

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
CIVIL APPEAL NO. 255 OF 2018**

SANLAM GENERAL INSURANCE (T) LTDAPPELANT

VERSUS

**GODFREY NGODO WABARE..... 1ST RESPONDENT
ALLY ABDULY WAHAB.....2ND RESPONDENT
ENOCK MARWA MWITA 3RD RESPONDENT**

Date of last Order: 27/09/2019
Date of Judgment: 18/10/2019

J U D G M E N T

MGONYA, J.

The Appellant herein **SANLAM GENERAL INSURANCE (T) LTD** being aggrieved by the Kisumu Resident Magistrate' Court decision in **Civil Case No. 71 of 2017** delivered on 26th day of September appealed to this honourable court. In the Petition of

Appeal, the Appellant presented two grounds of appeal as herein below:

- 1. That, the Trial Court erred in fact and in law in failure to address each and every issue raised and framed before the commencement of the trial;***
- 2. That the learned Trial Magistrate erred in law and in facts properly evaluate the evidence and hence arrived to an exorbitant quantum of general damages.***

In the event therefore, the Appellant prayed for the following orders:

- i. That this appeal be allowed;***
- ii. That the Proceedings, Judgment and Decree in RM Civil Case No. 71 of 2016 be quashed and set aside.***
- iii. Costs of this appeal be borne by the Respondents; and***
- iv. The honorable court be pleased to grant such other further reliefs as it may deemed fit and just.***

The Respondent was duly served with the Memorandum of Appeal. On hearing date, both parties to this Appeal requested the court to dispose the Appeal by way of written submission where I accordingly granted the prayer, hence this Judgment.

In his written submission, the Learned Counsel Mr. Magee for the Appellant submitting on the first ground of Appeal, revealed that the trial court did not address all the issues framed properly, for the purpose of the determination of the matter. Further that, the trial court would not have reach to the decision that the Respondent herein is entitled to the general damages to the tune of **Tshs. 45,000,000/=** if it labored to make a special finding on each issue and addressing the same properly.

On the second ground, the learned counsel for the Appellant submitted that, as a matter of law, general damages must be reasonable and reflect the reality of a particular matter. He further submitted that, in the assessment of the general damages in motor vehicle accident, the court must take into account the extent of injury of the Plaintiff, hence the said extent of injury is what reflects the pain and suffering of the Plaintiff. Submitting further in this ground, Mr. Magee referring to the instant case, said that the disability of the Plaintiff was not accessed, but according to the Medical report admitted in court as **Exh. P3** it is fair to conclude that the Plaintiff suffered **25%** of disability of which was supposed to be taken by the court in making assessment of the general damages.

The above suggestion was submitted by Mr. Magee with some examples in other cases which were decided by this court respectively, of which in one case , the Plaintiff was accessed to have

a **15%** permanent disability and awarded the sum of **Tshs. 1,000,000/=** as the general damages. Further in the other case with the same percentage of disability, the victim is said to have been awarded **Tshs. 2,000,000/=** respectively. From the above, then it is Mr. Magee's concern that the present Plaintiff (Respondent herein) with the **25%**, he was supposed to be awarded the sum not exceeding **Tshs. 3,000,000/=**.

Concluding this point, it is the learned counsel concern that in the instant case, the trial Magistrate awarded the excessive general damages of which the same did not reflect the incapability of the Respondent herein.

The Learned Counsel concluded by asking this court to nullify the amount granted to the 1st Respondent herein and cost be granted to the Appellant.

Responding to the Appellant's Counsel submission on the 1st ground of Appeal, learned Counsel for the 1st Respondent Ms. Anna Amon, vehemently objected the fact that the trial Magistrate erred in law by not determining the issues that were framed for determination at the trial court. She referred this court to trial court's Judgment stating that all the issues were well determined as stated in the said judgment; particularly in page four of the same.

On the 2nd ground of appeal, Ms. Amon was of the view that, the trial Magistrate was right in awarding the Respondent general

damages as the main aim of awarding the same is to place the party who has suffered, in the same position as he would have been if he has not sustained the wrong complained of. Further, the learned Counsel is of the view that, in rewarding the general damages, the trial court considered the disability suffered by the Plaintiff and thus awarded the 1st Respondent the sum of Tshs. 45,000,000/= which in the view of the Respondent and his counsel is still on the lower side comparing with the disability that the Respondent had encountered.

In the event therefore, the 1st Respondent's counsel prayed the court to dismiss the appeal with costs.

I have carefully perused the trial court's records as well as the grounds of appeal raised by the Appellant herein. From all those, I have the following:

The first ground of appeal was that the the Trial Court erred in fact and in law in failure to address each and every issue raised and framed before the commencement of the trial. Looking at the record of the trial court, it came to my knowledge that there were four issues to be determined that were framed by the parties' Advocates and the court respectively. The said issues were:

- 1. Whether the accident was caused by the negligence of the 1st Defendant;***
- 2. Whether at the time of the accident, the motor vehicle driven by the 1st Defendant had valid insurance policy;***

3. Whether the Plaintiff suffered injuries out of the accident; and

4. To what reliefs parties are entitled to?

Referring at the 4th page of the trial court Judgment and the entire Judgment, indeed, I am satisfied that the 1st to 3rd issues were determined and answered respectively. I make reference to the 2nd and 3rd paragraphs of page 4 of which I don't see any need to reproduce the same in this judgment. What the trial Magistrate did was to touch the facts and the evidence of each issue briefly and answered all the three issues collectively. It might be the style that the Magistrate used was not used and pleasant to the 1st Appellant's counsel. However, if one reads the entire judgment, there is no doubt that all the framed issues have been determined respectively.

Further, even if the said issues were not answered as alleged, this court is further satisfied that through the evidence tendered in court, answered the above issues. Example, ***Exh. P3 (The Judgment for Traffic Case No. 35/2015 Republic Vs. Ally s/o Abdul @ Wahabu)*** where through the same, the 2nd Appellant herein was found guilty in all 42 counts. One amongst the counts were reckless and negligent driving of which in the event where the 2nd Appellant was found guilty, the same answered the 1st issue respectively. Secondly, the fact that the Appellant herein accessed the injury and the loss that the 1st Respondent herein of whom was to be

compensated with **Tshs. 2.4 Million** for the injury and loss he inquired, it is the plain truth all these this fact confirmed all three issues that were framed to be answered in affirmative.

From the above explanation, **the first ground of appeal fails and hereby declared meritless.**

On the second ground of appeal that the learned Trial Magistrate erred in law and in facts properly evaluate the evidence and hence arrived to an exorbitant quantum of general damages; it is my view that the trial Magistrate stated well his reasons for not agreeing with the compensation of Tshs. 2.4 Million proposed by the Appellant herein.

Upon reading the said judgment, I can still remember the disappointment of the trial Magistrate talking about the said sum comparing with the loss that the Respondent herein have obtained.

If I may refer the wording of the trial Magistrate in page 5 of the Judgment he said:

"It is clear that the Plaintiff suffered injuries and big pain as well as psychologically he was very much affected. He stayed at the bed without leading his normal life all this period. Even the act by the 3rd Defendant to act the way he did, to resist to pay justifiable amounted to add salt to the wound, which I would say added more pain and

physiological torture. The offer by the 3^d Defendant to pay Tshs. 2.4 Million to the Plaintiff is a mockery and inhuman. The court therefore award general damages at the tune of forty five million say 45 Million."

To any reasonable man, the amount offered by the Insurance Company, the Appellant herein indeed was a mockery to a person who lost an important part of his body facing a permanent incapability so to say. In the event therefore as the general damages are at the discretion of the court, the learned trial Magistrate exercised his discretionary powers judiciously and granted the Plaintiff the general damages to the tune of **Tshs. 45,000,000/=**.

General damages have been well elaborated in the case of ***TANZANIA SARUJI CORPORATION V AFRICAN MARBLE COMPANY LTD [2004] TLR 155*** as herein below:

"General Damage are such as the law will presume to be the direct , natural or probable consequence of the act complained of, the defendant's wrongdoing must ,therefore, have been a cause ,if not the sole, or a particularly significant, a cause of damage, its discretion of the court."

Since the general damages are to be determined by the court, it is my firm view that the trial Magistrate weighed the

Plaintiff's accident and the loss he incurred from the same, and out of the same he awarded him the general damages of **Tshs. 45 Million** of which is quite reasonable under the circumstances.

As well stated in the record at the trial, out of the said accident, the Respondent herein faced **amputation**. This is a serious matter to any human being who was in control of his affairs and all over the sudden, out of the accident is amputated. Any amputation is a **devastating** and **life-changing** experience. Its effects are far-reaching and varied. However, there are some overriding features that are common to most forms of amputation, whilst others are more injury-specific. It is not easy to assess the total effects of amputation on a person. However, a number of factors must be taken into account including the person's age and the emotional and psychological effect on that person, of which can be taken in considering the general damages.

Out of all these, I don't buy the Appellant's Counsel wording saying that the amount offered as a general damages by the trial Magistrate to the 1st Respondent herein is an exorbitant amount. Instead, I stand with the trial Magistrate that the Plaintiff deserves the amount granted of which makes **the second ground of appeal herein similarly meritless.**

In light of the above, this court finds the appeal to have no merit. In the event therefore, I proceed to **dismiss the instant Appeal in its entirety with costs. The decision of the Kisumu RM's Court in respect of awarding the 1st Respondent herein the sum of Tshs. 45 Million as general damages is hereby upheld.**

It is so ordered.

Right of Appeal explained.



L. E. MGONYA
JUDGE
18/10/2019

Court: Judgment delivered in chamber in the presence of Mr. Magee, Advocate for the Appellant, the Respondent and Ms. Emma RMA this 18th day of October, 2019.



L. E. MGONYA
JUDGE
18/10/2019