

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

AT DAR ES SALAAM

CIVIL APPEAL NO. 203 OF 2019

(An appeal against the Judgment and Decree of the District Court of Temeke at (Hon.
BATULAIN, RM) in Civil Case No. 42 of 2018 dated 27/09/2019).

BETWEEN

ALLEN MMARI.....1st APPELLANT

GEOFREY MOSI.....2nd APPELLANT

VERSUS

GODFREY OBADIA TENG.....1st RESPONDENT

MWANANCHI INSURANCE COMPANY LIMITED...2nd RESPONDENT

JUDGMENT

MRUMA, J.

This appeal has been brought through a memorandum of appeal presented for filing on 10th October 2019 in which the Appellant has raised two grounds of appeal as follows;

1. That the learned trial Resident Magistrate erred in law and in fact by holding that all Defendants the 1st Defendants (ie the driver) and the 2nd Defendants (owner of the accidented motor vehicle) should pay the Plaintiff (ie the 1st Respondent herein) general damages of Tshs 10,000,000 and costs of the suit despite the fact that the 2nd issue framed was answered in the affirmative to the effect the Mwananchi Insurance Company Limited was liable on behalf of the 2nd Appellant.
2. That the learned trial Magistrate erred in law and in fact by failing to order the 2nd Respondent (ie. Mwananchi Insurance Company Limited) to pay costs of the case to the Appellant.

The case emanated from an accident claim involving motor vehicles Registration No. T. 713 DCG Make Nissan Civilian which was being driven by Allen Mmari (ie the first Appellant) and owned by Geoffrey Mosi (2nd Appellant) and a Motor Vehicle with registration No. T. 639 AKN Make Scania with trailer No. T. K711 AWN which occurred on 21.3.2015 in which Godfrey

Obadia Tenga (The 1st Respondent) who was a passenger in Nissan Civilian bus was injured. The 1st Respondent instituted Civil case No. 42 of 2018 at the District Court of Temeke at Temeke seeking for compensation for Tshs 34,784,000/= as specific damages and Tshs 10,000,000/= as general damages for injuries he suffered in the said accident.

Judgment was entered in favuor of the Plaintiff Godfrey Obadia Tenga (The present 1st Respondent) in the sum of Tsh 10,000,000/= being general damages together with costs of the suit. The trial court ordered that sum to be paid by Allen Mmari (the driver) and Geofrey Mosi (owner of the accedented Motor vehicle) and Mwananchi Insurance Company Limited (the insurer). The two Appellant (the driver and owner of the Motor vehicle) were aggrieved and hence this appeal.

The Appellants in this matter contends that having found that the Insurance Company (ie the 2nd Respondent herein) was liable to carry the 2nd Appellant's (owner of the motor vehicle's) liability the trial court erred in law to order the Appellants to pay the decretal amount .

The 1st Respondent supported the Appellant's appeal and submitted that because the third party was enjoined in the proceedings and since it

was found that wananchi Insurance Company had ensured 2nd Appellant's accidented motor vehicle which was being driven by the 1st Appellant, the trial court ought to have held the Insurance Company liable to pay the damages resulted in the accident.

On the issue costs the 1st Respondent parted way with the Appellants and submitted that it was proper for the trial court to order all defendants to pay him costs of the suit.

Having perused the record of appeal the trial court record and the respective submissions of the parties, the following are pertinent issue for determination;

- (i) Whether the trial court misdirected itself in making the orders of paying the award of general damages against the owner and driver of the insured accidented motor vehicle.
- (ii) Who bears the cost of the suit.
- (iii) This being the 1st appeal, this court is duty bound to revisit the evidence tendered before the trial court afresh, evaluate it analyse it and come to its own

independent conclusion on the matter but always bearing in mind that the trial court had the advantage of observing the demeanor of the witness and seeing them give evidence and giving allowance for that.

In the present case, parties are not disputing the way the trial court analysed the evidence adduced and arrived at its conclusion. They are quarreling on the orders made after those findings.

In law ,third –party procedure entails a procedure in a civil suit where by a defendant is given room to join another person who is not a party to suit as a co-defendant into the suit on the grounds that the Defendant in the suit had a legally recognized claim against that person called a third party. A typical example is a driver, or owner of an insured motor vehicle joining an Insurance Company as a party to the personal injury (accident) suit.

In the case at hand the second Respondent Mwananchi Insurance Company Limited was joined as a third party in these proceedings. Having conceded that they insured the motor vehicle which was owned by the 2nd Appellant and driven by the 1st Appellant herein, it follows that they provided liability insurance coverage to both the individuals (ie the

Appellants) and the business (ie the bus). In insurance business when an insured party causes an injury through negligence, intentional acts or other wrong doing, the Insurance company is liable to compensate the victim for the covered damages caused by the accident or injury. When a person is insured, he is protected or indemnified by the insurance policy against loss liability or damages. Thus, having found that the motor vehicle owned by the 2nd Appellant and driven by the 1st Appellant was insured by the 2nd Respondent, it was wrong for the trial court to order the Appellants to pay the victim of the accident (that is to say the first appellant) general damages awarded.

Regarding the question as who bears the costs of the suit, section 30 (1) of the Civil Procedure Code puts costs at the discretion of the court and it is trite law that costs follows the event. In the case at hand, the insurance Company (the 2nd Appellant) was held liable to pay compensation, it follows therefore that it is also liable to pay costs and all incidentals to the suit. Contract of insurance being in the nature of indemnity entitles the insured for the compensation for all damages and incidentals thereto.

In the final analysis the appeal succeeds and it is ordered as follows.

1. That award of general damages to the tune of Tshs 10,000,000/= (say ten Million) only, shall be paid to the 1st Respondent by the 2nd Respondent –Mwananchi Insurance Company Ltd.
2. That costs of the suit in the trial court shall be taxed and paid by the 2nd Respondent (ie –Mwananchi Insurance Company.
3. Costs of this appeal shall be taxed and paid by the 1st Respondent Godfrey Obadia Tenga who ^lparty contested the appeal. The 2nd Respondent is not liable for costs of this appeal because she didn't contest it.

Order according.



A.R.MRUMA

JUDGE

22/8/2022.

22/8/2022

Coram: Hon A.R MRUMA, J

For the 1st Appellant : Absent

For the 2nd Appellant : Present

For the 1st Respondent : Present

For the 2nd Respondent : Absent

CC: Delphina

Court :

Judgment delivery^{ed} in presence of 2nd Appellant and 1st Respondent but in absence of the 1st Appellant and the 2nd Respondent this 22nd day of August 2022.

R.F.A Explained.




A.R.MRUMA

JUDGE

22/8/2022.