

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
CIVIL CASE NO 73 OF 2012**

MOHAMED SAMEER KHAN.....PLAINTIFF

VERSUS

JUBILEE INSURANCE (T) LTD.....DEFENDANT

JUDGMENT

Date of Last Order: 29/05/2019

Date of Judgment: 12/07/2019

MLYAMBINA, J.

There are five fascinating legal issues to be determined in this insurance suit:

1. Whether the Plaintiff misrepresented to the Defendant the value of the motor vehicle at the time of formation of the insurance contract.
2. Whether the insured vehicle was involved in a road accident in Korogwe area Tanga Region.
3. Whether the Plaintiff induced the assessors by giving them a laptop in order to inflate the value of the accidented vehicle.
4. What is the Plaintiff indemnity's entitlement?
5. To what relief (s) are the parties entitled to.

The brief facts leading to this suit, as can be reduced from the plaint is that; on 23rd March, 2011 the Plaintiff entered into a comprehensive motor vehicle insurance contract with regard to the Plaintiff's Motor Vehicle, Make Range Rover Sport Registered as T810 AWP.

It was alleged by the Plaintiff that the premium to the said insurance contract of which was duly paid by the Plaintiff was USD 3,380. Unfortunately, on 13th

September, 2011 the said car was involved in an accident in Korogwe area, Tanga Region where it was totally damaged.

The Plaintiff further alleged that, on his part duly and timely informed the Defendant about the accident on 14th September, 2011, which was a day after the accident, to instigate Defendant's legal duty and responsibility.

It was further alleged by the Plaintiff that despite of his several efforts and reminders through demand notices the Defendant has refused to pay the said amount. As a result, the Defendant has breached the contractual obligations. Hence, the Plaintiff has suffered damages.

Wherefore, the Plaintiff prayed for judgment and decree as follows:

- a) Payment of USD 130,000 being the indemnity value of the insured motor vehicle.
- b) Interest at 12% per month from the date of filing of this suit to the date of judgment.
- c) Interest at Court rate from the date of judgment to the date of settlement.
- d) General damages at the discretion of the Court.
- e) Costs and any other relief (s) the honorable Court may deem fit to grant.

In its Written Statement of Defence (WSD), the Defendant conceded that it entered into contract of insurance with the Plaintiff and that the Plaintiff paid the premium as alleged in the plaint.

Further, the Defendant stated that the Plaintiff made misrepresentation in regard of the motor vehicle's value thereby breaching his duty of *uberimae fidei* which act entitled the Defendant to avoid the contract of insurance.

The Defendant denied the allegation that the motor vehicle was involved in car accident rather the same was pushed into a ditch with the aim of fraudulently obtaining money from the Defendant. Further, the alleged premises upon which the accident took place, shows there is a sharp corner and it is not steep to allow the damages that occurred on the motor vehicle.

In view of the Defendant, the driver's explanation on how the accident occurred do not suggest that the motor vehicle would have overturned in the way it did. Again, the time and place where the accident took place are questionable.

The Defendant went on to reply, dubiously the Plaintiff attempted to induce the Defendant's assessor to establish that the suit motor vehicle had higher value equivalent to the value misstated by the Plaintiff, by offering him with a laptop and money.

It was contended by the Defendant that the circumstances surrounding the accident as stated herein above, supported by the fact that the Plaintiff deliberately over insured the suit vehicle. Again, the Plaintiff's act of enticing the Defendant's assessor to support his claim shows that the Plaintiff's claim is a dubious one.

The Defendant conceded that the information in connection with the alleged accident was received as alleged by the Plaintiff. However, the Police Accident Report and Driver's Caution Statement, in view of the Defendant,

are contradictory, which also applies to the Plaintiff's letter dated 25/11/2011 and the claim form.

The Defendant denied to have breached any contractual duty towards the Plaintiff as alleged and stated that it is the Plaintiff who is in breach of the policy of insurance. Hence, the Plaintiff's demands and reminders stated in the plaint were of no use.

In reply to the Written Statement of Defence, the Plaintiff reiterated his allegation and went on to deny to have met and offered anything to the alleged assessor who is not known to him at all.

The Plaintiff replied more that the assessor was duty bound to have rejected the same or to have reported the matter to the PCCB if the same was a genuine offer. Thus, the allegations have been created by the Defendant in order to defeat the ends of justice.

Before I address the framed issues in seriatim, let me point out two point:

One, the Defendant apart from raising bribe (crime) within this civil proceeding has not attempted, leave alone to prove, such assertion. In all the evidences gathered before the Court neither the alleged bribed assessor nor the said laptop was presented before the Court.

It is the cardinal principle of law through the case of **Omary Yusufu v. Ahmed Abdulkadr** TLR (1987) 169 that:

"When the question whether someone has committed a crime is raised in civil proceedings that allegation need be established on a higher degree of probability that that which is required in Ordinary Civil Cases"

For the Defendant to establish the alleged bribe one would have expected; *first*, the one bribed be brought to the Court. *Second*, the laptop given to the assessor be brought as an exhibit; *third*, establish ownership of that laptop to the Plaintiff; *fourth*, prove that the laptop was given to the assessor for inducing him to establish that the suit motor vehicle had higher valued equivalent to the valued that was misstated by the Plaintiff.

Two, from the Written Statement of Defence, in particular paragraph 5 and 6, the Defendant has not disputed the liability rather the amount of compensation.

With the afore general observation, I will venture to determine the first issue; *whether the Plaintiff misrepresented to the Defendant the value of the motor vehicle at the time of formation of the insurance contract*. In answering the first issue, let it be noted that there is no dispute that the Plaintiff and the Defendant had an insurance contract providing cover for the Motor Vehicle, Make Range Rover Sports Registered as T810 AWP.

It is also not in dispute that the sum insured as value of the motor vehicle make Range Rover Sports Registered as T810 AWP was USD 130,000.00. It is not disputed that the paid premium of USD 3,380 is based on an amount insured.

It is further not disputed that during the time of the Policy the motor Vehicle Make Range Rover Sports Registered as T810 AWP was involved in an accident and was totally damaged.

Now, to answer the 1st issue, PW2 Mohamed Sameer Khan deposed *inter alia* that he insured his Motor Vehicle Make Range Rover with Registration

No. T810AW. A Motor Vehicle Card No. 36262339 for Range Rover Ranger No. T810 AWP in the name of Mohamed Sameer khan was admitted as *exhibit P2*. The Motor insurance with interim cover note JIC HQ/A/PC NO. 0432810 the policy holder been Mohamed Sameer khan for vehicle T810AWP insured on 23/03/2011 by agency code No. 150028 was admitted as *exhibit P3*.

PW2 told the Court further that he paid for comprehensive insurance receipt dated 23/03/2011 in the name of Mohamed Sammer Khan for TIN No. 100-675-749 VRN 10-015797-G, receipt No. TZ/DAR 137596 for the sum of USD 3,380 was admitted as exhibit P4.

On the other hand, DW1 one Rumishael Shoo Christian as the sole defence witness admitted before the Court, under oath, that there was no misrepresentation of the true value of the motor vehicle during the formation of the premium of the comprehensive motor vehicle. As correctly submitted by the Plaintiff in their final written submission, the admission by DW1 means the Defendant established the value of the vehicle before executing the insurance contract.

Above all, DW1 was of further testimony that the Defendant inspected and assessed the motor vehicle and there was no misrepresentation during the time when the premium of comprehensive insurance agreement was executed between the Plaintiff and the Defendant.

With the afore evidences and exhibits, the 1st issue is answered in the negative, there was no misrepresentation as alleged by the Defendant.

The second issue is; *whether the insured vehicle was involved in a road accident at Korogwe Area Tanga Region.* PW1 one John Morris Kyondo who was the driver of the insured motor car in dispute, PW2 and DW1 all concedes that the Motor Vehicle Range with Registration No. T810 AWR was involved in accident on 13/09/2011 at Lutindi nearby Korogwe. But DW1 goes further to testify that the accident may have been deliberately caused in order to seek an insurance claim. However, there is no supporting evidence that the accident was caused deliberately.

Even the Defendant never disputed on the authenticity of the vehicle inspection report D. 966478 for Vehicle No. T810 AWP, Range Rover, as a result it was admitted as *exhibit P1*. Therefore, the third issue is answered in the affirmative.

The fourth issue is; *whether the Plaintiff induced the assessors by giving them a laptop in order to inflate the value of the accidented vehicle.* As observed earlier on, this crime liability has not been established by the Defendant who raised it. The assessor and the said laptop were not made part of the defence evidence apart from the mere allegation. As such, the third issue is answered in the negative.

To answer the fourth and fifth issues; it is true as submitted by the Plaintiff in his final submissions, indemnity is a way of undertaking to place the insured after the loss in the same position he would have been, as if the loss did not occur or to the same position he immediately was before the loss. The accident in this case occurred on 13th September, 2011. This case was filed in 2012. I therefore find the Plaintiff is entitled to be compensated for

the insured value of the vehicle, that is USD 130,000 in terms of **Section 77 (a) and (a) of the law of contract act Cap 345 (R.E. 2002)**.

Indeed, I find the Plaintiff is entitled to general damages by breach of the insurance contract in terms of **Section 73 (i) of the law of contract act (supra)** because by virtue of **section 73 (i) of the law of contract, (supra)** the Plaintiff is entitled to receive, from the party who breached the contract, compensation for any loss or damage that arises naturally or in the usual course of things, or which both parties knew at the time of contract to be likely to result from the breach of it.

Given that general damages are awarded at the judicial discretion of the Court, I find in the interests of justice to award the Plaintiff TZS Two Million each year for the period of seven (7) years covering from 2012- 2019 making a total sum of TZs fourteen Million.

I also grant costs of the case to the Plaintiff because it is the established principle that costs would usually follow the event (see **Mohamed Salimin v. Jumanne Omary Mapesa**, Civil Application No. 4 of 2014 Court of Appeal of Tanzania at page 3 (unreported)).

In the event, I grant this suit with the following orders:

1. The Defendant to pay the Plaintiff USD 130,000 being the indemnity value of the insured motor vehicle
2. The Defendant to pay the Plaintiff 12% per month from the date of filing of this suit to the date of judgment.
3. The Defendant to pay the Plaintiff Court interest rate of 12% from the date of judgment to the date of settlement of the decree in full.

4. The Defendant to pay the Plaintiff general damages at the tune of TZS fourteen million.
5. The Defendant to pay the Plaintiff costs of the case.
6. It is so ordered.



Y. J. MLYAMBINA

JUDGE

12/07/2019

COURT

Judgment pronounced this 12th day of July, 2019 in the presence of Taher Muccadam Advocate for the Plaintiff. Also, Taher Muccadam holding brief of Godwin Muganyizi Advocate for the Defendant. Right of appeal explained.



Y. J. MLYAMBINA

JUDGE

12/07/2019