



ONTARIO
SUPERIOR COURT OF JUSTICE

Electronically issued : 14-Apr-2020
Délivré par voie électronique : 14-Apr-2020
Toronto

MAHALETCHUMI NAGARASA

Plaintiff

- and -

THE ESTATE OF JOACHIM VONDEHN

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

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Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THAT THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date

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Issued by

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Local Registrar

Address of
court office:

Superior Court of Justice
393 University Avenue, 10th Floor
Toronto, Ontario M5G 1E6

TO: **THE ESTATE OF JOACHIM VONDEHN**
C/O Michael VonDehn
44 Hillcrest Drive
Guelph, ON M1E 4W9

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CLAIM

1. THE PLAINTIFF CLAIMS:

- (a) General damages in the sum of \$1,000,000.00;
- (b) Special damages in the sum of \$1,000,000.00;
- (c) Pre-judgment and post-judgment interest on damages;
- (d) The costs of this action; and
- (e) Such further and other relief as this Honorable Court deems just.

THE PARTIES

- 2. The Plaintiff, Mahaletchumi Nagarasa, resides in the City of Scarborough, in the Province of Ontario, and at all material times was the backseat passenger of the 2014 Mitsubishi Outlander motor vehicle bearing Ontario License Plate number BVMF 316 (herein the “Plaintiff motor vehicle”).
- 3. The Defendant, The Estate of Joachim Vondehn, was an individual residing at 1070 Hewitt Street, in the City of Gravenhurst, in the province of Ontario and was at all material times of the owner 2008 Nissan motor vehicle bearing the Ontario License Plate number CEKE 281 (herein the “Defendant’s motor vehicle”).

THE ACCIDENT

- 4. On or about April 20, 2018, the Plaintiff motor vehicle was traveling on Finch Avenue East, in the City of Toronto in the Province of Ontario, in the far right lane nearing the intersection with Markham Road, when suddenly and without warning, the Defendant motor vehicle changed lanes and struck the Plaintiff motor vehicle, then struck another vehicle who was travelling in the middle lane, then fled the scene (hereinafter referred to as the “Accident”).

DEFENDANT’S CULPABILITY

- 5. The Plaintiff claims that the Accident was caused as a direct result of the negligence of the Defendants’, the particulars of which include, but are not limited to, the following:

A. AS AGAINST THE DEFENDANT THE ESTATE OF JOACHIM VONDEHN:

- (a) He permitted the Defendant's motor vehicle to be operated by an individual that he knew or out to have known was an incompetent driver and lacking reasonable care, skill, ability and training;
- (b) He permitted the Defendant's motor vehicle to be operated by an individual when he knew or ought to have known her license was suspended;
- (c) He failed to have the brakes on the Defendant's motor vehicle in proper working order;
- (d) He provided instructions to the driver of the Defendant's vehicle that compelled her to feel rushed and/or uneasy, leading them to become unfocussed on the safe operation of the Defendant's motor vehicle; and
- (e) He failed to have the Defendant's motor vehicle in a fit and proper condition, suitable for its safe operation on a highway.

DAMAGES

- 13. As a result of the Accident, the Plaintiff sustained serious and permanent injuries, including but not limited to back pain, left shoulder pan, left upper arm pain, concussion, and neck pain.
- 14. The injuries to the Plaintiff is accompanied by headaches, dizziness, shock, anxiety, depression, nightmares, emotional trauma, chronic pain, insomnia, weakness, diminished energy, insomnia, irritability, memory loss, cognitive difficulties and stiffness which continues to the present and will continue in the future.
- 15. The Plaintiff has sustained and will continue to sustain pain and suffering, loss of enjoyment of life and loss of amenities. The Plaintiff is unable to participate in those recreational, social, household, athletic and employment activities to the extent to which they participated in such activities prior to the Accident, or would have participated in the future, but for the Accident.
- 16. The Plaintiff has undergone and will be required to undergo in the future extensive hospital,

medical, surgical, therapy, drug and other treatment.

17. The Plaintiff has been put to medical, hospital, health care, and other out-of-pocket health expenses, the full details of which are not available at the time of issuance of the Statement of Claim, however, full details of these expenses will be available prior to the commencement of the trial in this action.
18. The Plaintiff's ability to carry out housekeeping and home maintenance activities has been significantly and materially impaired as a result of the injuries and impairments sustained in the Accident.
19. The Plaintiff has sustained a significant loss of income and loss of competitive advantage, loss of earning capacity, and loss of opportunity, as a result of the injuries and impairments sustained in the Accident.
20. The Plaintiff seek to recover from the Defendant all of the past, present, and future expenses incurred, or likely to be incurred, by the Plaintiffs' as a direct result of the injuries and impairments sustained in the Accident, none of which would have been incurred but-for the Accident, including but not limited to expenses for medical attention, ambulance transportation, hospital attendances, drugs, medication, assistive devices, parking, service providers, etc, and legal expenses and moving costs incurred to address the Plaintiffs inability to honour their financial obligations post-Accident, whether it be mortgage commitments, lease obligations, family support responsibilities, or otherwise. The full particulars of the Plaintiffs Accident related out-of-pocket expenses are not available at the date of issuance of the Statement of Claim, however, the full details of these expenses will be available prior to the commencement of the trial in this action.
21. In the within action, the Plaintiff seeks the costs and disbursements incurred of pursuing the accident benefits insurer with respect to the claim for accident benefits.
22. The Plaintiff pleads and relies upon the collateral source rule (herein the "collateral source doctrine"), such that in the event the Plaintiff receives compensation for their injuries from a source other than the defendant, the payment so received shall not be deducted from the damages that the defendants must pay.

23. The Plaintiff pleads that in the event that the collateral source doctrine is overruled, by legislation or otherwise, making a payment received from collateral sources deductible, in whole or in part, from the damages that the Defendants' must pay, the Plaintiff pleads that she has incurred, and will continue to incur, legal fees and expenses to pursue and collect those collateral benefits accruing to the benefit of the Defendants', with such legal fees and expenses being fully recoverable from the Defendants'. The Plaintiff pleads that these legal fees and expenses would not have been incurred but for the injuries and impairments sustained by them as a direct result of the Defendants' negligence.
24. This action is to be heard at the same time or one after the other of the companion action with the court file number CV-20-00634159-0000.

STATUTORY RELIANCE

25. The Plaintiff pleads and relies upon the provisions of the:
- (a) *Highway Traffic Act*, R.S.O. 1990, c.H 8;
 - (b) *Insurance Act*, R.S.O. 1990, c. I.8;
 - (c) *Negligence Act*, R.S.O. 1990, c. N.1;
 - (d) *Courts of Justice Act*, R.S.O. 1990, c. C.43; and
 - (e) *Rules of Civil Procedure*, R.S.O 1990, Reg. 194.

The Plaintiff propose that this action be tried at Toronto.

Dated:

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CORPORATION o/a
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NAGARASA v. THE ESTATE OF JOACHIM VON DEHN

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDINGS COMMENCED AT **TORONTO**

STATEMENT OF CLAIM

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