpless passengers in their vehicles. “It is common, especially along rural roads to see a five seater car carrying over 8 persons,” Sam Titi, a concerned road user noted. Even in the Yaounde city center, we observed that township cabs designed for five persons carry six and at times seven persons. Such overloading usually hinders the driver from freely changing the gear, thereby leading to some of the accidents recorded in the city. Also, drivers have been faulted for driving under stress as well as disrespecting road signs with impunity.

In the case of Pestaño vs. Sumayang [2000], it was held that Pestaño being a professional

driver should have known that it was a serious manoeuvre to overtake at a junction. This means he did not exercise caution. However, the employer is presumed negligent in the supervision or selection of his employees. But if the employer is able to prove that he exercised the duty of care in the selection and supervision of his employees, then the breach of the duty of care is then passed to the driver. But in this case the court held that the accident was as a result of the negligence of the employer (Metro Cebu) in supervising his employees as the employee used a defective speedometer. The court held that the lack of supervision caused the accident.

Transport companies in Cameroon have ignored the sanctity of human life and that workers need to stay conscious of safety so as to increase productivity and save the lives of their customers (passengers). Projecting the sanctity of human life is important in any public transport safety strategy. Since Title VI of the 1992 Labour Code of Cameroon does not make provision for safety policy, most public transport companies have resulted to the neglect of the importance of establishing safety standards for their companies. These, many people regard as negligence from the companies. Also, because of the driving behaviours of drivers, public transport companies are being blamed for not recruiting the right employees.

In another case of *Zulueta vs. Pan American World Airways* [1973], the court held that when passengers contract to be transported, they are not contracting to be transported only. They are obligated to be treated with kindness and respect by the employees. They are shielded from any misconduct and abuse from the driver and that the carrier is liable for actions of damages by the passenger if the driver or conductor insults, humiliates or hurts the feelings of the passenger. Though this might be the case, according to Nolo (2019), if there is an accident because the passenger was involved in insulting or caused the driver to be inattentive, the passenger will be held liable.

Also, poor road conditions do certainly cause lots of car accidents especially in Cameroon. These road conditions include potholes, cracks on the road, poor street signage among others. If a driver has an accident because of the condition of the road, the passenger has the right to claim not just against the driver but also the government or agency in charge of the road. In the case of

Gorringer v Calderdale MBC [2004], Mrs Gorringer the plaintiff was injured severely when she sharply braked before the crest of a country road and landed on the path of a bus that was coming. She filed charges in court against the local authority that the authority should have used suitable signs to warn her that she was heading towards a dangerous part of the road. She also claimed that the local authority had failed to carry out measures to improve the safety of the road and that the local authority has not taken reasonable care to ensure the road is safe. She brought both claims under section 41(1) Highways Act 1980 and Section 39(2) Road Traffic Act 1988 respectively.

The plaintiff Mrs. Gorringer succeeded at the court of first instance but did not prevail in the court of appeal and before the House of Lords. The claim she brought under section 41 failed because the Lordships found that the duty to take reasonable care by virtue of the design of the road and signage did not include danger to traffic. Secondly, on section 39, the Lordships found that the public duty imposed by section 39, did not generate a common law duty of care.

Passengers themselves sometimes negligently contribute to these accidents that have characterized this industry. This contributory negligence could arise from situations where the passenger failed to warn, caution, protest, or show direction to the driver in the face of danger that is foreseen, as was in the Oregon case of *Elling v. BlakeMcFall Co* [1917]. In the Kansas case of *Cooper v. Chicago, R. L & P. Ry* [1983] it was held that the passengers must always be at a lookout, observing obvious dangers, warning the driver and protesting against countering them and demand leaving the car if the driver refuses to heed to the warnings. Other similar jurisdictions have approved similar rules. But there is no case law or safety legislation in Cameroon giving such rights to passengers as of now. The law is inadequate to effectively govern safety issues in this industry. Thus many regard it as negligence from the government.

The drivers, public transport companies and passengers are not the only ones to blame. In Cameroon, the government has failed in implementing safety policies to effectively govern the transport sector. On August 20th 2017, 20 people lost their lives in an accident at Muyuka in the South West Region leaving many others wounded. Not long, on September 6th 2017, there was a fatal motor

accident involving another public transport bus at the Mutegene-Tiko highway (Mbonwoh, 2017, February 27). With an unconfirmed number of deaths and number of people injured. These accidents happen almost every day and some of these newspapers and news channels have failed to report. In 2016, the World Health Organization (WHO) stated that from 2010-2015, 20,000 people lost their lives in Cameroon through road accidents. WHO also stated that road accidents cause 40% fatalities more than malaria kills in Cameroon and Boko Haram (notorious terrorist group) inclusive. The rates at which these accidents occur have increased with the years. People no longer consider themselves safe taking public bus transport.

Similarly, cars in bad condition or which are defective according to Nolo (2019) can be very dangerous. These car defects are not limited to factory defects but also problems that develop over the life of the car. For example during the life of the car, the brakes could wear out, the accelerator, the steering or lights. The employer has the duty to ensure the car is always in a safe condition. But if the driver drives the car knowing of the defect, he then becomes liable under the law of negligence.

In the case of *Yobido vs. CA* [1997], the decision of the court was that the tire that exploded was accidental and that human factors were part of the situation. The court held that the fact that the tire was new never implied it was free from defects from the manufacturing or was mounted properly on the vehicle. The common carrier still had to prove that it was not his negligence that resulted to the accident and caused injury and death to the passengers.

From the discussion above, no single party is to blame for the reoccurrence of public vehicle accidents in Cameroon. Both the drivers, companies, passengers and government are to blame. This shows how important it is for all parties in the public transport companies to take reasonable care in the exercise of their duties to avoid accidents and injuries or other dangerous occurrences at the workplace. Establishing the causes of the numerous accidents occurring in the workplace in the transport sector in Cameroon could be traced as elaborated in above from the negligence not just from the public transport companies but also the government and passengers as well. To solve this problem and encourage a more

accident free environment, the following recommendations are made.

RECOMMENDATION

1. Both the government, public transport companies and customers (passengers) must apply the duty of care to not cause harm or put the 'neighbour' on harm's way.
2. Bad roads should be constantly ungraded to avoid such accidents.
3. The duties and responsibilities of the driver, the public transport companies and the passengers with regards to safety must be clearly spelt out
4. The Government should make provision for a safety policy to be established by every public transport company.
5. Drivers need to be taught technical, social and psychological skills to be a safe, responsible professional driver.
6. Owners and operators need to be encouraged to maintain their vehicles to a much higher standard than at present. Preventative maintenance can improve performance and productivity and extend the operational life of the vehicle. A safe, smart vehicle is also more likely to attract passengers than an unsafe and poorly maintained vehicle and also passengers might be encouraged to afford a slightly higher fare for such a vehicle/service. Owners/operators also need to understand that regular vehicle maintenance is a cost effective business practice which can minimise vehicle downtime and costly, time consuming breakdowns whilst in service.

CONCLUSION

Negligence is a big issue in public transport companies especially in Cameroon and very little research has been carried out to find out what drives these negligent behaviours. It is recommended that future research examines this. Provision of public transport services, enforcement of existing (and new) legislation in terms of vehicle condition, numbers allowed to operate among others needs to be strict. Operational regulations and procedures must also be implemented rigorously to ensure that safe and effective service provision prevails for the benefit of passengers and all road users (Transport Research Laboratory, 2000).

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