

THE BREACH OF THE DUTY OF CARE IN THE TORT OF NEGLIGENCE

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Abstract

The law of negligence is based on the duty of every one to exercise due care in his conduct towards others from which injury may result and negligence is the omission to do something which a reasonable man, guided upon the consideration which ordinarily regulates the conduct of human affairs, would do or doing what a prudent and reasonable man would not want to do. The aim of this paper is to examine the breach of the duty of care in the tort of negligence. The paper states that, in the law of tort, negligence has a mental element which is to be inferred from one of the mode in which some torts may possibly be committed and an independent tort which consists of breach of a legal duty. The researcher adopted the doctrinal research method. The paper concludes hat, there is no liability in tort for negligence, unless the act or omission that causes damage is a breach of a duty of care owed to the plaintiff.

Keywords: Law, Negligence, Duty, Care, Breach, Damage.

Introduction

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The term negligence refers only to that legal delinquency which results wherever a man fails to exhibit the care which he ought to exhibit, whether it be slight, ordinary, or great.¹ The term also denotes culpable carelessness. Negligence is characterized chiefly by inadvertence, thoughtlessness, inattention, and the like, while “wantonness” or “recklessness” is characterized by willfulness.² The law of negligence is founded on reasonable conduct or reasonable care, expected from a reasonable man under all circumstances of particular case.

Moreover, the doctrine of negligence is based on the duty of every person to exercise due care in his conduct towards others from which injury may result. Thus, the elements of the tort of negligence is usually expressed in terms of duty, breach of duty, causation, and damages. In law, negligence ranges from inadvertence that is hardly more than accidental to sinful disregard of the safety of others.³ Negligence may be one factor or ingredient in another tort and also a specific and independent tort. Flowing from the above, negligence has three ingredients and to succeed in an action the plaintiff must show, the existence of a duty to take care which was owed to him by the defendant, breach of such duty by the defendant and resulting damage to the plaintiff. Therefore, this paper examines the breach of the duty of care in the tort of negligence. The paper discusses the concept of negligence, and the ingredients of negligence.

Concept of Negligence

¹ Henry Campbell Black, *Black’s Law Dictionary*, Sixth Edition, (1990), West Publishing Co., St. Paul, p.1032.

² *Ibid.*

³ Bryan A. Garner, *Black’s Law Dictionary*, Eighth Edition (2004) West Publishing Co., St. Paul, p.1062.

Negligence means the omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do.⁴ It is also said to be the failure to use such care as a reasonably prudent and careful person would use under similar circumstances and the doing of some act which a person of ordinary prudence would not have done under similar circumstances.⁵ Negligence has been held to be failure to do what a person of ordinary prudence would have done under similar circumstances.⁶ The above shows that negligence is a conduct that falls below the standard established by law for the protection of others against unreasonable risk of harm. Thus, it was held to be a departure from the conduct expectable of a reasonably prudent person under like circumstances.⁷

Negligence is refusing to do something which a reasonable man, guided upon the consideration which ordinarily regulate the conduct of human affairs, would do or doing what prudent and reasonable man would not do.⁸ In the law of tort negligence is an ambiguous term that has presently been said⁹ to have two meaning as follows:

1. A mental element which is to be inferred from one of the modes in which some (but by no means all) torts may

⁴ Henry Campbell Black, *Black's Law Dictionary*, Sixth Edition, St. Paul West Publishing Co., (1990) p. 1032.

⁵ *Ibid.*

⁶ *Amoco Chemical Corp. v. Hill*, Del. Super., 318 A 2d 614, 617.

⁷ *U.S. v. Ohio Barge Lines, Inc.*, 607 F. 2d 624, 632.

⁸ *Tecno Mechanical (Nig.) Ltd. v Ogunbayo* (2000) 14 NWLR (pt.639) 150 ratio 1, p.30.

⁹ J.A. Jolowicz and T. Ellis Lewis, *Winfield on Tort*, (London, Sweet x Maxwell, 1963) p.165.

possibly be committed. Thus it is possible to commit torts like defamation, nuisance or trespass not only intentionally, but also negligently. The mental element signified by this is usually total or partial inadvertence on the part of a person to the nature of his conduct and/or its consequences. Yet it may also include full advertence to both.¹⁰ But even when this is so there is no desire for the consequences and this is what distinguishes negligence from intention.

2. An independent tort which consists of breach of a legal duty in the mode described above, followed by damage.

In order to understand clearly the concept of negligence, it is necessary to answer the question, whether negligence is a state of mind or it is an independent tort. The answer might be expressed as follows: “if someone has carelessly injured you, you may possibly have an action upon the case of one sort or another, or even an action for trespass” thus, the idea that negligence is in itself a tort was never stated in so many words, but there was a subconscious realization of it. Therefore, a man did no wrong merely because he drove a steam engine or a gig, sailed a boat, owned a hayrick or a cellar-flap, or pulled down his own house. But when he was careless in his management of any such thing and thereby injured another person, he was liable, and this inadvertence and the consequent damage were the gist of the action and the only things in respect of which it was brought. They constituted “negligence which was one of the possible ways of committing certain other torts.”¹¹ Therefore, under the law of tort, negligence can be said to

¹⁰ *Vaughan v. Menlove* (1837) 3 Bing N. C. 468. Seventh Edition.

¹¹ *Donoghue v. Stevenson* (1932). A.C. 562; *Grant v. Australian Knitting Mills, Ltd.* (1936) A.C. 85, 101, 103; *Nicholls v. Ely Best Sugar Factory, Ltd.* (1936) Ch.343, 351.

be the breach of a legal duty to take care which results in damage, that is not desired by the defendant, to the plaintiff.

Moreover, negligence is the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation and includes, conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly or willfully disregarding of others rights.¹² Negligence can be said to be behaviour which should be recognized as involving unreasonable danger to others.¹³ Negligence has been defined as a culpable omission of a positive duty, which differs from heedlessness, in that heedlessness is the doing of an act in violation of a negative duty, without advertent to its possible consequences.¹⁴ It involves inadvertence and breach of duty. Negligence is defined by Oxford Dictionary of Law¹⁵ as carelessness amounting to the culpable breach of a duty and that it is a failure to do something that a reasonable man, that is, an average responsible citizen, would do, or doing something that a reasonable man would not do. It is also said to be a tort consisting of the breach of a duty of care resulting in damage to the plaintiff.¹⁶

¹² Bryan A. Garner, *Black's Law Dictionary*, Eighth Edition (2004) West Publishing Co., St. Paul, p. 1061.

¹³ *Ibid.*

¹⁴ John B. Saunders, *Mozley and Whiteley's Law Dictionary*, London, Butterworths, 1977, p.218.

¹⁵ Elizabeth A. Martin, *Oxford Dictionary of Law*, New Edition, Oxford, Oxford University Press, 1997, p.305.

¹⁶ *Ibid.*

In the case of *Tecno Mechanical (Nig.) Ltd. v. Adisa Ogunbayo*,¹⁷ negligence was held to be the omission to do something which a reasonable man, guided upon the consideration which ordinary regulate the conduct of human affairs, would do or doing something which a prudent and reasonable man would not do. In the case of *Lochgelly Iron & Coal Co. v. M'Mullan*¹⁸, negligence as a separate tort, has been defined as something more than heedless or careless conduct, whether in omission or commission, which properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom the duty was owing.

The Ingredients of Negligence

Negligence in the law of tort may mean a state of mind in which a particular tort may be committed, for example, where a person commits a trespass through inadvertence or carelessness and also an independent tort. Therefore, negligence is the breach of a legal duty to take care which results in damage, undesired by the defendant, to the plaintiff. Thus, the ingredients of negligence are:

- a. That the defendant was under a duty of care to the plaintiff.
- b. That there had been a breach of that duty.
- c. That as a result the plaintiff has suffered damage.

A plaintiff suing in negligence must prove the above three ingredients to maintain a successful claim. However, these ingredients cannot always be kept apart. Thus, it was stated that “they are simply three different ways of looking at one and the same problem”.¹⁹ But, in considering them separately, it must be borne in mind that their separation is, to some extent at least,

¹⁷ (2000) 14 NWLR, (Pt. 639) 150.

¹⁸ (1934) A.C. 1, 35.

¹⁹ *Roe v. Minister of Health* (1954) 2 Q. B. 66, 85

artificial and the courts are almost invariably concerned with the problem of negligence *ex post facto*. Thus, the courts' decisions do not relate to what a man ought or ought not to have done, but to the tort of negligence as a whole, not simply to one or other of its ingredients. Sometimes, a decision could turn on absence of a duty of care in no more than one judge's analysis and another judge might equally have said that, there was a duty but no breach as was held in the case of *Woods v. Duncan*.²⁰ Therefore, the ingredients of negligence are summarized and discussed as follows:

1. Duty to Take Care

This is the legal obligation to take reasonable care to avoid causing damage²¹ and there is a duty to take care in most situations in which one can reasonably foresee that one's actions may cause physical damage to the person or property of others. The duty is owed to those people likely to be affected by the conduct in question. Doctors for example, have a duty of care to their patients and those who use the highway have a duty of care to all other road users. Moreover, the duty to take care under the tort of negligence is a duty recognized by the law. As a result, a moral or religious duty will not suffice. However, the classic test for establishing a duty of care was formulated by Lord Atkin in the case of *Donoghue v. Stevenson*,²² when he started that:

You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then is my neighbour? The answer seems to be persons who are so closely and directly affected by my act that I

²⁰ (1946) A.C. 401.

²¹ Elizabeth A. Martin, *Oxford Dictionary of Law*, Oxford, Oxford University Press, 1997, p.155.

²² (1933) A.C. 562.

ought reasonably to have them in contemplation as being affected when I am directing my mind to the acts or omissions which are called in question.

Thus, the test for establishing a duty of care is objective not subjective. The effect of its application is that a person is not liable for every injury which results from his carelessness. Therefore, there must be a duty of care as was held in the case of *Bourhill v. Young*.²³ Moreover, the test applied is whether a reasonably prudent man would have foreseen the danger to the plaintiff in the circumstances of the case. The existence of the duty of care is a question of law for the judge to decide. Moreover, the existence of the duty of care in negligence was established in those cases where a contract existed by laying down the principle that, if a person is contractually liable to another person, he cannot simultaneously be liable to a third party in tort for the same act or omission.²⁴ Therefore, the degree of care required is a question of fact in each particular case and the law exacts a degree of care commensurate with the risk created.²⁵ No specially high standard of care is required for the protection of unusually vulnerable people, except where the defendant knew or should have known of their special position. For example, a defendant will not be liable, where a blind man walks in front of a car which the defendant is driving with reasonable care. But a defendant will be liable if he employed a one-eyed employee and allows him to endanger the sight of his remaining eye by failing to provide protective goggles for welding work, if the man was blinded. This is because, the employer should

²³ (1943) 2 All E.R. 396.

²⁴ *Earl v. Lubbock* (1905) I K.B. 253.

²⁵ *Read v. Lyons* (1947) A.C. 156.

know of the unusual vulnerability of his workman.²⁶ Therefore, reasonable care must be taken to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Furthermore, the duty of care is restricted to persons within the potential area of danger. Thus, it was held in the case of *Bourhill v. Young*²⁷ that, a pregnant woman who heard the noise of a road accident caused by negligence of the defendant some distance away, and sustained nervous shock, which cause her to lose her baby, was outside the scope of the defendant's duty and could not recover damages for negligence.

2. Breach of Duty of Care

A duty of care must be established before there can be a breach of such duty. Thus, the establishment of a duty of care as a matter of law, leaves the judges to determine and decide whether there has been a breach of that duty in fact. Therefore, the law is concerned with how much care the defendant must take. Thus, it is true that if motorists did not take out their cars many lives would be saved, but it is not negligent to drive a car. However, the test is to place the reasonable man in the defendant's position and it is an objective test. It was stated by Barton Anderson in the case of *Blyth v. Birmingham Waterworks Co.*²⁸ that:

Negligence is the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do.

²⁶ *Paris v. Stepney Borough Council* (1951) A.C. 367.

²⁷ (1943) A.C. 92.

²⁸ (1856) 11 Ex. 781.

Flowing from the above, the standard required is not that of a particularly conscientious man but that of the average prudent man in the eyes of the jury.²⁹ It is obvious that, most of us behave unreasonably from time to time, and if during one of those lapses a person suffers injury, our pleading that we are usually reasonable men will not be a good defense. However, long ago or in the part, the reasonable man behaved much as he does now, except that he was much less accountable. However, whether the care that has been taken is or is not reasonable is a question, the answer to which must vary with circumstances. But, the standard of care is that of the hypothetical reasonable man.³⁰

Moreover, there is no liability in tort for negligence unless the act or omission that causes damages is a breach of a duty of care owed to the plaintiff.³¹ Most duties of care are the result of judicial decisions, but some are contained in statutes, such as the Factories Act, Laws of the Federation of Nigeria, 2004.

3. Consequent Damage

Consequent damage is the third ingredient of the tort of negligence. Negligence is not actionable in itself, therefore it is necessary for the plaintiff to show that he has suffered some loss. But the plaintiff's damage must have been caused by the defendant's breach of duty and must not be too remote a consequence of it. However, in cases of negligence, problems of remoteness of damage are most likely to arise and the measure of general damages to be awarded is determined by judges. Moreover, some problems in negligence, especially that of liability for nervous

²⁹ *Daniels v. White and Sons Ltd.* (1938) 4 All E.R. 258.

³⁰ *Bourhill v. Young* (1943) A.C. 92, 110

³¹ Elizabeth A. Martin, *Oxford Dictionary of Law*, Oxford, Oxford University Press, 1997, p.155.

shock, can only be dealt with against the background of the tort of negligence as a whole.

The Breach of the Duty of Care in Negligence

There is no general duty to avoid harming others under the tort of negligence, but the tendency of the courts is to recognize a duty of care wherever a man should reasonably foresee that his conduct is likely to cause harm. Therefore, negligence is not a ground of liability unless the person whose conduct is impeached is under a duty of taking care.³² But there are many situations where one person owes a duty of care to another. The fact is that, the list is endless and there are different forms of negligence and the situations in which the duty of care arises are varied. Thus, it was stated by Lord Macmillan in the case of *Donoghue v. Stevenson*³³ that, ‘the categories of negligence are never closed’ and the courts do recognize extended forms of duties from time to time.³⁴ Judicial recognition are constantly being given to new duties of care and the doctrine of precedent is being invoked to expand the tort of negligence. Some of the new varieties of legal duty of care constantly recognized by the courts that are well established and which have shown the wide scope of the tort of negligence has been classified as the new category of negligence. They are as follows:

- a. **Suppliers Duty of Care:** This duty of care is in respect of dangerous things distributed to the public. A supplier is a person or company that supplies goods and owes a duty of care not to supply dangerous goods to the public.

³² *Butler v. Fire Coal Co. Ltd.* (1912) A.C. 149.

³³ (1932) A. C. 562.

³⁴ *Clay v. A. J. Crump & Sons Ltd.* (1963) 3 All E. R. 687; *Home Officer Dorsel Yacht Club Ltd.* (1970) 2 All E. P. 294.

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Therefore, a supplier who supply goods that causes harm to those who received that goods, shall be liable in negligence.

- b. Highway Users Duty of Care: Those who use the highway have a duty of care towards the persons and property of other users of the highway. This duty applies to all places where people are likely to meet and thus, covers shipping at sea or on canals, railway, station, etc.
- c. Professional Persons Duty of Care: Professional persons, such as Doctors, Barristers and Solicitors, Dentists etc., owe a duty of reasonable competence, in accordance with the prevailing standards in their particular profession. Therefore, a doctor has a duty of care to his or her patients.
- d. Bailees of Goods Duty of Care: Bailees of goods owe a duty of care while the goods are in their possession. However, the standard of care depends on the type of bailment. Thus, a bailee who receives benefit from the goods, owes a higher duty of care than one whose duty is merely to accept goods for sale keeping gratuitously and for the convenience of the bailor.³⁵
- e. Carriers' Duty of Care: Carriers owe a duty of care towards passengers and freight. This duty arises from law and not from contract, though the contract of carriage often effectively excludes liability for Negligence. For example, carriers duty of care is owed to all passengers, whether paying or not.³⁶ But this duty does not extend to trespassers.³⁷
- f. Occupier's Duty of Care: This duty relates to occupier's liability for dangerous premises. However, liability for

³⁵ *Coggs v. Barnard* (1703) 2Ld. Ray, 909.

³⁶ *Harris v. Perry & Co.* (1903) 2 K. B. 219.

³⁷ *Grand Trunk Rail Co. v. Barnett* (1911) A.C. 361.

- negligence in regard to dangerous premises is primarily fixed upon the occupier, or any person having effective control of the premises. Otherwise the tenant will be the person to be responsible in most cases. However, the person responsible must take such care as in all the circumstance of the case is reasonable, to see that visitors are reasonably safe in using the premises.³⁸
- g. Local Authority Duty of Care: A local authority is liable for the negligence of its surveyor in passing defective foundations as sound, where the council had arrogated the power to inspect and check the soundness of building foundations.³⁹
 - h. Employer's Duty of Care: This is the duty of care in respect of employer's duty to provide:
 - (i) a safe system of work for his employees,
 - (ii) reasonably safe machinery and appliances and
 - (iii) competent fellow - servants⁴⁰

Among these new category of negligence, our focus of discussion is on the employer's duty of care. That is, situations where negligence of employer can be inferred. In the case of *Techno Mechanical (Nig.) Ltd. v. Ogunbayo*,⁴¹ negligence was held to mean the omission to do something which a reasonable man guided upon the consideration which ordinarily regulate the conduct of human affairs, would do or doing something which a prudent and reasonable man would not do. It is the duty of the employer to provide a safe working conditions for his employee. It is also the duty of the employer to provide reasonably safe machinery and

³⁸ Section 2, Occupiers' Liability Act, 1957.

³⁹ *Dutton v. Bognor Regis U. D.U.* (1972) 1 All E.R. 462.

⁴⁰ *Wilson & Clyde Coal Co. v. English* (1938) A.C. 57.

⁴¹ (2000) 14 NWLR (Pt.639) 150.

appliances for his employee. Unfortunately, some employers have neglected to provide reasonably safe machinery, even when their employees demand for them. Thus, in the case of *Obroku v. Iddo Plastics Ltd.*,⁴² one of the plaintiff's claims against the defendants was for the sum of ₦5,000,000.00 (Five Million Naira) being damages in negligence for defendants failure to provide a safe and proper system of work or machine in the defendants factory consequent upon which, the plaintiff lost four fingers of his left hand while operating a milling machine in the cause of his duties as defendants machine operator and also for breach of statutory duty for failing to fence a dangerous part of the machine under the factory Act 1987. It is important to note that, a plaintiff have a right of action in tort as the result of a breach of duty imposed by a statute and most breach of statutory duty claims arise out of industrial injuries. Thus, a particular duty of care may be laid upon a person by statute. For example, the duty placed on an employer to guard machinery under safety legislation.⁴³ Such duties are high and absolute. Sometimes, the employer can plead contributory negligence as a defence. However, where there is a breach of a statutory duty, it must be shown that the duty is owed to the plaintiff personally and not to the public as whole. Thus, in the case a *Atkinson v. Newcastle and Gateshead Waterworks Co.*,⁴⁴ the plaintiff's timber yard caught fire and was destroyed, there being insufficient water in the mains to put it out. The defendants were required by the Waterworks Clauses Act, 1874, to maintain a certain pressure of water in their water pipes, and the Act provided a penalty of £10 (Ten pounds) for failure to keep the required pressure and 40s. (Shillings) for each day during which the neglect

⁴² (2001) 2 LHCR p.17.

⁴³ *Obroku v. Iddo Plastics Ltd.* (2001) 2 LHCR p.17.

⁴⁴ (1877) L.R. 2 Ex.D. 441.

continued, the sums being payable to aggrieved ratepayers. The plaintiff sued the defendants for loss caused by the fire on the ground that they were in breach of a statutory duty regarding the pressure in the pipes. It was held by the court that, the defendants were not liable. The statute did not disclose a cause of action by individuals for damage of this kind. It was most improbable that the legislature intended the company to be gratuitous insurers against fire of all the buildings in Newcastle.

However, where a statute proscribes provision to prevent damage, if an action is brought, the harm resulting from the breach of duty must be of the type contemplated by the Statute. Thus, in the case of *Gorris v. Scott*,⁴⁵ a statutory order placed a duty on the defendant to supply pens of a specified size in those parts of a ship's deck occupied by animals. The defendant did not supply the pens, and sheep belonging to the plaintiff were swept overboard. The plaintiff claimed damages from the defendant for breach of statutory duty. It was held by the court that, the plaintiff could not recover for his loss under breach of statutory duty, because the object of the statutory order was to prevent the spread of disease, not to prevent animals from being drowned. Moreover, in the case of *Lane v. London Electricity Board*,⁴⁶ the plaintiff was an electrician employed by the defendants to install additional lighting in one of their sub-stations. While inspecting the sub-station, he tripped on the edge of an open duct and fell, sustaining injuries. The plaintiff claimed that the defendants were in breach of their statutory duty under the Electricity (Factories Act) Special Regulations in that, the part of the premises where the accident occurred was not adequately lighted to prevent danger. It was then

⁴⁵ (1874) L. R. 9 Exch. 125.

⁴⁶ (1955) 1 All E. R. 324.

held by the court that it appeared that, the word ‘danger’ in the regulations meant ‘danger from shock, burn or other injury’.⁴⁴¹ Danger from tripping was not *ejusdem generis*, since the specific words related to forms of danger resulting from contact with electricity. However, it should be noted that, the summary of the decision is concerned only with the plaintiff’s claim under the regulations. Therefore, the failure of this claim did not prevent a claim for damages for negligence at common law.⁴⁷

Thus, in the case of *Obroku v. Iddo Plastics Ltd.*,⁴⁸ the plaintiff testified that, he was claiming N5,000,000.00 (Five Million Naira) for negligence and breach of statutory duty for failure of the defendants to provide a safe system of working machine that led to his loss of four fingers and/or breach of statutory duty for not fencing the machine. The plaintiff testified further that, the whole machine was not fenced and that the most dangerous part of the machine which was crushing or grinding part of the machine, is the two heavy rollers of the machine, which were exposed and moves as fast as 6 to 7 times per second. After examining the evidence of the plaintiff and that of the defendants, the court found and held upon the preponderance of the evidence before the court and on balance of probability that the rubber milling machine was not fenced and that the plaintiff had to wear gloves to operate the machine and that the machine ought to be fenced but was not fenced. The court then held that the defendants rubber milling machine was a dangerous machine. The court further held that, the defendant owed a duty of care to the plaintiff as defendants machine operator; to fence the two rollers being the dangerous part

⁴⁷ Dennis Keenan, *English Law*, Seventh Edition, (London Pitman Books Limited) 1982, p.494.

⁴⁸ (2002) 2 LHCR p. 25.

of the defendants rubber milling machine operated by the plaintiff, to prevent injury to the plaintiff in the course of his duty. Thus, failure of the defendants to fence the two rollers of the rubber milling machine was a breach of the duty of care owed the plaintiff.

In the above case, it was stated by the court that, the defendants ought, as a reasonable employer to have fenced the two rollers of the rubber milling machine operated by the plaintiff. The court further stated that, the defendants were therefore negligent at common law in failing to fence the two rollers of the rubber milling machine. It should be noted that, the court referred to negligence under the law and to section 17(1) Factories Act, Cap.124, Law of the Federation of Nigeria, 1990 and then held that, upon the description of the defendants' rubber milling machine particularly the two rollers therein. That, the reasonable inference is that the rubber milling machine's two rollers were a dangerous part of the machinery that were not safe unless it was securely fenced. That failure of the defendants to fence the two rollers which were the grinding and crushing part of the rubber milling machine operated by the plaintiff, was a breach of the defendants statutory duty of care to the plaintiff. That if the two rollers of the machine had been fenced by the defendants, plaintiff's left hand could not have been dragged in between the rollers when the plaintiff was cutting the rubber that was stiff to the body of the rollers with a knife. That the fence would have prevented plaintiff left hand from being dragged into the roller. That the plaintiff lost four fingers of his left hand in the accident which was due to defendants negligence to fence the rollers. Based on the above, the court then held that, the defendants are negligent under the Factories Act and judgment was entered for the plaintiff

against the defendants jointly and severally for the sum of *DELSU Law Review Vol. 7 2021* ₦2,004,050.00 (Four Million, Four Thousand and Fifty Naira)⁴⁴³ being damages for defendants negligence resulting in plaintiff's loss of four fingers of his left hand while operating the defendants rubber milling machine.

Therefore, an employer owe a duty of care to its employees to prevent injuring to the employees in the course of their duties. Failure of the employer to provide a safe system of work for his employees and reasonably safe machinery and appliances, would make the employer liable for negligence which may occur, while the employees are carrying on with their duties.

Conclusion

Negligence is the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation and includes, conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly or willfully disregardful of others rights.⁴⁹ It is the failure to use sure care as a reasonably prudent and careful person would use under similar circumstances and the doing of some act which a person of ordinary prudence would not have done under similar circumstances.

The paper has shown that, the law of negligence is founded on reasonable conduct or reasonable care, expected from a reasonable man under all circumstances of particular case. The paper also revealed that, there is no liability in tort for negligence unless the

⁴⁹ Bryan A. Garner, *Black's Law Dictionary*, Eighth Edition (2004) West Publishing Co., St. Paul, p. 1061.

act or omission that causes damage is a breach of a duty of care owed to the plaintiff. The paper further revealed that, most duties of care are the result of judicial decisions, but some are contained in Statutes, such as the Factories Act, Laws of the Federation of Nigeria, 2004.