

IN THE HIGH COURT OF TANZANIA

**(AT DAR ES SALAAM)
CIVIL APPEAL NUMBER 76 of 2012**

(Originating from Resident Magistrate's Court of Dar es Salaam Civil Case No. 105 of 2010)

ALLIANCE INSURANCE CORPORATION LTD.....APPELLANT

VS

JOSEPH MUTASHOBYA.....RESPONDENT

JUDGMENT

Date of last Order: 08-08-2012

Date of Judgment: 16-10-2012

JUMA, J.:

Joseph Mutashobya, who is a businessman, was on 24th December 2009 returning to his base at Moshi to celebrate Christmas when his car was rammed into from behind. His vehicle in turn crashed into another car that was in front. His car, a Toyota Harrier registration number T672 ALR was damaged. Mr. Mutashobya had insured his vehicle with the appellant Alliance Insurance Corporation Ltd for Tshs. 25,000,000/=. Mr. Mutashobya filed a civil case number 105 of 2010 at the Resident Magistrate's Court of Dar es Salaam at Kisutu to demand from his insurer, payment of Tshs.

8,610,000/= as the costs of the repair of his car. Mr. Mutashobya further claimed that for 108 days he had to use alternative vehicle for his transportation while waiting for completion of the repairs. For this he wanted a refund of Tshs 5,400,000/=:, and Tshs. 10,000,000/= general damages for breach of contract.

The Alliance Insurance Corporation Ltd denied liability, contending that the amount claimed for repair was not only exaggerated but the hiring of alternative transport was not covered under the insurance policy agreement between Mr. Mutashobya and his insurer.

While the trial court agreed with the Alliance Insurance Corporation Ltd that its insurance policy with Mr. Mutashobya did not cover the loss of use of the vehicle, the court found that Mr. Mutashobya suffered general damages following the breach of the insurance contract. The trial court ordered the insurance company to pay Mr. Mutashobya a total of Tshs 8,610,000/= used to repair his vehicle and also Tshs 8,000,000= as general damages for inconveniences.

Both sides do not dispute that there was an insurance agreement between them. I also do not think that the

allegation that the trial court proceeded to compose the judgment without framing issues is borne out of the copy of the judgment which the insurer attached to the Memorandum of Appeal. Page 2 of the judgment of the trial court clearly shows that three issues were framed for determination and the trial court was accordingly guided by the framed issues. For purposes of my determination, only two issues arise from the Memorandum of Appeal which the Alliance Insurance Corporation Ltd filed on 26th June 2012. The first issue, is whether the trial court was correct to order the insurance company to pay Mr. Mutashobya a total of Tshs 8,610,000/= he used to repair his vehicle. The second issue is whether Mr. Mutashobya was entitled to Tshs 8,000,000= as general damages for inconveniences.

Hearing of this appeal proceeded by way of written submissions. Insurer's written submissions were prepared and filed by the Octavian & Co Advocates. NexLaw Advocate prepared and filed replying submissions on behalf of Mr. Mutashobya.

On the first issue on the claim for the amount of Tshs 8,610,000/= which he used to repair his vehicle, Mr.

Mutashobya had alleged that following the accident, he contacted the insurer's branch office at Moshi to inquire where he could take his vehicle for repair. The branch office told him that he could take his vehicle to Dulla Auto Garage in Moshi. Mr. Mutashobya obliged and the Dulla Auto Garage quoted Tshs 8,610,000/= to cover the repairs. Mr. Mutashobya also sought repair quotation from the Toyota Tanzania who quoted Tshs. 6,200,000/=. The Alliance Insurance Corporation Ltd contends that upon receiving a demand for Tshs 8,610,000/= Mr. Mutashobya allegedly used to repair his insured vehicle, the insurer appointed M/S East Africa Assessors Ltd to assess and determine the actual cost. The assessors determined Tshs 2,422,500/= which Mr. Mutashobya rejected as too little and went to the Resident Magistrate's Court.

In my re-evaluation of evidence, the resolution of the two questions, (i) whether the trial court was correct to order the insurance company to pay Mr. Mutashobya a total of Tshs 8,610,000/= he used to repair his vehicle, and (ii) whether Mr. Mutashobya was entitled to Tshs 8,000,000= as general damages for inconveniences, depend entirely on the nature

of the evidence that was presented at the trial and the relative preponderance of that evidence.

Upon my re-evaluation of evidence on the costs of repair of the vehicle, I cannot fault the conclusion reached by the trial court. In my opinion, on the basis of evidence that was before it, the trial Resident Magistrate's Court properly declined to accept the assessment report by the East African Assessors. The basis of the assessment by the East African Assessors was the price quotation from the Afri-Carriers Company, which was not presented before the trial court. This left the trial court with only the price quotations of Tshs 8,610,000/= from Dulla Auto Garage. On the scale of balance of probabilities based on the price quotation from Dulla Auto, the trial court reached a proper conclusion.

On the second issue regarding the general damages of Tshs 8,000,000= which the trial court awarded Mr. Mutashobya for inconveniences, the law is now settled that such general damages are designed to compensate for the pain and suffering and are a matter for the discretion of the trial court. It was contended on behalf of the Alliance Insurance Corporation Ltd that the trial court neither directed

itself to its assessment nor furnished reasons for awarding. The insurer through its learned Advocate has also referred me to page 4 of the judgment of the trial court where the learned trial magistrate merely mentioned the amount as resulting from inconvenience caused.

In my opinion, so long as that discretion is exercised judicially this court of first appeal cannot interfere with an award of general damages. The insurer has not demonstrated that the general damages that was awarded by the trial court was either so inordinately high as to represent an entirely erroneous estimate of the compensation to which the respondent was entitled. Further, the insurer has not demonstrated why this Court should interfere with the judicial discretion of the trial court. I am in full agreement with the principle of law the Court of Appeal stated in the case of **Tanzania Saruji Corporation vs. African Marble Company Limited [2004] TLR 155** to the effect that general damages are the direct, natural or probable consequence of a wrong doing subject of a complaint. I can see no reason to interfere with the trial court's conclusion that a total of Tshs 8,000,000/= which was awarded as general damages, was the

direct, natural or probable consequence of inconveniences Mr. Mutashobya had to endure while waiting for the insurer to timely pay up Tshs. 8,610,000/= for the repairs of his car.

In the result, the appeal is dismissed with costs.

DATED at DAR ES SALAAM this 16th October, 2012



I.H. JUMA

JUDGE

16/10/2012

Judgment is delivered in the presence of Mr. Zeno Tarimo, Advocate (for the Appellant) and Ms Upendo Mbaga, Advocate holding Ms Elizabeth's brief (for the Respondent)



I.H. Juma

JUDGE

16/10/2012