

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

CIVIL CASE NO.12 OF 2015

RASHID WAHI OMARI PLAINTIFF

VERSUS

MURZAH SOAP DETERGENT LIMITED..... 1ST DEFENDANT

OMARY YAHAYA ISSA 2ND DEFENDANT

AND

MO ASSUARANCE COMPANY..... THIRD PARTY

JUDGEMENT

14/12/2022 & 20/12/2022

MASAJU, J.

The Plaintiff, Rashidi Wahi Omari, instituted this suit against Murzah Soap Detergent Limited, the 1st Defendant and Omary Yahaya Issa, the 2nd Defendant praying for judgement and decree on the following reliefs:-

- 1) payment of TZS 226,433,000/= being special damages;
- 2) payment for loss of Revenue at the weekly rate of TZS 4,200,000/= and payment of TZS 10,000/=per day being security of the damaged motor vehicle.

- 3) payment of interest on item (1) above at the Courts' rate of 7% per annum from the date of judgement to the date of full settlement;
- 4) payment of general damages as assessed by the Court;
- 5) costs of this suit; and
- 6) any other reliefs the Court shall deem fit and just to grant.

The brief facts constituting this dispute as ascertained from the pleadings are as follows: on the 11th day of July, 2014 at about 05:30 hours at Maweni village within Manyoni District in Singida Region, along Dodoma- Singida highway the 2nd Defendant (being the 1st Defendant employee) drove the 1st Defendant motor vehicle make Scania Semi-Trailer with registration number T678 AWA / T937 AVA on the wrong side of the road and thereby knocked and damaged the Plaintiff's motor vehicle make Isuzu truck with registration number T 796 BJU and caused death of one Said Ramadhani. Consequently, the 2nd Defendant was charged before the District Court of Manyoni for the offences of causing death through careless driving on the public road contrary to section 41,27(1)(a) and 63(2)(b) of the Road Traffic Act, [Cap 168 RE 2002] and causing damage to the motor vehicle through careless driving on the public road contrary to section 41, 27(1)(a) and 63(2)(b) of the Road Traffic Act, [Cap 168 RE 2002]. He was convicted of the two offences on his own readily

plea of guilty and sentenced accordingly. Hence this suit by the Plaintiff against the Defendants.

The Third party, Mo Assurance Company Limited, was also made party to the suit at the instance of the 1st Defendant. The Defendants filed their Joint Written Statement of Defence contesting the Plaintiff's claims. Consequently, the Third Party filed its Written Statement of Defence. Thereafter, the Plaintiff filed a Reply to Joint Written Statement of Defence and a Reply to the Third Party Written Statement of Defence accordingly.

The parties could not resolve their dispute through mediation. Thus, on the 28th of February, 2019 when the case was called for a Final Pre-Trial Conference the Court in agreement with the learned counsels for the parties drew up the following five issues for determination, thus;

- 1) whether the Plaintiff suffered any damages in connection with the traffic accident.
- 2) whether there was any negligence on the part of the Defendants as regards the said traffic accident.
- 3) whether the Plaintiff negligently contributed to the traffic accident.
- 4) whether the Third Party is liable to indemnify the Defendants in the event, the Defendants are found liable to the Plaintiff.

5) what reliefs are the parties entitled to.

The intermittent trial of the suit before the Court took place from the 10th day of October, 2019 to 26th August, 2022 wherein all parties were throughout represented. Mr. Francis Kesanta, the learned advocate appeared for the Plaintiff. Mr. Emmanuel Mbuga, the learned advocate appeared for the 1st and 2nd Defendants whilst Ms. Catherine Solomon, the learned advocate appeared for the Third Party.

The Plaintiff summoned three witnesses: F.3582 Cpl. Herman (**PW1**), Rashid Wahi Omari (**PW2**) and F.1640 Cpl. Ulaya (**PW3**). On the other hand, the Defence side had four witnesses, Omary Issa Yahaya (**DW1**), Nicetas Arbogast Lyamuya (**DW2**), Aisha Ramadhan Mashauri (**Third Party-DW1**), and Emmanuel Gamaya Mboje (**Third Party-DW2**).

At the end of trial of the suit, the parties filed their written submissions in support of, and against the suit. The parties' testimonies shall shortly herein be taken into account as the Court proceeds to address the issues raised.

It is trite law under section 110 (1) and (2) of the Evidence Act, [Cap. 6 RE 2019] that, whoever request a Court to give judgment in his favour as to any legal right on the existence of any fact which he asserts, must prove that, the fact exist. It follows therefore that, the burden of proving the claim contained in the Plaint is on the Plaintiff and the level of proof is that on the balance of probability (that the Court will sustain such evidence which is credible than the other).

The 1st issue, that whether the Plaintiff suffered any damages in connection with the traffic accident. PW1 testified that upon arriving at the scene of accident and inspecting the Plaintiff's motor vehicle it had suffered several defects as pointed in the Vehicle Inspection Report which he prepared himself (**Exhibit P1**). The Judgement of the District Court of Manyoni (**Exhibit P2**) tendered by PW1 proves also that indeed the Plaintiff suffered damages in the said traffic accident as the 2nd Defendant was convicted on his own plea of guilty for the offences in relation to causing damages among other things. Notably, **Exhibit P2** was not objected by any party in this case.

PW2 (the Plaintiff himself) tendered a contract (**Exhibit P4**) between himself and kigoma Cargo Local Transport Agent which proves

he was contracted to transport cargo from Dar es salaam to Kigoma (at an agreed payment price of TZS 4,200,000/=per trip) for a period of three month from 1st day of July, 2014 to 30th day of September, 2014 whereby the contract was subject to renewal. PW2 also tendered in evidence a receipt (**Exhibit P5**) of fuel worth TZS 400,000/= given to his other employee (Mwinyihaji Omari) whom he had instructed to go the scene of the accident. Further, PW2 testified that he incurred transportation costs (*to wit* TZS 1,000,000=) of the dead body of his turn boy for burial from Manyoni District to Kiomboi District who had passed away in the said road traffic accident as seen in the receipt of payment (**Exhibit P6**). PW2 also testified that he used TZS 2,200,000/= to transport his damaged motor vehicle from Manyoni, the scene of accident to Dar es salaam as seen in (**Exhibit P7**). Furthermore, PW2 tendered receipts of payment for security services (**Exhibit P8**) which evidences that his motor vehicle was taken and kept at Belaf Tanzania Limited in Dar es salaam (a car security company) thus daily charged TZS 10,000/= for parking and security from 15th July, 2014 to 31st August, 2015. Hence, a total cost of security services tsh.4,120,000/= as pleaded in paragraph 11(m) of the Plaint. Notably, the Plaintiff did not furnish any evidence to prove the costs of security services of his motor vehicle at the scene of the accidents from

11th to the 13th day of July, 2014, as claimed in paragraph 11(l) of the Plaintiff. PW3 (the police officer at Manyoni police station who drew the sketch plan of the scene of the accident) testified that in deed there was a collision between two motor vehicles which the same had occasioned death.

It can be noted from the defence side testimonies and closing submissions that indeed the Plaintiff's motor vehicle sustained damages. DW1 (the 2nd Defendant, and driver of the 1st Defendant's motor vehicle) admitted in his testimony to have caused the accident which damaged the Plaintiff's motor vehicle. DW1 stated that the Plaintiff's damaged motor vehicle was still capable of repair after the accident. DW2 (the human resource manager and logistics in charge of the 1st Defendant) testified that the Plaintiff's motor vehicle was not written off rather capable of repair. The Third-Party witness DW1 (the principal officer of the third-party) testified that upon being informed of the accident they contacted the EMC Surveyors and Assessors Limited Company who issued the Third-Party Motor Vehicle Damage Inspection and Appraisal Report (**Third-Party Exhibit D2**) which revealed that the Plaintiff has to be paid TZS 6,531,962/= being compensation for the damaged motor vehicle. Thus,

the Third-Party was therein advised to set off the claim at such a compensation rate (TZS 6,531,952/=) being the computed pre-accidental value of the Plaintiff's motor vehicle. But on the other hand, the said report (**Third Party Exhibit D2**) states categorically that the Plaintiff's motor vehicle's extent of damage was a total loss (*that the Third-Party vehicle is irreparable due to its nature and extent of damage and if repaired it could jeopardize unforeseen future mechanical faults that can cause inconveniences to the users*). The report further pointed (through its attached unverified Motor Vehicle Damage Appraisal Form) that the proper repair cost allegedly computed by M/S Mashota Auto Garage is TZS 26,633,250/= contrary to the Plaintiff's claim of TZS 71,250,000/= as allegedly itemized by M/S Mashota Auto Garage vide unverified proforma invoice number 511 dated the 2nd day of September, 2014, issued to them by the Plaintiff.

The Third-Party witness DW2 (the director of EMC Surveyors and Assessors Limited who assessed the Plaintiff's motor vehicle and authored the **Third-Party Exhibit D2**) testified that as per the documentary evidence supplied to him by the Plaintiff, the Plaintiff's damaged motor vehicle was bought in 2010 at TZS 10,087,971/= and not TZS

75,000,000/= as claimed. The third-party witness DW2 further testified that the Plaintiff's motor vehicle was written off due to the accident and the computed cost for its repair amounts to TZS. 26,633,250/= as calculated in their Motor Vehicle Damage Appraisal Form. In consideration to all these facts, the first issue is answered in affirmative, that the Plaintiff did suffer both special and general damages out of the accident especially that the Plaintiff attached in its Plaint, Annexure "RWO-4" which the annexure contains black and white pictures of the damaged motor vehicle and the same pictures were annexed in their coloured form in the Motor Vehicle Damage Inspection and Appraisal Report, the **Third-Party Exhibit D2**.

On the 2nd issue whether there was any negligence on the part of the Defendants as regards the said traffic accident. The same is answered in the affirmative too. The Plaintiff has proved that there was indeed negligence by the 2nd Defendant who carelessly and negligently caused the accident so to say in principle the 1st Defendant too (his employer). The same is evident from the testimonies of PW1, PW3 along with the Judgement of the District Court of Manyoni (**Exhibit P2**) and the sketch plan of the scene of the accident (**Exhibit P9**).

The 3rd issue that whether the Plaintiff negligently contributed to the traffic accident is answered in the negative simply because from the testimonies of the Defendants together with the third-party there is no proof of this allegation. After all, the 2nd Defendant (DW2) shouldered the liability of the tragic road traffic accident solely to the extent of being convicted of the two offences on his own readily plea of guilty thereof. The Defendants are therefore estopped to shift the goal post of recklessness and negligence that led to the tragic road accident to the Plaintiff's driver.

The 4th issue, that whether the Third-Party is liable to indemnify the Defendants. As per the evidence on record, there was neither no proof of the motor cover note nor insurance policy for the 1st Defendant motor vehicle (Scania Semi Trailer T678AWA/ T937 AVA). The **Third-Party Exhibit D1** is a private car schedule which gives particulars of a private saloon car make Toyota Corolla with registration number T212 ASY. The registration number of the 1st Defendant's motor vehicle T678 AWA has been additionally handwritten on the said private car schedule/ insurance policy. Further, the private car schedule was issued by Golden Crescent Assurance which has since been renamed Mo Assurance. But since the

Third-Party testified to have insured the 1st Defendant and the 1st Defendant did not object the said private car schedule the same is hereby considered by the Court as the Third Party's acceptance of liability for third party insurance policy for the 1st Defendant motor vehicle. The Plaintiff generally pleaded to be paid special damages to the tune of TZS 226,433, 000/= . He did not specifically plead the claim of TZS. 71,250,000/= as being costs for repair of his written off motor vehicle (an amount seen in his proforma invoice from M/S Mashota Auto Garage issued to the third party). In his testimony, the Plaintiff neither established the purchase price, market value (pre-accidental value) nor the costs for repair of his written off motor vehicle. He, however, prayed before the Court to be paid compensation for his written off motor vehicle. Thus, considering that it is glaring on the record that the Plaintiff motor vehicle was at a total loss (as seen from the coloured pictures comprised in the **Third-Party Exhibit D2**) and that the third-party had tabled the purchase price (TZS 10,087,971/=) and computed both the pre-accidental value (TZS 6,531,962/=) and full costs of repair (TZS 26,633,250/=) in its Motor Vehicle Damage Inspection and Appraisal Report (the **Third-Party Exhibit D2**), which exhibit though less credible, was not objected by the Plaintiff, hence, admitted in evidence, it is the Court's considered

position due to the nature of the case that payment of full costs of repair of the damaged motor vehicle by the third-party to the Plaintiff would serve justice accordingly than payment of its pre-accidental value as advised by the EMC surveyors and Assessors Limited. Consequently, the fourth issue is hereby answered in the affirmative that the Third-Party is liable to indemnify the 1st Defendant TZS 26,633,250/= being full cost of repair of the Plaintiff's written off motor vehicle as computed in the **Third-Party Exhibit D2** since an amount of TZS 30,000,000/= is specified in item four on the limits of indemnity of their insurance policy (**Third-Party Exhibit D1**) as the maximum amount of indemnification in respect to damage of a Third -Party property.

On the last issue that, what reliefs are the parties entitled to. The Court finds that the party entitled to relief is the Plaintiff since he has managed to prove his case on the preponderance of probability. In tortious liabilities like the instant case, damages may be special or general in nature. In this case, the Plaintiff has prayed to paid special damages to tune of TZS 226,433,000/= but there was no proof of how such special damages amount was arrived at. However, it is the Court's finding that the Plaintiff has to be paid by the 1st Defendant special damages as proved

to the tune of TZS 7,720,000/= which is inclusive of; payment of TZS 400,000/= being cost of fuel given to the Plaintiff's employee who went to Manyoni District right after the accident (**Exhibit P5**), TZS 1,000,000/= being cost of transportation of dead body of the turn boy from Manyoni District to Kiomboi District (**Exhibit P6**), TZS 2,200,000/= being cost of transporting the Plaintiffs' damaged motor vehicle from Maweni village, Manyoni to Dar es salaam (**Exhibit P7**), TZS 4,120,000/= being cost for parking and security services charges of the damaged motor vehicle at Belaf .T. Ltd from the date of parking that is 15/7/2014 to 31/08/2015 as computed from **Exhibit P8**.

Further, the Plaintiff be paid compensation for the loss of income arising from the contract (**Exhibit P4**) to the tune of TZS 25,200,000/= which the same is calculated for the three-month contractual time whereby one trip was payable at TZS 4,200,000/= as per **Exhibit P4**. Hence a total of six trip in three-month contractual time according to the explanation of PW2 in his handwritten statement of 8th of August, 2014 attached in the **Third-Party Exhibit D2**, wherein he stated that "*kwa mwezi inakwenda Kigoma mara mbili*".

The claim by the Plaintiff on payment of interest in relation to special damages from the date of filling this suit to the date of judgement and interest at the Courts' rate of 7% per annum from the date of judgement to the date of full settlement is hereby declined by the Court for want of good cause. There is neither evidence that if the Plaintiff had not suffered the same then his monies could have been deposited with the Bank nor that in the instance, he is paid the same then he will opt to deposit them at a Bank. The Plaintiff did not even state the bank and the account thereof.

The Plaintiff also prayed to be paid general damages as assessed by the Court. In consideration to the evidence, it can be ascertained that after the accident, the Plaintiff motor vehicle remained at a total loss that it could no longer further his cargo transport business, hence qualifying for general damages. On that account, it is the Court considered view that payment of TZS 50,000,000/= as general damages would meet the ends of justice to the Plaintiff.

Thus, having regard to all the above, Judgement is hereby entered in favour of the Plaintiff to the following extent:

1. That, the 1st Defendant shall pay the Plaintiff TZS 7,720,000/= being payment for the specific damages which includes; cost of fuel, cost of transporting the dead body for burial, cost of transporting the Plaintiff's damaged motor vehicle and cost of security services and parking charges.
2. That, the 1st Defendant shall pay the Plaintiff compensation for the loss of revenue to the tune of TZS 25,200,000/= arising from the three-month contract which the Plaintiff was engaged by then.
3. That, the 1st Defendant shall pay the Plaintiff general damages amounting to TZS 50,000,000/=.
4. The Third Party shall pay the Plaintiff TZS. 26, 633,250/= being costs of repair by then of the damaged motor vehicle accordingly in terms of the third party insurance policy liability.
5. The Cost of this suit shall be borne by the 1st Defendant accordingly.



GEORGE. M. MASAJU

JUDGE

20/12/2022

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