IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL APPEAL NO. 192 OF 2020

(Appeal from the Judgment and Decree of the District Court of Bagamoyo at Bagamoyo in Civil Case No. 38 of 2019 before Hon. M.B. Mmanya, **RM** dated 07/08/2020)

BHANJI LOGISTICS.....1ST APPELLANT

HARUNA HAMZA.....2NDAPPELLANT

JUBILEE INSURANCE CO.TZ. LTD.....3RDAPPELLANT

VERSUS

DOREEN RUBEN TOWO..... RESPONDENT

JUDGMENT

25th Aug, 2021 & 17th Sept, 2021.

E. E. KAKOLAKI J

This is the first appeal preferred by the appellants against both judgment and decree of the District Court of Bagamoyo at Bagamoyo in Civil Case No. 38 of 2019 dated 07/08/2020. Before the trial court, the respondent sued the 1st and 2nd appellants jointly and severally for recovery of Tshs. 51,060,000/= as costs of repair of his motor vehicle with Reg. No. T. 956 CFD/T 486 BSC make Scania **T24** trailer and general damages of Tshs.

200,000,000/= suffered from the road accident caused by 2nd appellant, who is the 1st appellant's driver driving motor vehicle with Reg. No. T207 BCT/T143 GBX make Scania lorry on 02/09/2018, insured by the 3rd appellant. Further to that the respondent claimed for costs of the suit and interest at the rate of 21% to the claimed amount. When the plaint was served to the 1st and 2nd appellants they jointly disclaimed any liability against the respondent's claims and filed a third party notice that brought in the 3rd appellant as the insurer to the 1st appellant's motor vehicle alleged to have caused accident. It was the trio's defence that on the date of accident the respondent's driver had no valid driving licence, thus were not responsible to compensate her and during defence hearing they paraded only one witness from the 3rd appellant's office. In resolving parties dispute three issues were framed by the trial court reading thus:

(a) Whether the plaintiff suffered damages in the accident.
(b) Whether the driver of the plaintiff (respondent) had valid licence on the day of accident.
(c) What are the reliefs which parties are entitled?

In building her case the respondent brought in court five (5) witnesses and tendered three (3) exhibits. It was respondent's testimony through PW2 that, the 2nd appellant and driver who caused accident was charged with and pleaded guilty to traffic offences of careless driving and causing injuries. Ruling of the said traffic case was tendered and admitted as exhibit P1. It was her further testimony that a demand notice was issued to the 1st respondent claiming for maintenance costs of Tsh. 51 million contained in the pro forma invoice (exh. P3) duly prepared by Pamba Quick Bus Service

Ltd garage, who through its letter (Exh. P2) advised the respondent to send her claims to the 3rd appellant (Jubilee Insurance). As no response was made to her claims she preferred a suit against the appellants. On their side appellants through DW1 denied liability whatsoever over the respondent's claims. It was stated by DW1, the respondent was requested to supply documents including the driver's driving licence but no driving licence was submitted instead she supplied a payment slip from TRA for renewal of licence dated 24/01/2019 while the accident occurred on 02/09/2018. He said, they failed to process payment and compensate the respondent as her driver had no valid licence which is a very important document to establish insurer's liability. The trial court rejected appellants' defence instead entered a verdict that, appellants were responsible to compensate the respondent as she suffered damages despite of expiry of her driver's licence a day before he was involved into accident. They were therefore ordered to compensate her to the tune of Tshs. 51,060,000/- plus general damages of Tshs. 50,000,000/= and costs of the suit. It is from that decision which discontented the appellants, the present appeal has been preferred containing six grounds of appeal going thus:

1. The learned Trial Magistrate erred in law and fact by disregarding without reasons the crucial fact that on the date of the accident the Driver of the Plaintiff's Motor vehicle did not have valid driving licence.
2. The learned Trial Magistrate erred in law and fact by introducing in her judgment a new fact (which is not anywhere in record) that the Defendants agreed to pay the plaintiff.
3. The learned Trial Magistrate erred in law and fact by failing to show the ration decidendi of her decision.

4. The learned Trial Magistrate erred in law and fact by failing to take into consideration the testimony of the Defendants' witness and cross examination questions to the Plaintiff's hence gave a very biased and most unfound decision.
5. The learned Trial Magistrate erred in law and fact by considering the prayers for reliefs which were made not by her husband irrespective of the fact that he did not have a power of attorney to act on her behalf.
6. The learned Trial Magistrate erred in law and fact by admitting a document (Pro forma invoice) which had been previously rejected by the Court.

At the hearing both parties were represented and it was agreed the matter be disposed of by way of written submissions. The appellants and the respondent hired legal services of Mr. Julius Manjeka and Mr. Steven Makwega, respectively, both learned advocates. In his submission though not explicitly stated counsel for the appellant abandoned the 3rd and 6th grounds of appeal and argued the rest of the grounds. In the first ground he contended, in determining the 2nd issue the trial magistrate disregarded the fact that the respondent's driver had his driving licence expired a day before the motor vehicle subject of this appeal was involved in accident something which is in infraction of the provisions of Section 19(1) and (2) of the Road Traffic Act, 1973, the facts if considered would have led her to conclude the appellants were not liable for the damages suffered by the respondent (if any). Next in his submission was the 4th ground of appeal where he assailed the trial magistrate's findings on the first issue regarding damages suffered by the respondent. He said the trial court's finding that the respondent

suffered damages as her motor vehicle was knocked by a motor vehicle driven by 2nd appellant, owned by the 1st appellant's and insured by the 3rd appellant was arrived at without evaluating both sides' evidence on the contentious issue something which was against the requirement of the law as set forth in the case of **Stanslaus Rubaba Kasusura and the Attorney General Vs. Phares Kabuye** [1982] TLR 338 (CAT) and **Kilamei S/O Ramadhani Vs. R**, Criminal Appeal No. 128 of 2004 (HC-unreported). He further argued the trial magistrate in arriving to the award of Tshs. 51 million to the respondent did not take into consideration the principle as state in the case of **Zuberi Augustino Vs. Anicet Mugabe** (1992) T.L.R 137 which requires specific damage to be specifically pleaded and strictly proved, as the respondent failed to abide to that principle. Mr. Manjeka added in awarding general damages the trial court failed to assign reasons as to why it arrived at such amount of Tshs. 50,000,000/. It was his argument therefore that, where there is failure of the trial court to substantiate the award given to the party this court is bound to interfere with the finding and vacate the order or reduce the amount as it was the case in the case of **Salum Salum Khamis Vs. Helgoni Kingu**, PC Civil Appeal No. 17 of 2017 where this court took into consideration the principle of awarding general damages as laid down in the case of **Anthony Ngoo & Another Vs. Kitinda Maro**, Civil Appeal No. 25 of 2014 (CAT-Unreported) to reduce the general damages from Tsh. 45,000,000/- to Tshs. 5,000,000/-.

Mr. Majeka moved to ground No. 5 of the appeal where he submitted, the trial magistrate erred in law and fact to consider the prayers for reliefs not made by the plaintiff (PW1) but rather PW2 who was neither owner of the motor vehicle in question nor the possessor of power of attorney from PW1.

And lastly was the 2nd ground where he lamented the trial magistrate imposed new fact in her judgment that the defendants (appellants) had agreed to pay the plaintiff while in fact is was not so stated anywhere throughout their testimonies nor in their written statement of defence, that they would pay the respondent Tshs. 51 million. With all that submission Mr. Manjeka invited this court to allow the appeal with costs by setting aside the judgment and its orders.

In riposte Mr. Makwega for the respondent resisted Mr. Manjeka's submissions. On the first ground he countered there was not proof that the respondent's driver had expired as the said driver PW5 in his testimony testified he had a valid licence and the appellants failed to bring evidence to contradict his version. He argued if the requirement of validity of driving licence is the condition precedent for indemnification of the 3rd party then the appellants ought to have stated so in the 3rd appellant insurance policy, which unfortunately without assigning reasons they failed to produce it court. He argued further that, for the sake of argument, assuming the respondent's driver driving licence is invalid, that fact would not relieve the 3rd appellant from the liability against the 1st and 2nd appellant as under tort the 1st appellant is vicariously liable for the act of the 2nd appellant who is assured by the 3rd appellant. He said insurance cover being as loss shifting device where liability is denied for failure to abide to its terms, the same does not in any way absolve the guilty part of 3rd appellant's liability, thus under the circumstances the trial court was justified to hold the appellants were responsible for payment of the awarded damages. As regard to the 4th ground on damages he said the respondent's lorry cabin was totally destroyed on account of the 2nd appellant's negligent act, thus the loss of

Tsh. 51,060,000/= awarded to the respondent on that base was reasonable and fair as the same was specifically pleaded and proved as per the requirement in the case of **Balog Vs. Hutchson** (1950) AC 515. As regard to the general damages he argued the same being grantable under court's discretion, the trial court was justified to enjoy its discretional powers and grant the respondent Tshs. 50,000,00/= as the same was grounded on the loss of the use of the said commercial truck. On interference of the assessment of general damages he told the court, the principle is that appellate court should not do so unless there are good grounds for so doing as held in the case of **Cooper Motor Corporation Ltd Vs. Moshi Arusha Group Occupational Health Service** (1990) TLR page 96. Since the appellants have failed to advance any good grounds as to why the assessment and award of general damages by the trial court should be interfered then that ground is bound to fail, Mr. Makwega submitted. As to the complaint that the trial court failed to consider defence evidence he responded the complaint is unfounded as it is only the 3rd appellant who entered defence whose evidence was considered. Otherwise he argued on the 1st and 2nd appellants there was no defence which allegedly the court ignored. Since the court was so analytical and took into consideration every point of DW1's evidence that ground lacks merit and therefore the entire appeal is wanting. He thus urged this court to dismiss it with costs. In his rejoinder submission Mr. Manjeka on the first ground responded PW5 (respondent's driver) when testifying failed completely to tender his driving licence to prove it was valid. Apart from that fact the respondent when requested by the 3rd appellant to surrender it for payment consideration failed to do so, the invalidity of his driving licence was also established by

the court in its judgment, Mr. Manjeka noted. On the issue of repudiation of payment basing on the validity of the driving licence he argued, the plaintiff/respondent was not a party to the contract of insurance to require tendering of the policy for purposes of determination of appellants' liability to the 3rd party as claimed by Mr. Makwega, that is why the liability is denied basing on violation of the provision of section 19(1) and (2) of the Road Traffic Act, 1973. He was of the view that, the provision goes against the respondent's assumption that absence of valid driving licence would not be used to absolve the 3rd appellant liability against the 3rd party as it could not apply to 1st and 2nd appellants since the 1st appellant is vicariously liable to the act of 2nd appellant. As to the failure of the 1st and 2nd appellants to testify in court he commented that does not validate the respondent driver's act of driving on road without a valid driving licence. Otherwise he reiterated his earlier submission and prayers thereto.

I have dispassionately weighed and considered rival arguments from both parties in this appeal in line with the pleadings and adduced evidence during the trial. What is discerned therefrom is that, it is uncontroverted fact the respondent's motor vehicle with Reg. No. T. 956 CFD/T.486 BSC make Scania **T24** trailer was knocked down and damaged by 2nd appellant when driving 1st appellant's motor vehicle with Reg. No. T. 207 BCT/T.143 GBX make Scania lorry, insured by the 3rd appellant. It is also not in dispute that on the day of accident 02/09/2018 the 2nd appellant's driving licence had expired a day before as rightly submitted by Mr. Manjeka. I make that finding basing on the evidence of PW2, PW5 (respondent's driver) and unchallenged findings of the trial court over the same fact. PW2 when testifying at page 11 of the typed proceedings on whether PW5 had valid driving licence said

"I came to know about the fact that the driver licence had expired one day before accident." Also PW5 informed the court to have paid for renewal of the licence at TRA before the accident but when cross examined at page 22 of the typed proceedings said that, he had no evidence tendered in court to prove the alleged payment to TRA for renewal of licence and that by then (08/06/2020) he was not yet issued with a licence. Had he had a valid driving licence I am certainly sure he would have tendered it in court or else the respondent would have submitted it to the 3rd appellant as a mandatory document when submitted other documents claiming for compensation. Lastly is the unchallenged findings of the trial court when stated at page 4 of its typed judgment when determining the 2nd issue where it said:

> "2nd issue on **whether the driver had valid license during the accident is answered in negative because the mere fact that a driver licence had expired a day before the accident** does not disprove a fact that plaintiff had suffered damages." (Emphasis supplied)

Since the trial court's finding on the validity of driving licence of the respondent's driver has not been challenged by the respondent in anyway by way of cross-appeal, I distance myself from Mr. Makwega's submission that the respondent's driver had valid licence as it remains uncontroverted fact that the same had expired a day before the accident. With the above uncontroverted facts and findings the only disputable issues that call for determination of this court in my opinion are three, namely:

(i) Whether invalid driving licence of the driver entitles the appellants to repudiate liability against the respondent (3rd party) under the insurance cover?

(ii) Whether the trial Court properly awarded the respondent both specific and general damages?

(iii) What are the respondent's entitlements?

To start with the first issue, I hasten to say that I am not at one with Mr. Manjeka's submission that respondent driver's act of driving the motor vehicle in dispute without valid licence and in violation of section 19(1) and (2) of the Road Traffic Act, 1973 is the base for repudiation of appellant's liability to compensate the respondent. I agree with Mr. Makwega's argument that the same would be the base if it was so stated under the insurance policy between the 3rd appellant and the 1st appellant as the respondent being the third party is automatically covered by the said insurance policy. The provisions of section 19 (1) and (2) of the Act provides thus:

> *19.-(I) No person shall drive any class of motor vehicle, on a road unless he is the holder of a valid driving licence or a valid learner driving licence issued to him in respect of such class of motor vehicle.*
>
> *(2) No person who owns or who has charge of a motor vehicle or trailer of any category shall allow or permit any person to drive such motor vehicle unless such person is the holder of a valid driving licence or a valid learner driving licence issued to him in respect of that class of motor vehicle, or trailer.*

An act of driving the motor vehicle without valid driving licence is criminalised under section 52(a) of the same Road Traffic Act which provides that:

> *52. Every person who drives a motor vehicle or trailer on a road or in any public place:*
>
> *(a) while disqualified from driving, or while he is not in possession of a valid driving licence or is in possession of a learner driving licence and is driving the vehicle while not accompanied by a person holding a Valid driving licence respect of that vehicle;*
>
> *(b).....N/A.*
>
> *shall be guilty of an offence.*

Since the law under the above provisions apart from criminalising the act of driving the motor vehicle without valid licence do not state to have affecting in anyway the driver or owner's rights to be indemnified under insurance cover as 3rd party to the insured vehicle as claimed by Mr. Manjeka, then the issue as to whether respondent in this matter should be indemnified or not under the circumstances in my opinion should have formed part of the terms of the insurance policy. In this case none of the appellants tendered the said insurance policy in court as exhibit for the trial court or this court to refer to and come up with the conclusion that by allowing her driver to drive the motor vehicle in dispute without valid driving licence the respondent was not entitled to compensation under third party claims, as Mr. Manjeka would want this court to believe. Even if the same was tendered in court still I would hold any condition repudiating liability from the 3rd party is void as

third party claim is a claim against an insurance company, therefore 3rd party is not affected by the conditions in that policy which may relieve the company from liability towards the insured, as those conditions remain effective contractually between the company and the insured only since third party is not privy to their contract. On that account I hold, third parties are entitled to recover their damages from insurer notwithstanding such conditions. As a matter of principle in this case what the respondent ought to have done for her to recover her claims from the insurer of the 1st appellant was to establish and ascertain first the liability of the insured (1st appellant) against her claims. This principle of law of insurance is drawn and adopted from the writings of the prominent author in the Law of Insurance, **Avtar Singh** in his Book **Law of Insurance**, 2nd Ed, 2010, Eastern Book Company at page 177 when cited the wisdom of Lord Denning in the case of **Post Office Vs. Norwich Union Fire Insurance Society**, (1967) 1 ALL ER 577, and commented thus:

> ***"One of the principles is that a third party cannot recover from the insurer unless the liability to such party on the part of the insured is established and its amount ascertained.*** *Explaining this principle in the* ***Post Office Vs. Norwich Union Fire Insurance Society****, (1967) 1 ALL ER 577, Lord Denning MR said:*
>
> > ***It seems to me that the insured only acquires a right to sue for the money when his liability to the injured person has been established to as to give rise to a right of indemnity. His liability to the injured person must be ascertained and determined to exist, either by the***

judgment of the Court or by award in an arbitration or by agreement. *Until that is done, the right to an indemnity does not arise..." (Emphasis supplied).*

In this case the 1st and 2nd appellants as insured were sued by the respondent (the 3rd party) and established their liability to the damages caused to her through exhibit P1, the ruling in which the 2nd appellant pleaded guilty to the offences charged with thus admitting the liability to the accusation of driving carelessly and causing damages to the respondent's motor vehicle. What remained in dispute which this court is called to address and determine next is the ascertainment of the amount claimed. It is from that background I find the first issue is answered in negative that the invalidity of licence does not entitle the appellants with the right to repudiate liability against the respondent (3rd party) in absence of breach of specific conditions/terms in the insurance policy which are not in existence in this case.

Next for determination is the propriety of the damages awarded to the respondent both specific and general damages. To start with specific damages of Tshs. 51,060,000/= awarded to the respondent as costs for repair of her motor vehicle Mr. Manjeka submits, the same was not specifically pleaded and strictly proved as per the requirement of the law under **Zuberi Augustino case** (supra) while Mr. Makwega is of the contrary view that, the same was pleaded and strictly proved. It is trite law as agreed by both counsel that specific damages must be specifically pleaded and strictly proved as held in numerous case laws such as **Zuberi Augustino case** (supra), **Stanbic Bank Tanzania Limited Vs. Abercrombie & Kent**

(T) Limited, Civil Appeal No. 21 of 2001 (CAT-unreported), **Peter Joseph Kilibika and Another Vs. Partic Aloyce Mlingi,** Civil Appeal No. 39 of 2009 (CAT-unreported) and **Reliance Insurance Company (T) Ltd and 2 Others Vs. Festo Mgomapayo**, Civil Appeal No. 23 of 2019 (CAT-unreported). The Court of Appeal in **Peter Joseph Kilibika** (supra) on the said principle of the law cited with approval the holding of Lord Macnaughten in **Bolog Vs. Hutchson** (1950) A.C 515 at page 525 on special damages, which held 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)

As to whether the said Tshs. 51,060,000/= was specifically pleaded and strictly proved my perusal of the plaint and the evidence adduced by the respondent before the trial court has proved to me that, the same was specifically pleaded through paragraphs 4.0, 7.0, 10.0 and 14.0 save for its prove where the respondent relied on the pro forma invoice (exh. P3) duly tendered through PW5. The said pro forma invoice was prepared by **Pamba Quick Bus Service Ltd garage** itemising defective parts of the motor vehicle that needed repair and their costs. However, what is deciphered from the trial court judgment in the present case is that, there is no justification from the trial magistrate as to how she arrived to the awarded amount as specific damages to the tune of Tshs. 51,060,000/=. I therefore agree with Mr. Manjeka that the same was not strictly proved as required by the law. Assuming the court relied on exhibit P3 (Proforma invoice) to justify the said

award which is not the case, still I would hold the same was not strictly proved for want of receipts of the costs incurred by the respondent. It is the law that a party claiming special damages must demonstrate that he actually made payments or suffered the specific injury before compensation will be permitted. The reason behind this principle is that our court are always insisting a party must present actual receipts of payments made to substantiate the loss suffered or economic injury. It is not enough for a party to provide pro forma invoices sent to the party by a third party as the same are mere suggestive of the proposed costs which might vary from one person/supplier to another and therefore not reflecting the actual loss suffered. In the case of **Reliance Insurance Company (T) Ltd** (supra) which its facts are more or less similar to the present case when interfering to the award of specific damages awarded in the insurance claims relying on the pro forma invoices and job card tendered by the respondent the Court of Appeal had this to say:

> *"In this respect therefore,* ***it is our finding that the High Court judge misdirected himself when relied on contents of job card and proforma invoice (Exhibits P9 and P10 respectively) and the evidence of Rogath Kauganila (PW2) as strictly proving the amount he awarded as specific damages****. That being the case, the first issue is answered in the negative." (Emphasis supplied)*

As regard to the award of general damages of Tshs. 50,000,000/= which Mr. Manjeka is lamenting was awarded without any justification, Mr. Makwega is suggesting the same was justifiably ordered after the court had considered

all circumstances of the case. And that general damages is grantable at the discretion of the court and therefore the appellate court cannot interfere with it unless there are good grounds for so doing as held in **Cooper Motor Corporation Ltd** (supra). I agree with Mr. Makwega's proposition that awarding general damages is done on the discretion of the trial court after consideration and deliberation on the evidence adduced as the principle is stated in a number of cases. In the case of **Peter Joseph Kilibika** (supra) the Court of Appeal adumbrated the function of the Court when determining and quantifying damages where it said:

> ***"It is the function of the Court to determine and quantify the damages to be awarded to the injured party.*** *As Lord Dunedin stated in the case of* ***Admiralty Commissioners v SS Susqehanna*** *[1950] 1 ALL ER 392.*
>
> > *"If the damage be general,* ***then it must be averred that such damage has been suffered, but the quantification of such damage is a jury question."*** *(Emphasis added)*

Similarly in the case of **Reliance Insurance Company (T) Ltd** (supra) the Court of Appeal on the award of general damages had this to say:

> *"The position of the law in regard to an award of general damages is settled. There is a number of authorities stating that general damages are normally awarded at the courts discretion and need not to be specifically proved, as Mr. Rutabingwa would wish it to be done in this particular matter."*

In light of the above authorities it is evident to me that general damages must only be pleaded but the same need not be proved by the party as it is awarded at the discretion of the court. With such principle in mind, I am also alive to the fact that in interfering with the award of general damages granted by the trial court this court as appellant court is bound to satisfy itself that the trial magistrate failed to adhere or consider the principle of law when arriving at the awarded quantum. This position of the law is illustrated in a number of cases such as **Henry Hidaya Ilanga v Manyema Manyoka** [1961] EA 705 at page 713. See also **The Cooper Motor Corporation v Moshi /Arusha Occupational Health Services** (1990) TLR 96 (CA); **Silas Simba V Editor Mfanyakazi Newspaper and another**, Civil appeal No. 7 of 1997 (unreported); **Prof. Ibrahim Lipumba V Zuberi Juma Mzee,** Civil Appeal No. 92 of 1998 (unreported), **Musa Mwalugala v Ndeshe Hota,** [1998] T.L.R. 4 and **Peter Joseph Kilibika** (supra).

The Court of Appeal in the case of **Peter Joseph Kilibika** (supra) when deliberating on the issue of assessment of general damages cited with approval the case of **Davies v Powell** 1942 1 ALL ER 657 which was approved by the Privy Council in **Nance v British Columbia Electric Raily Co. Ltd** (1951) AC. 601 at page 613, where it was stated that:

> *"whether the assessment of damages be by a judge or jury, the appellate court is not justified in substituting a figure of its own for that awarded below simply because it would have awarded a different figure if it had tried the case... before the*

appellate Court can properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law (as taking into account some irrelevant factor or leaving out of account some relevant one); or, short of this that the amount awarded is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage...."

Applying the above principle in this case, upon perusal of the lower court record and typed judgment of the trial court it became evident me that general damages was pleaded at paragraphs 4.0 of the plaint. However, I noted when granting the said Tshs. 50,000,000/= to the respondent the trial magistrate failed to assign reasons or show the basis upon which such amount was arrived at, thus entitling this court to re-evaluate the evidence tendered and come up with the justifiable amount as the one granted in my opinion is on the high side. There is no dispute as alluded to earlier that the respondent suffered damages resulted from her motor vehicle being knocked by 2nd appellant who was driving the 1st appellant motor vehicle insured by the 3rd appellant. It is the law that damages are intended to restore the injured party to the position he held before he/she suffered damages and not to benefit him. See the case of **Reliance Insurance Company (T) Ltd** (supra). I have taken into consideration the fact that the said motor vehicle was used for commercial purposes and the fact that at any rate the respondent will incur cost to repair it so as to be road worth. PW2 when giving his testimony in court on 30/03/2020 at page 14 of the typed proceedings told the court that, Amina the officer from the 3rd appellant's

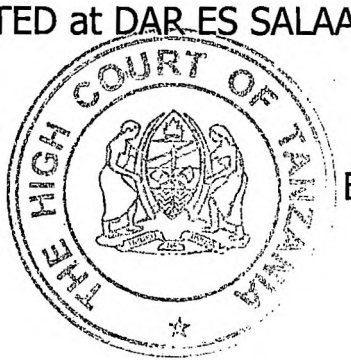
office Mwanza Branch had offered the respondent 28 million Tanzania shillings to satisfy the claim and she agreed but the same was not paid. This fact confirms to me that the said amount was reasonable to the respondent to mitigate her damages since she accepted the offer. That being the case and considering the fact that the appellant's failure to pay her timely suffered her more damages I find Tshs. 35,000,000/= would be sufficient to restore the respondent to the position she was before the accident regard being paid also to the fact she lost business for grounding the said motor vehicle. I therefore find the second issue partly answered in negative to the extent that it was not proper for the trial court to award the respondent specific damages without proof and partly affirmative to the award of general damages to the amount varied.

Now as to the last ground on what are the respondent's entitlements having deliberated on the above issues I come to the conclusion that the respondent is entitled to general damages to the tune of Tanzania Shillings Thirty Five Million (Tshs. 35,000,000/=) and costs of this case. Otherwise the award of Tshs. 51,060,000/- awarded to the respondent is set aside.

The appeal therefore partly fails and partly allowed to the extent explained above.

It is so ordered.

DATED at DAR ES SALAAM this 17th day of September, 2021.

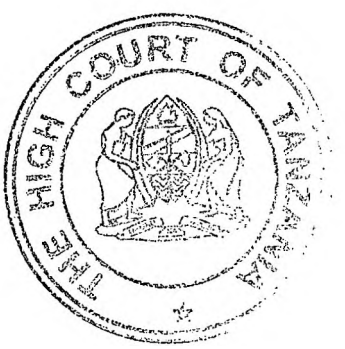


E. E. KAKOLAKI

JUDGE

17/09/2021

The Judgment has been delivered at Dar es Salaam today on 17th day of September, 2021 in the presence of the Mr. **Julius Manjeka** advocate for the Appellants, Mr. **Steven Makwega** advocate for the Respondent and Ms. **Asha Livanga**, Court clerk.



E. E. Kakolaki

JUDGE

17/09/2021