1. MRS. FELICIA ODEBUNMI
(For herself and on behalf of dependants of the deceased)
2. MADAM ADEBUSU ODEBUNMI
v.
ALHAJI ISA ABDULLAHI

SUPREME COURT OF NIGERIA

SALIHU MODEBO ALFA BELGORE, J.S.C. *(Presided and Read the Leading Judgment)* MICHAEL EKUNDAYO OGUNDARE, J.S.C.
EMANUEL OBIOMA OGWUEGBU, J.S.C.
SYLVESTER UMARU ONU, J.S.c.
ANTHONY IKECHUKWU IGUH, J.S.c.

FRIDAY, 14TH FEBRUARY, 1997

APPEAL - Findings of fact by trial court - Attitude of appellate court thereto Relevant considerations for interference therewith.
EVIDENCE - Averments in pleadings - Whether tantamount to evidence - D on party alleging to prove.
EVIDENCE - Presumptions - Collision between moving vehicle and station vehicle in broad day light - Presumption that driver of moving vehicle negligent.
EVIDENCE - Presumptions - Motor vehicle - Registration of in a party's in a Presumption raised thereby.
EVIDENCE – Presumptions Vicarious liability Driver of vehicle Where relationship between him and owner of vehicle not fully known – Presumptions that driver is the servant/agent of the owner.
EVIDENCE - Proof-Ownership of motor vehicle - How proved - What owner m prove.
EVIDENCE: Unchallenged evidence - How treated.
MASTER AND SERVANT - Presumption- Vicarious liability - Driver of vehicle where *relationship between him and owner of vehicle not fully know Presumption that driver is the servant/agent of the owner.*
MASTER AND SERVANT - Vicarious liability - Principles of - Application of
MAXIM - *Res ipsa loquitur - Meaning of - Purport of - When applicable.*
NEGLIGENCE - Res ipsa loquitur - Collision between a moving vehicle and a stationary vehicle in broad day light - Presumption that driver of moving vehicle negligent. ,'.
NEGLIGENCE - Res ipsa loquitur - Meaning of - Purport of - When applicable.

PRACTICE AND PROCEDURE - Findings of fact by trial court - Attitude of appellate court thereto - Relevant considerations for interference therewith.

PRACTICE AND PROCEDURE - Pleadings- Functions of - Averments in pleadings - Whether tantamount to evidence.
- Res ipsa loquitur - Meaning and purport of - When applicable.
- Res ipsa loquitur - Collision between a moving vehicle and a stationary vehicle in broad daylight - Presumption that driver of moving vehicle negligent.
- Vicarious liability - Driver of vehicle - Where relationship between him and owner of vehicle not fully known - Presumption that driver is the servant/ agent of the owner.
*- Vicarious liability - Principles of - Application of w*hether the appellants established before the trial court that the respondent was vicariously liable of the negligence of his driver/agent.

The 1st appellant who sued as 1st plaintiff is the widow of the late Augustine Odebunmi who died in an accident whereby he got burnt. She brought In under the Fatal Accidents Law of Northern Nigeria, applicable to Kwara She represented herself and her children. She sued the respondent Alhaji Alli also known as Alhaji Abdullahi Ibrahim Isa who was the registered a tanker-trailer vehicle registration number KN 5645K. Appellant's case was that on the 5th day of November, 1980 Augustine Odebunmi "the deceased" was in his vehicle of Volkswagen make being by one Raymond Orifunmise along the highway between Okene and la. On getting to a narrow bridge, the vehicle halted to allow to get out of the bridge. While so stationary the vehicle No. KN 5645 K, a tanker-trailer driven by

one Mohammed Ibrahim Albasa, coming from the ran into the deceased's vehicle. As a result of this crash into the stationary vehicle of the deceased, the tanker-trailer pushed the Volkswagen vehicle into the river
the tanker immediately exploded into a ball of fire which engulfed the Volkswagen vehicle with the deceased inside. As the deceased was trapped inside the wreck a he was burnt to death. The case for the appellants was that the tanker-trailer 1m was in the employment of the respondent and that he drove the vehicle with authority of the respondent, in the course of his employment.

The respondent's answer was a total denial of all the averments in a statement of claim. He denied ownership of the tanker-trailer that caused the fall accident, he also denied knowing any driver of the said vehicle or any driver by 1 name Mohammed Ibrahim Albasa and therefore on the premises of these denied liability. The appellants in proof of their claim led evidence but i respondent did not give evidence to rebut the allegations leveled against him.
At the end of the case, the learned trial Judge, in a considered judgment, gave judgment to the appellants. The respondent being dissatisfied with the devise appealed to the Court of Appeal, which allowed the appeal. The appellants were dissatisfied with the decision of the Court of Appeal. Appealed to the Supreme Court.

Held *(Unanimously allowing the appeal):*

1. *On whether averments in pleadings tantamount to evidence the* law is settled that an averment in pleading is not pertaining to evidence and cannot be so construed. An averment
Pleadings to be worthy of consideration by the court must I established or proved by credible evidence subject, however, any admissions by the other party. In the instant case, the respondent's denial in his pleadings that he knew Albasa that the said Albasa was his driver in the absence of a supporting evidence became valueless. *[Akirifosile* v. *Ijose* (19 SCNLR 447; *Akanmu* v. *Adigun* (1993) 7 NWLR (Pt.304) 2181 231; *Obmiami Brick and Stone Ltd.* v. *ACE. Ltd.* (1992) 3 NWU (Pt.229) 260 at 293; *Honika Sawmill (Nig.) Ltd, v. Hoff* (1994) NWLR (Pt.326) 252 at 266 referred to.] *(Pp. 539-540, paras. H*

2. *On Treatment of unchallenged evidence*
Where as in this case, appellants testimony that Albasa was driver of the respondent was neither challenged nor converted by the respondent who had the opportunity to do so, trial court as it did was entitled to act on such unchallenging evidence as established. *[Omoregbe v. Lawani* (1980) 3-4 SJ 108 at 117; *Odulaja* v. *Haddad* (1973) 11 S.C. 35; *Nigeria Maritime Services Ltd.* v. *Afolabi* (1978) J.S.c. 79 referred to]. IJ *540, paras. A-B)*

3. *On Proof of ownership of motor vehicle*
Where there is a registration of a motor vehicle in the Registration of motor vehicle in the name of a person it is *prima facie* evidence of ownership by that person. *[Ogunmuyiwa v. Solanke* (1956) SCNLR 143 referred to]. *(P.* 541, *para. A)*

4. On Proof of ownership of vehicle
Ownership of vehicle may, *inter alia,* only be proved by the registration particulars of a vehicle or the receipt for its purchase. In the instant case, the trailer was registered in the name of the respondent and in the absence of any rebuttal evidence, the trial court was right when it held that the respondent was the owner of the trailer in issue. *[Allied Trading Co. Ltd. v. G.B N. Line* (1985) 2 NWLR (Pt.5) 74 referred-to] *(P.* 541, *paras. A -B)*

5. On Presumption that driver of a vehicle is the agent/servant of the owner of the vehicle
Where the facts of the relationship between the owner of a vehicle and the driver are not fully known, proof of ownership may give rise to a presumption that the driver was acting as the owner's agent. In other words, there is a presumption that the servant or agent of the owner which presumption may be rebutted is driving vehicle. In the instant case, the respondent was unable to rebut this presumption. The Court of Appeal was in gross error to have interfered with the trial court's finding that Albasa was at all material times the driver and agent of the respondent. *[Kuti* v. *Balogun* (1978) 1 S.C. 53 at 58; *Okeowo v. Sanyaolu* (1986) 2 NWLR (Pt.23) 471; *Maduga* v. *Hamza Bai* (1987) 3 NWLR (Pt.62) 635 at 641; *Ogunmuyiwa* v. *Solanke* (1956) 1 F.S.C. 53 referred to] *(P.* 541, *paras. C-E)*

6. On Principle of vicarious liability
Unless an employer could otherwise explain his non-liability, he as employer of the servant is vicariously liable for the negligence of his servant in the performance of his duty, where such negligence occurred in the normal course of his business. [*Nwabuokei v.1wenjiwe* (1978) 2 S.c. 61 at 70.; *James v. Mid-West Motors Nigeria Ltd.* (1978) 11-12 S.C. 31 at 51; *Kuti v. Balogun* (1978) 1 S.C. 53 at 58 referred to] *(P.* 538, *paras. B-C)*

7. On Application of doctrine of Res ipsa loquitur
Res ipsa loquitur is a rule of practice and not a rule of law. It is to assert the right of a party claiming injury and damages due to negligence. There must be evidence of negligence in a reasonable way. Thus, where a thing is shown to be under the management of the defendant or his servants and an accident occurs in the process, and that accident is such as does not occur in the ordinary course of things if those who are thus in the management exercise proper care or diligence, in the absence of any explanation by those in the aforementioned management

Nigerian Weekly call KTUl " as to how the accident occurred, the accident is presuml occur due to lack of care. Thus, negligence is presumed in cases, for in such cases negligence is inferred to have res1 from the want of care by the persons in the management Of1 agents or servants. The maxim *res ipsa loquitur* means " speak for themselves". It is a convenient way to exp unusual accident and it is entirely a rule of evidence, not (In the instant case, in the absence of any defence to principle, the appellants' case was not controverter. *(Pp*536, *paras. H-C)*

Per IGUH; J.S.C. at page 541, paras. E-G:
"The facts of this case clearly admit the application maxim, *res- ipsa loquitur.* In the present case, 1 defendant's Trailer collided with a stationary bus highway in broad daylight and no explanation proferred as to why this happened. *This prima facie* evidence of negligence on the part of the deflect driver. See *Randall v. Tarrant* (1955) 1 All E.R. 600. The situation did not end there. The defendant's after the said collision proceeded to push the bud with both vehicles falling into a river; the Trailer somersaulted into the river resulting in a COI from which the deceased died on the spot.
In this regard, the principle is basic that if a vehicle leaves the road and falls into an embankment in this case into a river, and this without more is then *res ipsa loquitur* there is a presumption of and the plaintiff succeeds unless the defendant presumption. See *Barkway v. South Wales Tri,* (1948) 2 All E.R. 460. The defendant in the pi has failed to rebut this presumption"':

8. On Attitude of appellate court to findings of fact by trial court.
An appellate court must be wary of interfering with the: fact by the trial court except in certain circumstances,
a. Where the finding is not supported by any Far from the claim of any party; or
b. Where there is no evidence to support pleading or
c. Where the evidence received in supporting is against any statute, being either Evidence Act or any other statute prohibition of such evidence or prescribing the receive such evidence which proceed lowed or
d. given without jurisdiction or
e. Where the court did not hear all the pairs by denying one party the opportunity heard.
[Agbonifo v. Aiwereoba (1988) 1 NWLR (Pt.70)325 .

2NWLR (Pt.9) 710 *Chukwueke* v. *Nwankwo* (1985)
2NWLR (Pt.6) 195; *Oilfield Supply Centre Ltd.* v. *Johnson;* (1987)
2NWLR (Pt.58) 625; *Kimdey v. GovernorofGongolaState* (1988)
2NWLR (Pt.77) 445; *Ekwunife* v. *Wayne (W* A.) *Ltd.* (1989) 5 NWLR (Pt.122) 422 referred to]. *(P.* 535, *paras. C-F)*

Nigerian Cases Referred to in the Judgment:
Agbonifo v. *Aiwereoba* (1988) 1 NWLR (pt.70) 325
Ajuwa v. *Odili* (1985) 2 NWLR (Pt.9) 710
Akanmu v. *Adigun* (1993) 7 NWLR (pt.304) 218
Akinfosile v. *Ijose* (1960) SCNLR 447
Allied Trading Co. *Ltd.* v. G.B.N. *Line* (1985) 2 NWLR (Pt.5) 74
Chu*kwueke* v. *Nwankwo* (1985) 2 NWLR (pt.6) 195
Ekwunife v. *Wayne (W A.) Ltd.* (1989) 5 NWLR (pt.l22) 422

Honika Sawmill (Nig.) Ltd. v. *Hoff (1994)* 2 NWLR (pt.326) 252
James v. *Mid-West Motors Nigeria Ltd.* (1978) 11-12 S.c. 31
Kimdey v. *Governor of Gongola State* (1988) 2 NWLR (Pt.77) 445
Kuti v. *Balogun* (1978) 1 S.c. 53
Maduga v. *Bai* (1987) 3 NWLR (pt.62) 635
Nigeria Maritime Services Ltd. v. *Afolabi* (1978) 2 S.c. 79
Nwabuokei v. *Iwenjiwe* (1978) 2 S.c. 61
Obmiami Brick and Stone Ltd. v. *A.C.B. Ltd.* (1992) 3 NWLR (Pt.229) 260
Odulaja v. *Haddad* (1973) 11 S.C. 357
Ogunmuyiwa v. *Solanke* (1956) SCNLR 143
Oilfield Supply Centre Ltd. v. *Johnson* (1987) 2 NWLR (pt.58) 625
Okeowo v. *Sanyaolu* (1986) 2 NWLR (Pt.23) 471
Omoregbe v. *Lawani* (1980) 3-4 S.c. *108*

Foreign Cases Referred to in the Judgment:
Barkway v. *South Wales Transport Co.* (1948) 2 All E.R. 460
Baumwoll Manufactur von carl Scheibler v. *Furness* (1893) A.C. 8 at 17
Bernand v. *Sully* (1931) 47 T.L.R. 557
Hewittt v. Bonvin (1940) 1 K.B. 188
Morgan v. *Launchbury* (1973) A.C. 127
Randall v. *Tarrant* (1955) 1 All E.R. 600

Appeal
This was an appeal against the decision *of* the Court *of* Appeal, which set the judgment *of* the High Court given in favour *of* the appellants. The Supreme Court, in a unanimous decision, allowed the appeal

Story of the cases:
Supreme c*ourt:*
Names of Justices that sat on the appeal: Salihu Modibbo Alfa Belgore, J.*S.C. (Presided and Read the Leading Judgment* to Michael Ekundayo Ogundare, J.*S.C.;* Emanuel Obioma Ogwuegbu, J.S.C; Sylvester Umaru Onu, J.*S.C.;* Anthony Ikechukwu Iguh, J.*S.C.*

Appeal No: S. 242/1991
Date of Judgment: Friday, 14th February, 1989 *Names of Counsel:* Yusuf O. Alli, Esq. (With him, W. Egbewole and Kehinde Kola Eleja, Esq.) -*for the appellants* Mohammed Gafar Esq., (With him, o. Yaqub, Esq.) - *for the Respondent*

Court of Appeal:
Division of the Court of Appeal from which the appeal was brou8 Court of Appeal, Kaduna
Names of Justices that sat on the appeal: Sani Salith Aikawa, CJ *(Presided and Read the Leading Judgment);* Qkay Achike},J.C.A. Justin Thompson Akpabio, J.C.A.
Appeal No: CA/K/203/88
Date of Judgment: Monday, 17th July, 1989
Names of Counsel: O. Ayodele (with him, Gafar) - *for the Appeal*. Yusuf O. Alli - *for the Respondents*

` *High Court:*
Name of the High Court: High Court, Ilorin
Name of the Judge: Gbadeyan, J.
Suit No: KWS/277/1983
Date of Judgment: Friday, 12th June, 1987
Names of Counsel: Adegboyega Awomolo (with him, Yusuf O. Esq.) -*for the Plaintiffs*
Chief P.A.O. Olorunnisola (With him, Yemi Ijaiya, Esq.) - *for the Defendant*

Counsel:

Yusuf O. AlIi, Esq. (With him, W. Egbewole Esq., and Kehinde Kola Eleja, Esq.) - *for the appellants*
Mohammed Gafar Esq. (With him, O. Yaqub, Esq.) - *for the respondent.*

BELGORE, J .S.C. (Delivering the Leading Judgment): The first Plaintiff(now appellant, is the widow of the late Augustine Oyewole Odebunmi who died in an accident whereby he got burnt. She brought this action in the High Court of Kwara State (former Kwara State)'under the Fatal Accidents Law 1963. She therefore represented herself and her children to wit, Folashade, Femi, Wunmi and Bukola. Joining her as co-plaintiff is the mother of the deceased, Madam Adebusu Odebunmi. According to the final amended statement of claim, the defendant. Alhaji Isa Abdullahi, also known as Alhaji Abdullahi Ibrahim Isa, was the registered owner of a tanker-trailer vehicle registration number KN 5645 K and registered at Motor Registry, Kano. The plaintiffs' case is that on the 5th day of November, 1980 Augustine Oyewole Odebunmi (hereinafter called and referred is "the deceased") was in his vehicle of Volkswagen make, being driven by one Raymond Orifunmise along the highway between Okene and Ogaminana (bohilin Kogi State). On getting to a narrow order the vehicle halted to allow a to cycle to get out of the bridge. While so stationary, the vehicle No. KN 5645 aforementioned, driven by one Mohammed Ibrahim Albasa, coming from the are ran into the deceased's vehicle. As a result of this crash into the stationary mile of the deceased, the trailer -tanker pushed the Volkswagen vehicle in the car. Thus both vehicles ended up in 'the river and the tanker immediately loaded into a ball of fire which engulfed the Volkswagen vehicle with the Ceased inside. As the deceased was trapped inside the wreckage he was burnt death. The case for the plaintiff clearly was that the tanker trailer driver was in employment of the defendant and he drove the vehicle with the authority of the defendant, that is to say, in the course of his employment.

It took a long time to get the defendant served with the write of summons. He rejected service initially and had to be served through that High Court, Kano. Initially the court made an order for pleadings, which were duly filed and exchanged. Lie defendant's statement of defense was filed on 12th November 1985. The plaintiff however filed another amended statement of claim, which was filed with half of the court and not objected to by the defendant on 14th August, 1986 when bearing was actually in progress. The answer of the defendant in his statement of defense was a complete denial of all the averments in the statement of claim. He lied ownership of the tanker-trailer that caused the fatal accident, he denied knowing any driver of the said vehicle or any driver by the name Mohammed Albasa. He therefore on, the premises of these denials dissociated himself any liability as the owner of the vehicle or the employer of its driver. He also owed his name being Alhaji Ibrahim Isa in whose name the vehicle was registered and. Thus he denied any vicarious liability for the accident that led to the death Deceased. He then raised the issue that at all rate the action was statute for the reason that it was filed more than-three years after the accident giving no the action. He also denied liability because the writ was served on him the jurisdiction of Kwara State High Court etc.

The evidence for the plaintiff was clear. as to how the fatal accident occurred vehicle occupied by the deceased stopped before entering a narrow bridge to a motorcyclist to cross the bridge. While so stationary, the tanker-trailer No. J45 K came from the rear, hit it and pushed it whereby the two vehicles ended deliver over which the bridge stood. The tanker-trailer, apparently carrying liable material, on landing in the river with the deceased with the vehicle it along, burst into flames and was in no time engulfed in a ball of fire. Then I was trapped in his own Volkswagen vehicle even though its driver and one of the erring taker -trailer escaped. The deceased died in the fire as he was death. Upon all this evidence, and with the plea, aside from Fatal Accident recipe *liqueur,* the defendant never gave evidence but sent one Alhaji who lived at Okene in the then Kwara State to testify. This witness never to know all the defendant's vehicles and the main plank of his evidence I.e.

> "DW1: Moslem, sworn on Holy Quran speaks Yoruba. I am Alhaji Usman of 36 Lafiya Street Okene and 21 Unity Road Kano. I am the supervisor in the business of A1haji Isa Abdullahi. I do not know of any vehicle with registration number KN 5645 K belonging to Alhaji Isa Abdullahi. I am aware that Alhaji Isa Abdullahi is sued in respect of the vehicle but he denies any knowledge of the vehicle. We went to licensing office at Kano for clarification and we sent the findings to our Lawyer. This is the document obtained from the licensing office, Kano."

Therefore it is not difficult for the trial court to come to the conclusion that the defendant's defence was based on

total denial. He denied the vehicle was his own, and that it was registered in his name. However, the plaintiffs evidence that the vehicle was his own could not be contradicted on the meager evidence of DWI, which at best is hear say. He denied knowing any driver by the name Mohammed Ibrahim Albasa, much less employ that person as a driver. The writ originally bore the name of Mohammed Ibrahim Albasa as co-defendant. When the case finally came to court after several efforts to serve the defendants failed, the present defendant accepted service and told the bailiff that Mohammed Ibrahim Albasa had died.As a result of this information from the defendant the name of Mohammed Ibrahim. The court on the plaintiffs' application struck out Albasa. Learned the trial Judge, after considering the pleadings and all the evidence before him finally found:

i. That the vehicle of the defendant, the tanker -trailer No. KN 5645 K was driven negligently and hit the vehicle in front in which the deceased was a passenger that as a result of the negligent driving of the aforementioned tanker-trailer the vehicle carrying the deceased was pushed from the rear whereby both the tanker-trailer and the vehicle carrying the deceased, with the deceased inside crashed, into the river as a result of which the tanker-trailer burst into flames which engulfed the vehicle occupied by the deceased.

ii. That the deceased unable to extricate himself from the wreckage of the two crashed vehicles, was consumed by the resultant inferno and he there and then died as a result

iii. That the erring tanker-trailer was driven by Mohammed Ibrahim Albasa, now said to be dead, and that at the time of the accident he was driving in the employment and with the authority of the defendant and that the defendant was therefore vicariously liable for the negligence, which resulted in the death of Augustine Oyewole Odebunmi.

iv. The defendant was therefore found liable and plaintiff was awarded lump sum damages as claimed and proved. This led to the appeal to the Court of Appeal.

Court of Appeal, in a unanimous decision allowed the appeal. The Court of Appeal's reversal of the trial court's decision was based on

Failure to identify with certainty the driver of the offending tanker trailer the identification of the registration number of the tanker-trailer was not clear, and the identity of the owner of the tanker-trailer was not properly established.

Trial Court, however, on the clear evidence of P.W.l (first witness for plaintiff) being an eye witness of the accident, believed the registration number is fiat pleaded, i.e. KN 6545 K. The court also, on the evidence before it, found that 80th Alhaji Isa Abdullahi and Alhaji Abdullahi Ibrahim Isa are one and the same person and refer only to the defendant as the owner of the tanker driver. It also found that the registration number of the offending tanker-trailer is KN 5645 K and also found that it was on the fateful day in question driven by Mohammed lbrahim AIbasa, an employee of the defendant the said driver was in the course of. duty as employee of the defendant. The best person to deny all the findings of its by the trial court in the clear circumstances of this case was the defendant, but chose not to give evidence. He was perfectly entitled to adopt this line of defence the court was equally obliged to make its legal conclusions on the failure of the defendant to testify in person. Unfortunately, his sole witness, D.W.l, never saw accident occurred, he only testified that he never knew Mohammed Ibrahim, Albasa as one of the driver employed by the defendant, and he never claimed to IW all his drivers either it therefore a grave error for the Court of Appeal to set aside the clear findings of facts on the clear evidence of the plaintiffs J. Dre the court. An appellate court must be wary of interfering with the findings fact by the trial court except in certain circumstances, e.g. where the finding is (supported by any pleading or far from the claim of any party, where there is no defence to support the pleadings, or where the evidence received in support of the things is against any statute - being either against Evidence Act or any other prohibiting reception for such evidence or prescribing the procedure to have such evidence which procedure is not followed; or given without jurisdiction findings of fact that offend any of the aforementioned may be perverse and I to miscarriage of justice in circumstances like not hearing all the parties on the It by denying one party the opportunity to be heard. The category of such "erase circumstances remains open. See this court's decisions *in Agbonifo* v. *reoba.(1988)* 1 NWLR (Pt.70) 325; *Ajuwa* v. *Odili* (1985) 2 NWLR (Pt.9) *Chukwueke* v. *Nwankwo* (1985) 2 NWLR (Pt.6) 195; *Oilfield Supply Centre*. *Johnson* (1987) 2NWLR (Pt.58) 625; *Kimdey* v. *Governor of Gongola State 2NWLR (Pt.77)445 Ekwunife v. Wayne (W A.)Ltd.* (1989) 5 NWLR (Pt. 122)

This action was also brought under Fatal Accidents Law of Northern Nigeria 1963 (Cap. 43 LN 1963) by the "immediate family" of the deceased as defined in - 112 of the statute. The Law was the applicable law in Kwara State at the time action. This was not challenged by the defendant either in the pleadings or hence. S. 3 of the statute

confers right of action in respect of death caused wrongful act, neglect or default of another person for the benefit of the late family of the deceased (see S. 4 of the Law]. The interesting aspect of e is that the defendant never contested that an accident occurred in the instances enumerated in the statement of claim and that the accident was by negligent driving of the tanker -trailer whereby the deceased got killed resultant inferno. What was denied was that neither the vehicle i.e. the killer nor its driver had any link with the defendant. This defence was not with any acceptable evidence in the light of clear evidence to support the statement of claim of the plaintiffs/appellants, which the trial court accepted.

The plaintiffs also relied on the rule of *res ipsa loquitur.* It is a rule of practice and not rule of law; it is to assert the Brigit of a party claiming injury and damages due to negligence. There must be evidence of negligence in a reasonable way. Thus where a thing is shown to be under the management of the defendant or his servants and an accident occurs in the process, and that accident is such as does not occur in the ordinary course of things if those who are thus in the management exercise proper car or diligence, in the absence of any explanation by those in the aforementioned management as to how the accident occurred, the accident is presumed to occur due to lack of care. Thus negligence is presumed in such cases: for in such cases the persons in the management of their agents or servants infer negligence to have resulted from the want of care. The maxim *res ipsa loquitur* means "things speak for themselves". It is convenient way to explain an unusual accident and it is entirely a rule of evidence, not of law. In the absence of any defecator this principle, the plaintiffs/appellants' case was not controverter.

I find that the trial court came to correct conclusion to find for the plaintiffs and that the court of Appeal was in error to venture to disturb the correct findings of fact by the trial court. I allow this appeal therefore for the reasons given above. I set aside the decision of the Court of Appeal and I hereby reinstate the judgment of the High Court of Kwara State. I award N500.00 as costs in the Court of Appeal and Nl,000.00 as costs in this court in favour of the appellants against the respondent.

OGUNDARE, J.S.C.: I have had the privilege of a preview of the judgment of my learned brother Belgore, J.S.c. just delivered. I agree with his conclusion that the appeal be allowed and the reasoning leading thereto which I hereby adopt as mine. I have nothing more to add.
I too allow the appeal, set aside the judgment of the court below and restore the judgment of the trial High Court awarding total damages of N141,140.00 and N500.00 costs to the plaintiffs against the defendant. I also abide by the order for costs of the proceedings in this court and in the court below as contained in the lead judgment of my learned brother, Belgore, J.S.c.

OGWUEGBU, J.S.c.: Having had the advantage of reading earlier the draft of the judgment just read by my learned brother Belgore, J.S.C. with which I am in entire agreement, I would also allow this appeal for the reasons stated in the said judgment; and I endorse the orders made inclusive of the order as to costs.

ONU, J.S.c.: I had the benefit of a preview of the judgment of my learned brother Belgore, J.S.c. just delivered. I am in complete agreement with his reasoning and conclusion that this appeal is meritorious and should therefore successful.

The un-contradicted and unchallenged evidence of P.W.I who had known the respondent since 1975, long before the accident giving rise to the case in hand in 1979, along with other antecedent matters such as the address of the respondent (owner of the trailer-tanker driven by his deceased driver by name Mohammed; Ibrahim Albasa who was earlier joined in the action but had his name struck out upon being withdrawn after his death), being 21 Unity Road, Kano, with the deceased being said to be exclusively his; his forwarding address having been notified as 36 Lafiya Road, Okene along with dovetailing pieces of evidence vide ibits 4, 5, 6, D6, 8 and 11, indicating ,that the respondent is the same Alhaji Abdullahi Ibrahim Isa or Alhaji Isa A. Abdullahi, the owner of the vehicle, made conclusion arrived at by the trial court inescapable. The respondent having led evidence in denial. of the appellants' pleading and evidence that he was the owner of the offending vehicle, the court below was clearly wrong to held that there was no evidence to support the appellants' assertion that Alhaji Abdullahi was also known and called Alhaji Abdullahi Ibrahim Isa - a well

" Kano-based business-man and transporter. Thus, the fact that P.W.l was of the deceased would not detract from the logical, unrebutted and directed evidence he gave and given support in the evidence of P.W.3, to allow corroboration whatsoever. Below was there front wrong, in my view, to have held as follows:

"Therefore he learned trial Judge relied solely on the evidence of P.W.I in finding the appellant liable. He did not consider it unsafe to rely solely on the evidence of a witness who is closely connected with the victim. Such evidence if not rejected should be carefully tested on its veracity. "The witness took up the investigation right from the time of the accident. He testified that' he knew the appellant since 1975 in the course of his insurance business. Therefore he will no doubt have the particulars of the appellant on his fingertips from "his records I have indicated earlier in this judgment "all that this witness had done in making the evidence appear neat for the case to succeed.

In his testimony in chief he stated that the deceased was his town mate and a very close childhood friend. They are from the same compound and they grew up together. In my opinion this evidence should sound a word of warning that it will be dangerous to accept the testimony of this witness without any support or scrutiny. I am of the opinion that evidence of' this witness who stated in evidence at page 106 of the record that he was prepared, to do anything to assist the widow and children.

Moreover, the respondent never contested that an accident in fact occurred circumstances set out in the Amended Statement of Claim and evidence led thereon; nor that the accident was caused by the negligent driving of the tanker" driver resulting in the death of the deceased who died in the fire that engulfed

What the respondent denied in his Statement of Defence was that neither the denor its driver had any connection with him. This defence was not pursued any seriousness to de bulk the Amended Statement of Claim of the impellents evidence led thereon which the trial court accepted. *See (Osawaru* v: E*zeiruka*) 6-7 S.C. 135 at 154 in which this court held *inter alias* thus:

> "Chief Akinyemi had argued that the respondent had not proved that the appellant was using the premises as a brothel maintaining that he did not call witnesses to that effect. We are however satisfied that in the special circumstances of this case, the learned trial Judge was entitled to make the finding he made on the evidence before him. As provided in section 178 of the Evidence Act, except as specially provided in that section, no particular number witnesses shall in any case be required for the proof of any special provisions in the section were made for treason, 2 treasonable offences, perjury, exceeding speed limit, sedition sexual offences."

As in the instant case there has been no explanation forth-coming from respondent in the nature of a defence of the negligence or want of care exhibit (see *Jibosu* v. *Kuti* (1970) 2 All NLR 102 his deceased driver (Albasa), were he be alive, should have been sued together with him (respondent) for both of the to be held directly and primarily liable for causing the death of late Odebunmi, was burnt to death in the fire which engulfed him as a result of the accident.

Ossai Nwabuokei v. *Iwenjiwe* (1978) 2 S.c. 61 at 70). Unless the respondent could otherwise explain his non-liability and this he had failed to do: he as employer I the deceased driver (Albasa), is vicariously liable for, the negligence of his serve in the performance of his duty which negligence occurred in the normal course I his business. See *Ayodele James* v. *Mid-West Motors Nigeria Ltd.* (1978) S.c. 31 at 51 and *Kuti v.Balogun* (1978) J.S.c. 53 at 58. See also *Benson v. Otu* (1975) NSCC 49 where it was held that the defendant therein should not be allow« to deny the negligence of his driver in the special circumstances of the case b should be regarded as being vicariously liable for the tort of his servant.

The evidence of D. W.1 was essentially hearsay and not probable; thus it w rightly rejected by the trial court. The testimony of P.W.1 having not disbelieved nor discredited under cross-examination was rightly believed and acted upon by the trial court. To have required corroboration of the unchallenged evidence of that witness or to have regarded it with suspicion on the ground that it emanated from a friend of the deceased victim of a grisly and unfortuna1 accident, the court below, having regard to all the circumstances, in my view, was wrong to have dismissed the case of the appellants.

For the reasons given and those elaborately articulated in the lead judgment of my learned brother Belgore, J.S.c. this appeal succeeds and is allowed by me. I make the same consequential orders inclusive of those as to costs as contain therein.

IGUH, J.S.C.: {have had the privilege of reading in draft the leading judgment just delivered by my learned brother, Belgore, J.S.c., and I entirely agree that this appeal is meritorious and should be allowed.

The facts of the case have been adequately set out in the leading judgment and no useful purpose will be served by my recounting them all over again. It suffices to state that at the material time and place, one Oyewole Odebunmi, then aged 38 years, was a passenger in a Volkswagen bus No. KW 3178 E. While this bus stopped at a narrow bridge in Okene to give right of way to an on-coming motorcyclist, a Trailer No. KN 5645K driven by one Mohammed Ibrahim Albasaran into it from the rear, pushed the bus into the river down below and went up in flames. Oyewole Odebunmi who was entrapped in the bus died in the resulting conflagration.

In an action filed by the dependants of the deceased against the registered owner and driver of the trailer under the Fatal Accidents Law, 1983, the High Court of Kwara State fund for the plaintiffs. On appeal, the Court of Appeal, Kaduna set aside the judgment of the trial court and dismissed the plaintiffs' The court below had held that there was no credible evidence in support of amities of the owner and driver of the offending Trailer as well as the proper fixation of the registered number of the said Trailer. The plaintiffs have now led to this court. On the question, of the identity of the driver of the Trailer, the plaintiffs in ph 3 of their amended Statement of Claim averred as follows:

> "……and one Mohammed Ibrahim Albasa (dead) drove the vehicle, (i.e. the Trailer) at the material t time being the agent, servant and authorised driver of the said vehicle on behalf of the defendant."
> (Words in brackets supplied for clarity)

Then, are also further clear averments in paragraphs 4 and 5 of the said Statement of Claim to the effect that the collision in issue was caused by intelligence of the deceased driver, servant and agent of the defendant at all Guiltiness. The defendant, the alleged owner of the said Trailer, in paragraph 2, of this next of Defence, replied as follows:

The defendant avers with respect to paragraph 3 of the statement of claim that he does not own the Vehicle Registration No. KW 5645K and avers further that he did not and does not know anybody or' driver called by the name Mohammed Ibrahim Albasa nor does he have any agent so called." I think it ought to be observed that two defendants were originally sued in this. The 1st defendant was said to be the owner of the Trailer. He is the appellant this court. The 2nd defendant, known as and called Mohammed Ibrahim 1, was said tg be the driver of the 1st defendant's Trailer at all material times. after the death of the said Mohammed Ibrahim Albasa was disclosed by the. It himself, that the action against the driver was discontinued. Said

"When we went to serve the Summons the defendant was very hostile and it", was at the Kano High Court that the accepted service. *He refused to accept service for his. driver saying that he had died in* 1982"

I was personally involved in serving the writ of summons, We served him at the second attempt relevant fact to be noted is that all references to the defendants driver in the e of the plaintiffs and/or their witness clearly referred to the said deceased med Ibrahim Albasa or Albasa for short.

Although the defendant, now the respondent, in his Statement of Defence, knowing his said driver, Albasa, there was no evidence whatsoever in of this denial. The appellants' testimony to the effect that Albasa was at trial times the defendant's driver, therefore, remained unchallenged and trovertedly any evidence from the defendant.

The law has long been settled that an averment in pleadings is not tantamount evi*dence* and cannot be so construed. An averment in pleadings to be worthy of duration by the court must be established or proved by credible evidence however to any admissions by the other party. See *Akinfosile* v. *1jose (1960)* SCNLR 447; *Muraina Akanmu* v. *Adigun and Another* (1993) 7 NWLR (Pt.304) 218at 231; *Obmiami Brick and Stone Ltd.* v *.A.CB. Ltd.* (1992) 3 NWLR I (Pt.229) 260 ar293; *Honika Sawmill (Nig.) Ltd. v. Mary Hoff* (1994) 2 NWLR I (Pt.326) 252 at 266 etc. The defendant's denial in his pleadings that he knew Albasa or that the said his driver in the absence of any supporting evidence became valueless so too, where, as in this case, the plaintiff's testimony. That Albasa was the driver of the defendant was neither challenged nor controverter by the defendant who have the opportunity to do so, the trial court, as it did, was! entitled to action such unchallenged evidence as established. See *Isaac Omoregbee* v. *Daniel Lawani* (1980) 3-4 S.c. 108 at 117, *Odulaja* v. *Haddad* (1973) 11 2.S.C 35; *Nigerian Maritime Services Ltd.* v. *Alhaji Bello Afolabi* (1978) 2 S.c. 79 at 81 etc.

There is also the abstract of Police report of the accident, Exhibit 3, which. was tendered by the plaintiffs without objection. Exhibit 3 disclosed the name of

Mohammed Ibrahim Albasa as the driver of the Trailer at the time of the accident entertain no doubt that the trial court was right when it found that Albasa was the driver of the Trailer at all material times and that the court

below, with respect, was in definite error to reverse that finding. Turning now to the identity of the owner of the Trailer, the plaintiffs in': paragraph 3 of their Amended Statement of Claim pleaded thus:
The defendant was at all material times of the cause of action apart from being called Alhaji S.A. Abdullahi was also known and called, Alhaji Abdullahi Ibrahim Isa, a popular and famous transporter in Kano. He was the Registered owner of the Tanker Trailer vehicle Registration Number KN 5645 K and one Mohammed Ibrahim Albasa (dead) drove the vehicle at the material time' being the agent servant and authorized driver of the said vehicle on behalf of the defendant."

By paragraph 2 of the defendant's Statement of Defence above reproduced, the defendant denied ownership of the accidental Trailer No. 5645 K. Also by paragraph 5 of the said Statement of Defence, the defendant simply averred:

"The defendant is not Alhaji Ibrahim Isa."
The testimony of P.W.l in support of facts averred in paragraph 3 of the Amended statement of Claim was after thorough evaluation accepted by the trial court as impressive and reliable. On the other hand, no evidence was led by the defendant in respect of the averment in paragraph 5 of his Statement of Defence. Accordingly that averment, as I have already pointed out, must be treated as not established. On the averment that he was not the owner of the Trailer in issue, the defendant gave: no evidence himself to establish this claim. All he did was to call D.W.I, one of his employees who testified that *he did not know* any vehicle with registration number KW 5645 K belonging to the defendant. The trial court as untruthful dismissed his evidence. I should perhaps add that the trial court having disbelieved D.W.l, the sole witness called by the defendant, the position must be, that there is no credible evidence to support any of the averments in the defendant's Statement of Defence.

Reference must also be made to Exhibit 3 which reflected the defendant as the owner of the accidental Trailer No. KN 5645 K. The defendant, as I have did not himself deny this allegation of fact that he was the registered of the Trailer. Where there is a registration of a motor vehicle in *the* Register or Vehicle in the name of a person, as in the present case this is *prima facie* :e of ownership by that person. *See Lasisi Ogunmuyiwa* v. *Solanke* (1956) .53; (1956) SCNLR 143. This is because ownership of vehicle may *inter* y be proved by the registration particulars of a vehicle or the receipt for its ;e. See *Allied Trading Co. Ltd.* v. *G.BN. Line* (1985) 2 NWLR (Pt.5) 74; a*ll Manufacturer von carl Schreiber* v. *Furness* (1893) A.C. 8 at 17 etc. die present case, the Trailer was registered in the name of the defendant and in absence of any rebuttal evidence, the trial court was right when it held that the defendant was the owner of the Trailer in issue.

The defendant in his Statement of Defence averred that the driver, Albasa, not only unknown to him but that the said driver was not his agent. He however 10 credible evidence in that regard. Be that as it may, where the facts of the relationship between the owner of a vehicle and the driver are not fully known, of ownership may give rise to a presumption that the driver was acting as the agent. See *Kuti* v. *Balogun* (1978) 1 S.c. 53 at 58; *Okeowo* v. *Sanyaolu* 2NWLR (pt.23) 471; *Yesufu Maduga v. HamzaBai* (1987) 3 NWLR (Pt.62); at 641; *Bernand v. Sully* (1931) 47 T.L.R. 557 *Morgans* v. *Launchbury* (1973) 127 at 139; *Hewitt* v. *Bonvin* (1940) 1 K.B. 188. In other words, there is the emption that a vehicle is being driven by the servant or agent of the ownero of the presumption may, of course, be rebutted. See *Lasisi Ogunmuyiwa* v. S*olanke, Onuchuku* v. *Williams* 12 NLR 19; *Bernard* v. *Sully, supra.* The defendant unable to rebut this presumption in the instant case and I think the court below with respect, in gross error to have interfered With the trial court's finding that was at all material times the driver and agent of the defendant.

The issue of negligence is exhaustively considered in the leading judgment my learned brother Belgore, J.S.C., I entirely agree with the findings therein. The facts of this case clearly admit the application of the maxim, *res ipsa loquitur.* In the present case, the defendant's Trailer collided with a stationary bus the highway in broad day _d no explanation was proffered as to why this Joined. This *prima facie,* is clear evidence of negligence on the part of the defendant's driver. See *Randall* v. *Tarrant* (1955) 1 All E.R. 600 at 605. The situation did not end there. The defendant's Trailer after the said mission proceeded to push the bus forward with both vehicles falling into a river;
Trailer having somersaulted into the river resulting in a conflagration from the deceased died on the spot. In this regard, the principle is basic that if a defendant's vehicle leaves the and falls into an embankment, in this case into a river, and this without more proved, then *res ipsa loquitur,* there is a presumption of negligence and the plaintiff succeeds 'unless the defendant rebuts this presumption. See *Barkway* v. *Wales Transport Co.* (1948) 2 All E.R. 460. The defendant in the present has failed to rebut this presumption and I entirely agree with the trial court not it

concluded as follows:
"I therefore hold that the defendant was the registered owner of the tanker/trailer and the employer of Albasa, whose negligence caused the death of Mr. Odebunmi. In the circumstance, the defendant is vicariously liable for the negligence of his servant."

The court below, with profound respect, was in gross error when it held on the It is for the above and the more detailed reasons contained in the If judgment of my learned brother, Belgore, I.S.C., that I, too, all9w this appeal. Aside the decision of the court below and restore the judgment of the trial co abides by the order as to costs contained in the leading judgment.

Appeal allowed