

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL APPEAL NO. 87 OF 2020**

(Arising from the Judgment and Decree of the Resident Magistrates Court  
of Dar es salaam at Kisutu Civil Case No. 61 of 2019 before Hon. J.H.  
Mtega, **PRM** dated 21/01/2020.)

**XIUBAO CAI .....1<sup>ST</sup> APPELLANT**

**MAXINSURE (T) LIMITED.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**MOHAMED SAID KIARATU ..... RESPONDENT**

**JUDGMENT**

19<sup>th</sup> May, 2021 & 18<sup>th</sup> June, 2021.

**E. E. KAKOLAKI J**

In this appeal which is contested by the respondent, the appellants are challenging the judgment of the Resident Magistrates Court of Dar es salaam at Kisutu in Civil Case No. 61 of 2019, which was handed down on 21/01/2020 in respondent's favour. They are equipped with two grounds of appeal going thus:

1. That, the Trial Magistrate erred both in law and fact by awarding special damages which were not strictly proved.
2. That, the Trial Magistrate erred both in law and facts by failure to find that the evidence adduced by the Plaintiff did not prove the quantum of both special damages and general damages thereto.

The court is therefore prayed to quash the judgment and orders of the trial court and enter judgment in appellant's favour in lieu of.

Briefly the facts leading to this appeal can be narrated as hereunder. Before the trial court in Civil Case No. 61 of 2019, the respondent being a passenger in the public transport (PSV) commonly known as "*daladala*" with registration No. T 965 ANA, make Toyota Hiace, sued the appellants for payment of Tshs. 65,000,000/= being damages suffered from the road accident caused by the 1<sup>st</sup> respondent's motor vehicle with Registration No. T 665 CXX insured by the 2<sup>nd</sup> respondent. He also claimed for general damages and interest on the claimed amount, costs of the suit and any other reliefs as the trial court would deem fit to grant. Though the claims by the respondent were vehemently disputed by the 2<sup>nd</sup> appellant who claimed irresponsibility, during the trial it was proved that, it is the 1<sup>st</sup> appellant's motor vehicle duly insured by the 2<sup>nd</sup> appellant that caused the claimed accident as the driver therein, entered a plea of guilty to the traffic charges and convicted in a traffic case that was facing him, evidence of which was produced and admitted by the trial court as exhibits, thus making the 2<sup>nd</sup> appellant responsible for compensation of the damages suffered by the respondent. The claims by the respondent were found genuine and proved before the trial court after proving to the court's satisfaction that he sustained physical disabilities

resulted from that accident, save for specific loss which was not proved for want of evidence, as a result judgment was entered in his favour ordering the appellants to pay him compensation of Tshs. 50,000,000/= and general damages to the tune of Tshs. 20,000,000/=, due to bodily injuries sustained to him as well as the costs of the suit. It is from that decision which discontented the appellants this appeal has been preferred.

During the appeal the appellants were represented by Mr. Anindumi Jonas Semu, learned advocate whereas Capt. Ibrahim Bendera, learned advocate was for the respondent. With leave of the court both parties agreed to dispose of the appeal by way of written submission and I thank them for abiding to the court's filing schedule orders. In his submission in support of the two grounds appeal Mr. Semu chose to consolidate both grounds of appeal and argue them together. It was his brief submission that, the respondent failed to produce evidence to prove as to how the amount claimed in the plaint accrued as it was found by the trial court in its typed judgment at page 16, but to the contrary the court proceeded to order for compensation on the same damages without being strictly proved. Citing to the court the case of **Stanbic Bank Tanzania Limited Vs. Abercrombie & Kente (T) Limited**, Civil Appeal No. 21 of 2001 (CAT-unreported), he argued, specific damages must be proved specifically and strictly, in which case the respondent failed to do in this matter. On the strength of that submission he urged this court to allow the appeal and quash the judgment of the trial court with costs.

On his part Capt. Bendera for the respondent, resisted the appeal attacking the appellants' submission to be misconceived, wanting, unjustifiable and

untenable in law. He said, the evidence adduced through exhibits P1, P2, P3 and P4, a medical report showing specific injury of respondent's body and denoting assessment of 50% disability, were sufficient proof that the respondent sustained special damages out of injuries and treatment. He therefore submitted, the respondent was entitled to compensation of Tshs. 50,000,000/= and general damages of Tshs. 20,000,000/= as ordered by the trial court since the case of **Stanbic Bank Tanzania** cited by the appellants was corresponding the trial magistrate's findings. He prayed the court to dismiss the appeal with costs. In his rejoinder submissions Mr. Semu reiterated his earlier submission in chief but added specific damages are quantifiable in nature with measurable amount that needs to be proved such as medical expenses, transportation costs, loss of wages or earning capacity, which in the present matter were never proved. He thus repeated his earlier prayers.

Having considered the fighting arguments from both parties as well as the pleadings and evidence adduced in court during the trial, it is now clear to me that parties are not in dispute over the fact that the respondent was involved in the accident caused by the 1<sup>st</sup> respondent's motor vehicle insured by the 2<sup>nd</sup> respondent. It is also not controverted fact that the respondent suffered physical injuries caused by the alleged accident and the award of general damages of Tshs. 20,000,000/= was rightly entered by the court to cover that aspect. The only dispute is on whether the awarded damages of compensation of Tshs. 50,000,000/= due to the bodily injuries sustained to the respondent was correctly awarded by the trial court. Mr. Semu contends, the same was not specifically and strictly proved while Capt. Bendera resists

the contention that, it was proved by evidence of physical disability sustained by the respondent as exhibited in exhibit P4. As the amount of general damages awarded to the respondent is not subject of this appeal what I am prepared to deal with is special damages only. In that regard, I find it apposite to explore what does special damages means. **Justice Yaw Appau**, Justice of the Court of Appeal, in his Paper Presented at Induction course for newly appointed circuit judges at the Judicial Training Institute, **Assessment of Damages**, ([www.jtighana.org](http://www.jtighana.org)) at page 5 defines Special damages thus:

***“Special Damages are such a loss as will not be presumed by law. They are special expenses incurred or monies actually lost. For example, the expenses which a plaintiff or a party has actually incurred up to the date of the hearing are all styled special damages; for instance, in personal injury cases, expenses for medical treatment, transportation to and from hospital or treatment centre, etc.”*** (Emphasis added)

In the light of the above definition which I subscribe to it is obvious special damages are such damages which the law will presume. Now that being the position how is it proved? There several literature on that area as well as court decisions. Justice Appau, in the above cited paper at page 6 on the proof of special damages commented and I quote:

*"Unlike general damages, a claim for Special damages should be specifically pleaded, particularized and proved. I call them three P's."*

The Court of Appeal in the case of **Zuberi Augustino Vs. Anicet Mugabe**, (1992) TLR 137 at page 139, although not comprehensively expressed, on the proof of special damages said:

*"It is trite law, and we need not cite any authority, that special damages must be specifically pleaded and proved."*

Similar observations were aired by the Court of Appeal in the case of **Stanbic Bank Tanzania** (supra) when cited with approval the holding of Lord Macnaughten in **Bolog Vs. Hutchison** (1950) A.C 515 at page 525 on special damages, that:

*"... such as the law will not infer from the nature of the act. They do not follow in the ordinary course. They are exceptional in their character and, therefore, **they must be claimed specifically and proved strictly.**"* (Emphasis supplied)

From the above cited authorities, I am left with no scintilla of doubt and I find it a settled principle that where it is claimed, **special damages** must not only be specifically **pleaded** but also its **particulars** must be specifically stated and strictly **proved**. In other words the three **P's** must be complied with the plaintiff by making sure that special damages are specifically **pleaded**, its **particulars** specifically stated and strictly **proved**. In this case

in paragraph 4 of the plaint the respondent averred his special claims and I quote:

*4. That, the Plaintiff claims from the defendants jointly and severally for the sum of sixty five million Tanzanian Shillings (Tshs. 65.000.000/=) being the damages suffered from the accident caused by the 1<sup>st</sup> Defendant's motor vehicle with registration number T 665 CXX insured by the 2<sup>nd</sup> Defendant.*

Applying the three (3) P's to the facts of this matter and having considered the respondent's specific claims above cited in paragraph 4 of the plaint as well as the evidence on record it is clear to me that, apart from presuming that the pleaded claim of Tshs. 65,000,000/= suffered from the accident caused by the 1<sup>st</sup> respondent/defendant's motor vehicle insured by the 2<sup>nd</sup> respondent/defendant is specific damages, no particulars were given as to what kind of damage is it and how was it arrived at nor was it proved as rightly found by the trial court in its judgment where he stated in page 16 and I quote:

*"Regarding the above case in relation the plaintiff has explained to the court on how he has suffered a loss the road accident like fracture of his left limb and hip and caused him to undergo physiotherapy, see exhibit P.4. Also the plaintiff is no longer full participating in his daily activities as before like business and so on. **Thus he is entitled to a damages and not a specific loss because the plaintiff did not have the concrete evidence of income emanating from his business of***

*chicken. See the case of Michael Ashley (supra).” (emphasis added)*

From the above excerpt reduced from the typed judgment, the trial court made it clear that, the respondent failed to prove specific loss he was claiming for failure to prove his income arising out of the lost business due to the accident caused to him. Capt. Bendera sweetly tried to convince this court to regard the injuries suffered by the respondent as exhibited in exhibit P.4, as proof of specific damages. With due respect to the learned counsel, that will be going outside the preview of what it takes to prove specific damages as specific damage by its nature must be capable of being quantified and measurable in amount. The injury sustained by the respondent cannot be quantified that is why the trial magistrate decided to award the relief through general damages, as **General Damages** are damages that the law presumes to have resulted from the defendant's tort or breach of contract. What ought to have been proved by the respondent to justify the awarded claim of Tshs. 50,000,000/= as specific damages which he failed are claims on medical expenses, transportation costs, loss of business or earning capacity all in figures. As none amongst them was particularised in the plaint and proved in court, I am in agreement with Mr. Semu that the respondent failed to prove the specific damages of Tshs. 50,000,000/= awarded to him. I am of further finding that the trial magistrate failed to distinguish between the special damages and general damages since having found the respondent had failed to prove the special loss ought to have refrained from awarding him the said Tshs. 50,000,000/= as general damages basing on the injuries he had sustained, the criteria



which was used to award general damages of Tshs. 20,000,000/= . In other words the respondent was awarded the general damages twice, which is contrary to the law.

Having so found the award of Tshs. 50,000,000/= to the respondent is hereby set aside. Otherwise other orders of trial court remain intact. The appeal is therefore allowed to that extent.

Each party to bear its own cost of this appeal.

It is so ordered.

DATED at DAR ES SALAAM this 18<sup>th</sup> day of June, 2021.



E.E. KAKOLAKI

**JUDGE**

18/06/2021

Delivered at Dar es Salaam in chambers this 18<sup>th</sup> day of June, 2021 in the presence of Mr. John Kisyungu advocate for the 1<sup>st</sup> and 2<sup>nd</sup> appellants, Ms. Amina Macha advocate for the respondent and Ms. Asha Livanga, court clerk.

Right of appeal explained.



E. E. Kakolaki

**JUDGE**

**18/06/2021**