LIBERIA TRACTOR & EQUIPMENT COMPANY (LIBTRACO), by and thru it General Manager, J. D. READER, Appellant, v. **RUTH S. PERRY**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIX'TH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: April 17, 1995. Decided: July 28, 1995.

1. The owner of a vehicle is answerable for the negligent tort committed by its driver under the principle of respondent superior, which holds the driver as the owner's agent.

2. A person sustaining damages inflicted on his person by another does not have to wait until after the completion of the criminal prosecution of the person inflicting the injury before commencing an action of damages resulting from the personal injuries.

3. The statute of limitations applicable to civil action is not tolled by prior pendency of the criminal prosecution.

4. In order to qualify as an expert, a witness must possess special knowledge of some subject on which the jury's knowledge would presumably be inadequate without expert assistance.

5. A person qualified by professional, scientific or technical training, or by practical experience, in regard to a particular subject or field of endeavour which gives him special knowledge not shared by persons in the ordinary walks of life, may testify as an expert on questions coming within the field of his training and experience.

6. The jury may award special damages in excess of the amount pleaded under proper circumstances, consistent with the requirement of notice and the evidence adduced at the trial.

7. The jury may award general damages in excess of the amount prayed for.

8. An issue of fact is to be determined solely by the jury on the greater weight and sufficiency of the evidence, and such preponderance of the evidence may be established by a single witness who may testify against a greater number of witnesses to the contrary.

Appellee in these proceedings, Ruth S. Perry, was injured in a motor car accident on April 6, 1989, when her car collided with appellant's car on Somalia Drive, Monrovia. She was subsequently flown to the United States of America upon medical advice and was hospitalized at the New York University Medical Center, where she underwent surgery.

She made two additional trips to the United States for further surgeries and treatment thereafter. Appellant paid the medical expenses for the first operation, but refused to pay the expenses for the second and third operations, as well as for the damages that appellee sustained as a result of the accident. Accordingly, appellee instituted an action of damages for personal injuries against appellant in the Civil Law Court for the Sixth Judicial Circuit. Upon a regular trial, the jury awarded appellee US$58,942.65 for special damages and US$900,000.00 for general damages, and the court entered a judgment confirming the verdict, from which appellant noted its exceptions and announced an appeal to the Supreme Court.

On appeal, appellant contended that its driver having been held responsible for the accident, should have been tried and convicted before the appellee could use her injuries from the accident as a basis for her action of damages. Appellant also contended that the court erred when it confirmed the verdict of the empanelled jury awarding appellee special damages of US$58,942.65 and general damages ofUS$900,000.00, when the appellee had prayed for special damages of only US$48,000.00 and general damages of only US$800,000.00. Appellant also contended that the amount awarded for general damages was excessive and hence illegal

The Supreme Court found that the appellee pleaded special damages for her medical attention and hospitalization in the sum of US$48,740.41, but gave notice that she will produce evidence of the additional expenses that she incurred at the trial; and that at the trial the appellant did produce documents into evidence showing expenses she underwent totalling US$58,942.65 as special damages. The Court also found that the plaintiff/appellee proved her case as to her injury and the special damages by a preponderance of the evidence.

On the question of the general damages, the Court found evidence in the records which not only confirmed the extent of the injury sustained by appellee, along with the likelihood that she could have a spinal chord problem ten to fifteen years after the injuries, but also that the appellee will need a yearly medical follow-up in New York. Accordingly, the Supreme Court holding that the evidence at the trial established the

negligent tort of the appellant against the appellee, and that the verdict for US$900,000.00 as general damages accords with what the trial records reveal, affirmed and confirmed the verdict.

Elijah Garnett for appellant. *Charles W. Brumskine* for appellee.

MR. JUSTICE HNE delivered the opinion of the Court.

When this case was called, the appellant's counsel did not appear though he filed a brief. The appellee's counsel was granted leave to argue his brief.

The facts of the case are that appellee, Ruth Perry, was injured in a motor car accident on April 6, 1989 when her car collided with the car of the appellant on Somalia Drive, Monrovia. The appellee was travelling towards Paynesville on the Monrovia-Gardnersville highway while the vehicle of the appellant was travelling towards the Free Port of Monrovia. Mrs. Perry and three other occupants of the two cars were rushed to the ELWA Hospital immediately after the accident. Mrs. Perry was however transferred to the John F. Kennedy Medical Center and later to the St. Joseph's Catholic Hospital due to the serious nature of her injuries. She was subsequently flown to the United States of America on April 15, 1989 upon medical advice and was hospitalized at the New York University Medical Center. She was accompanied by Dr. Robert Kpoto, an Orthopaedic Surgeon in Liberia, who attended her in flight during her travel to New York.

The appellee, Mrs. Perry, underwent surgery in the United States, after which she returned home. In late 1989 she returned to the United States for further treatment, during which time she had a second operation. She returned home, but had to go to the United States for a third operation upon the advice of her American attending physician, one Dr. Lamont, who attended her during the first two operations. She returned home after the third operation. LIBTRACO, the appellant, paid the medical expenses for the first operation, but refused to pay the expenses for the second and third operations.

Both the vehicles of Mrs. Perry and LIBTRACO were damaged in the accident. The police charged LIBTRACO's driver with reckless driving resulting into injuries. Upon the intervention of the Liberian Senate (Mrs. Perry being a member of that body at the time), LIBTRACO paid Mrs. Perry US$2,000.00 which she owed the Nurse who accompanied her. Upon the further intervention of the then Minister of State for Presidential Affairs, G. Alvin Jones, LIBTRACO also paid Mrs. Perry US$5,455.00

for her car which was damaged in the accident. Her demand for compensation for the personal injuries which she suffered was rejected by LIBTRACO.

Mrs. Perry therefore instituted an action of damages for personal injuries against LIBTRACO on 31st July, 1992. In her complaint she prayed for US$48,748.41 plus additional bills to be produced at the trial as special damages and general damages in an amount not less than US$800,000.00.

Upon the disposition of the law issue, the case was ruled to trial. At the conclusion of the trial, the jury awarded the appellee, Mrs. Ruth Perry, special damages in an amount of US$58,942.65 and general damages of US$900,000.00. The trial judge rendered a judgment confirming the verdict.

The appellant, LIBTRACO, timely completed the appellate jurisdictional steps by filing an approved bill of exceptions, an appeal bond, and service of a notice of completion of appeal for purpose of our final review of the case.

The appellant filed a bill of exceptions containing twenty three (23) counts, of which we deem counts 1, 11, 14, 17, 21, and 23 to be substantive to the determination of this case.

In count one (1) of the bill of exceptions, the appellant contends that the trial judge omitted to rule the complaint to trial, but ruled only the answer and reply to trial. In count 16 of the answer, the appellee (defendant in the court below) attacked the complaint as being time-barred. The appellant contended that the accident occurred on April 6, 1989 and that the action was filed more than three (3) years after the right to relief accrued. He therefore prayed for the dismissal of the complaint for this reason. In his ruling on the law issues, the trial judge correctly held that although the action was commenced more than three years after the right to relief accrued, the statute of limitations tolled when appellee went to the United States for treatment. The judge therefore overruled count 16 of the answer.

The judge concluded his ruling on law issues with the following:

"Since all other counts of the answer and reply contained mixed issues of law and facts, we therefore rule counts 2 through 15 of the answer and counts 3 through 18 also, and count 21 of the reply to trial to be heard by a jury under the direction of the court."

The complaint was not dismissed. On the contrary, count one of the answer which sought to have the complaint dismissed for tardiness was overruled. It follows then that the complaint stood for trial along with those counts of the answer and the reply that were ruled to trial. Count 1 (one) of the bill of exceptions therefore cannot be sustained.

In count 11 of the bill of exceptions, the appellant contended that the police accident investigator who prepared the police charge sheet should have been called to testify to that document. The trial records, minutes of the 12t h day's jury session, October 8, 1992, show that the plaintiff/ appellee's third witness was Captain Joseph Forkay, who went to court upon a *subpoena duces tecum* with the original copy of the charge sheet. He testified that the whereabouts of the traffic investigator who prepared the charge sheet were unknown, especially because of the dispersal of persons since the civil conflict. He identified the document as the original copy of the police charge sheet which states that the appellant's driver was charged and held responsible for the accident. The charge sheet was part of the plaintiff/appellant's documentary evidence and what was sought to be done was to identify it as well as to produce the original. The trial of the accident was not the object here in order to necessitate the testimony of the traffic investigator who prepared the charge sheet. The testimony of Capt. Forkay, producing the original copy of the charge sheet and identifying it as the report of the accident was sufficient for purposes of the evidence in the trial of the damages action.

The appellant contends further in count 11 of the bill of exceptions that the appellant's driver having been held responsible for the accident, should have been tried and convicted before the appellee could use her injuries from the accident as a basis for her action of damages.

The appellee's action is a civil action in tort for the operation of the appellant's vehicle by its driver. The appellant is answerable for this negligent tort committed by its driver under the principle of *respondeat superior,* which holds the driver as the appellant's agent. The appellant does not seem to be averse to this. What it contends is that the traffic charge against the driver, which is *quasicriminal,* should be prosecuted and the driver convicted before appellee could sue a civil action for damages against the appellant for her injuries. The problem with this is that the criminal prosecution may take a prolonged period to conclude while the injured party, the appellee in this instance, runs the risk of her action being barred by the statute of limitations. Therefore, this Court has held that a person sustaining damages inflicted on his person by another, does not have to wait until after the criminal prosecution of the

person inflicting the injury before commencing an action of damages resulting from the personal injuries. Further, that the statute of limitations applicable to the civil action, is not tolled by prior pendency of the criminal prosecution. *Doe v. Tarplah and Wonkar, 15* LLR 410, 413 (1963). The appellant's contention is not supported by law.

The appellant contended in count 14 of the bill of exceptions that Dr. Robert M. Kpoto, the appellee's fourth witness, having testified that he did not take part in the operation which the appellee underwent in the United States because he did not possess the requisite license to do so, the medical report dated October 17, 1989, issued by him has no bearing on the condition of the appellee and so should not have been admitted to form a part of the evidence. Dr. Kpoto was a consulting physician in Liberia. He also accompanied the appellee to the United States for her medical treatment. In fact, it was he who recommended that the appellee seek medical attention abroad and suggested the New York University Medical Center for the treatment. He was thus a referral physician for purpose of the appellee's treatment in the United States. His medical report covered the general condition of the appellee. The appellee having sued for injuries which she sustained as a result of the accident, Dr. Kpoto' s medical report, both as a consultant and referral physician, appears to us to be relevant to the case whether or not he took part in the appellee's operation.

The appellant contends in count 17 of the bill of exceptions that Dr. Lamont of the New York University Medical Center, having issued two medical certificates, one dated June 16, 1989, "indicating that the patient has no operative complication and tolerated the procedure well" and the other dated May 5, 1992, "indicating that the patient has a total hip replacement and that the patient is suffering pains and weakness", should have been subpoenaed to appear to testify or have a deposition taken from him.

The medical certificates were brought to Liberia by Mrs. Perry, the appellee, as part of the records of her treatment. She proferted them with her complaint, identified them in her testimony, and they were marked and admitted by the court into evidence without any objections by appellant. Besides, Dr. Kpoto, who was the referral physician, testified as an expert witness to the X-Rays showing the condition of the appellee's hip. In order to qualify as an expert, a witness must possess special knowledge of some subject on which the jury's knowledge would presumably be inadequate without expert assistance. A person qualified by professional, scientific or technical training, or by practical experience, in regard to a particular subject or field of endeavour which gives him special knowledge not shared by persons in the ordinary walks of life, may testify as an expert on questions coming within the field of

his training and experience, subject, of course, to the general exclusionary rules of evidence in respect to materiality and relevance of the testimony; but if he is not so qualified, his testimony is incompetent. 31 AM JUR. 2d., *Evidence, ∫* 26, *Expert and Opinion Evidence.*

Dr. Kpoto testified that he is an orthopaedic surgeon, the branch of surgery which Dr. Lamont's operation and treatment partook of. Dr. Kpoto's testimony, to us, is material and relevant and sufficiently establishes the appellant's condition at the trial, upon which they jury could have formulated an informed judgment.

In counts 21 and 22 of the bill of exceptions, the appellant raises the contention that the plaintiff/appellee having prayed for special damages of US$48,000.00 and general damages of US$800,000.00, the special damages of US$58,942.65 and general damages of US$900,000.00 awarded her were in excess of the amounts prayed for by her. A recourse to the complaint indicates that the plaintiff/appellee prayed for special damages of US$48,740.41, plus the additional bills to be produced at the trial, and general damages in an amount not less than US$800,000.00.

The appellant, in his brief, argued that the special damages were not specifically pleaded and affirmatively proved; and further, that the appellee claimed US$48,740.41 as special damages and the jury erroneously awarded her US$58,942.65.

The appellee (plaintiff's) complaint, count 16 thereof, pleaded special damages for her medical attention and hospitalization "in the sum of US$48,740.41, plus additional expenses to be produced at the trial." At the trial, the plaintiff/appellee produced documents which were admitted into evidence, showing expenses she underwent totalling US$58,942.65 as special damages.

The counsel for appellant also argued in his brief that while the plaintiff/appellee prayed for general damages of US$800,000.00, the jury awarded her general damages of US$900,000.00, which not only exceeded the amount prayed for, but was also excessive. Further, appellant contended that the general damages were only alleged, but there was no proof to show appellee's entitlement thereto.

Counsel for appellee, in his brief and argument, stressed that there was a preponderance of the evidence supporting the jury's verdict and that the driver of the appellant testified that he left his lane and collided with the appellee's car. In the brief, he argued that Dr. Kpoto, who testified for the appellee, stated that with the whiplash injury appellee sustained to her neck, she could have both nerve root and in extreme

case, spinal cord problems ten(10) to fifteen (15)years after the injuries; and she could develop arthritis in the hip and will require artificial hip replacement.

As we have said before, the plaintiff did prove her case as to her injury and the special damages by a preponderance of the evidence which the jury accorded due weight. An issue of fact is to be determined solely by the jury on the greater weight and sufficiency of the evidence, and such preponderance of the evidence may be established by a single witness who may testify against a greater number of witnesses to the contrary. *Liberia Oil Refinery v. Mahmoud,* 21 LLR 201 (1972).

On the question of the general damages, the evidence in the records does not only show the extent of the injury sustained, but also the potential for future medical complications. Dr. Lamont of the New York University Medical Center stated in a medical certificate dated May 5, 1992 that the appellee needs a yearly follow-up. This means that the appellee is to travel to New York yearly for the required follow-up. There is also a medical report indicating that the appellee could have a spinal chord problem ten (10) to fifteen (15) years after the injuries. In our opinion, the evidence adduced at the trial entitles the appellee to general damages. It is therefore our view that the verdict of US$900,000.00, as general damages accords with what the trial records reveal. The general damages awarded is in consideration of the costs that the appellee will need to undergo yearly medical treatment in the United States because of the nature of her injuries, as certified by Dr. Lamont, and also for pain and suffering sustained.

The appellant contends in its bill of exceptions and in its brief that the amount it paid as a result of the intervention of the Liberian Senate, of which the appellee was a member, and through the intermediary of the then Minister of States for Presidential Affairs, Honourable G. Alvin Jones, was tantamount to the Legislative and Executive Branches of Government performing judicial functions. Appellant contends further that the payments aforesaid and the expenses it met for the appellee's medical treatment did not constitute an admission of liability on its part for the injuries of the appellee.

The claim of the appellee is for the expenses she incurred personally which she established at the trial. In fact, she signed a release exclusively for the amount she received for the car and acknowledged the sum she was paid for the nurse who accompanied her to the United States. These amounts were not part of her claim in this suit. The records do not show that the amount carried by the verdict and the judgment were subject of any Legislative or Executive determination. We, therefore,

do not deem appellant's argument to be important as to affect our determination of the case.

As to any admission of liability on the part of the appellant, the records do not raise such a conclusion. The evidence at the trial established the negligent tort of the appellant against the appellee, and was strengthened by the testimony of the appellant's driver that he left his lane and collided with the appellee's vehicle. The contention of the appellant on the admission of liability, to our mind, is not decisive of the case. We have therefore not deemed it necessary to actually review these contentions and arguments in this opinion.

In view of what we have said herein, and considering the facts and circumstances of the case and the law controlling, it is our considered opinion that the judgment of the lower court should not be disturbed and is hereby affirmed and confirmed. The Clerk of this Court is hereby ordered to send a mandate to the lower court directing the judge presiding therein to give effect to this opinion. Costs are assessed against the appellant. And it is hereby so ordered.

Judgment affirmed.