

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)
AT ARUSHA
CIVIL APPEAL NO. 38 OF 2020**

(C/f Resident Magistrate's Court of Arusha at Arusha, Civil Case No. 61 of 2017)

**PHOENIX OF TANZANIA ASSURANCE
COMPANY LIMITEDAPPELLANT**

VERSUS

- 1. MBAYO S/O OLOITITO NAMAIKO1ST RESPONDENT**
- 2. SHABAN SAID2ND RESPONDENT**
- 3. MAIMUNA MBARUKU (Sued as Intermeddler of the Estate of the Late
Mbaruku Mwatambwuta Bozely).....3rd RESPONDENT**
- 4. SHABAN AMIRI PAZZIA4TH RESPONDENT**
- 5. RIFT VALLEY INSURANCE AGENCY5TH RESPONDENT**

JUDGMENT

04/04/2022 & 06/5/2022

GWAE, J

The appellant,^o Phoenix of Tanzania Assurance Limited has filed this appeal essentially requesting the court to determine whether the Resident Magistrate's Court of Arusha at Arusha (trial court) was justified to award general damages in favour of the 1st respondent, Mbayo Oloitito Namaiko at the tune of Tshs. 20,000,000/=.

In the trial court, the plaintiff now 1st respondent instituted the suit on the 17th June 2017 against the respondents, Shabani Said, Maimuna

Mbaruku sued as intermeddler of the estate of the late Mbaruku Mwatambwuta Bozeily, Shabani Amiri Pazzia, Rift Valley Insurance Agency and Phoenix who were accordingly referred to as 1st, 2nd, 3rd, 4th and 5th defendant respectively).

The 1st respondent's claims against the said defendants were inter alia; payment of Tshs. 46,827,500/= being special damages, payment of general damages assessable by the trial court and costs, interests. The claims of the plaintiff now 1st respondent originated from an accident which occurred on the 10th November 2014 involving a motor vehicle with Registration No. T. 892 AVE allegedly caused by the reckless driving by the 1st defendant. Through the parties' pleadings, the contentious issues before the trial court were; whether the 1st respondent was involved in the accident and sustained injuries, whether the accident was caused by the reckless driving by the 1st defendant and whether the motor vehicle was insured by the 5th defendant now appellant.

Upon hearing the parties, the trial court came up with a conclusion that, the 1st respondent was evidently involved into the accident as per his evidence and other pieces of evidence (DE1) and that, the 1st defendant was liable for the reckless driving as the same was conclusively proved through a court's decision in traffic case (Traffic Case No. 11 of

2014). Consequently, the trial court decreed in favour of the 1st respondent by ordering the appellant to Tshs. 46,827,500.00 being specific damages, Tshs. 20,000,000/= being general damages, interest at the rate of 7 % from the date of filing of the 1st respondent's suit to the date of judgment and interest of 7 % from the date of the trial court's judgment to the date of full satisfaction of the decree as well as costs of the suit.

Feeling aggrieved by the judgment and decree of the trial court the appellant filed this appeal to the court advancing three grounds of appeal, namely, **firstly**, that, the trial court erred in law and fact in awarding the said special damages not proved to the required standard , **secondly**, that, that the trial court unjustifiably awarded the general damages as it failed to evaluate evidence resulting into awarding damages of the higher side and **thirdly**, that the trial court erred in law and fact by failing to properly evaluate evidence.

The appellant's appeal was orally disposed of on the 4th April 2022 by the parties' advocates namely; Mr. Mapembe assisted by Miss Anna Ngoty and Mr. Gwakisa Sambo for the appellant and 1st respondent respectively whereas other respondents did not enter their appearance as was the case before the trial court. Despite the fact that the appellant

filed three (3) grounds of appeal mentioned herein but the appellant's advocates opted to abandon ground of appeal No. 1 and ground No. 3. Thus, the ground 1 and 3 were subsequently considered by the court as abandoned and therefore not subject of the court's determination of this appeal.

In his endeavors to persuade the court that the trial court erred in law and fact in awarding the said general damages in favour of the 1st respondent, the counsel for the appellant argued that, the trial court did not give reasons for the award of the general damages taking into account that the 1st respondent was awarded special damage at the tune of Tshs. Tshs.46, 000,000/=, the trial would have awarded him Tshs. 8, 000,000/= as general damages. According to the appellant's counsel, this court is legally allowed to intervene the trial court's quantum of the awarded general damages as no reasons were assigned. Mr. Mapembe buttered his argument by inviting this court to make a reference to a judicial precedent in **Cooper Motor Services v. Arusha Occupational Health Services** (1990) TLR 96.

On the other hand, Mr. Sambo strongly reacted to the submission by the counsel for the appellant by stating that, it is general principle that appellate courts of law used to decline from interfering awarded general

damages on the obvious reason that an award of general damages for a person who has evidently sustained permanent injury or incapacitation is not less than Tshs. 20,000,000/=. He then embraced his arguments by citing the case of **Said Ally Bakari v. Managing Director-TANESCO**, Civil Appeal No. 147 of 2018 (unreported-H.C) at page 10 &11, **Hamis Abdallah vs. Charles Nicolous and two others** Civil Appeal No. 211 of 2017 at page 17 and **Sanlam, General Insurance Tanzania Limited vs. Godfrey**, Civil Appeal No. 255 of 2018 (unreported), at page 8 and 9 of the decision.

He went on asking the court to enhance the impugned award of general damages as was stressed in Sanlam's case (supra). The 1st respondent also argued that the reasons for the questioned award were given by the trial court are depicted at page 10 of the typed judgment. Hence, according to him, there is no legal reason justifying this court to fault the trial court's award adding that, the evidence of record clearly depicts that extent of injuries or incapacitation sustained by the 1st respondent calls for more award of general damages than what he had been awarded by the trial court. Mr. Mapembe has nothing to rejoin to the submission by Mr. Sambo.

Mr. Sambo went to argue that, the amount of special damages was pleaded and proved. Therefore, it is his opinion that, the same cannot be used to operate in lieu of the general damages which was also pleaded and proved. lastly, Mr. Sambo prayed for an order of the court dismissing this appeal with costs.

Having outlined what transpired during trial and on this appeal, it is now the duty of the court to determine the following two issues, whether the amount awarded as special damages may, in law, replace or substitute a prayer on general damages and whether the trial court was justified in granting the general damages at the tune of twenty million Shillings (Tshs. 20,000,000/=).

In the 1st issue, whether the amount awarded as special damages may, in law, replace or substitute a prayer on general damages. It is general principle that special damage must be specifically pleaded and strictly proved by a litigant who alleges to have suffered special damages following one's act (s) or omission (See decisions of the Court of Appeal of Tanzania in **NBC Holding Corporation v. Mrecha** (2000) 1 EA 174 and **Zuberi Augustine v. Anicet Mgabe** (1992) TLR 137 &138 and **Registrar of Buildings v. Bwogi** [1986–1989] 1 EA 487).

Since a claim by a litigant who seeks an order of the court directing payment of special damages like the present one requires a litigant who alleges that an act or omission by an adverse party has affected him or her must not only specifically plead it in his or her plaint but also strictly prove that he or she actually suffered special damage and since the relief of general damages is awardable on the discretion of the trial court as was the case before the trial court, it follows therefore, there two reliefs sought by the 1st respondent which were legally distinct from each other, therefore the awarded special damages cannot legally substitute or replace the relief of general damages sought by a party in a proceeding as correctly argued by the 1st respondent's advocate. It was therefore not legally justifiable for the trial court to abstain from granting general damages in favour of the 1st respondent merely because he was granted special damages.

In the 2nd issue, whether the trial court was justified in granting the general damages at the tune of Tshs. 20,000,000/= . The award of general damages is always at the discretion of a presiding magistrate or judge, the discretion is judiciously exercisable. Hence, a quantification of general damages is upon a trial court depending on the facts surrounding the case and evidence adduced before it.

It is trite law that an award of damage be it specific or general must be guided by governing principles, including evidence adduced during trial and considering the essence of granting damages is to put a party who has proved to have been injured or who has suffered damages in the same position as he would have been if he had not sustained the complained wrongful act or omission which he or she gets as his or her compensation or reparation, the trial court was therefore duty bound to exercise its discretion judiciously.

The appellant is now found to have been seriously dissatisfied with the awarded quantum of the general damages by the trial court and reason given by the learned counsel who represented him was that no reason that was given for arriving at such amount of money. He is now asking the court to reduce from Tshs. 20,000,000/= to Tshs. 8,000,000/= the amount which is seriously disputed by the 1st respondent's counsel.

It is fundamental principle of the law that an appellate judge or magistrate should not interfere with the trial court's assessment in relation to the awarded damages unless it is clearly observed that, the trial court acted upon wrong principles, or according to the evidence and the facts of the case, the awarded damages is of high side or excessively low. Logic being that, the trial court is always certainly in the better position to

ascertain extent of injuries sustained by a victim than an appellate court like this one. Perhaps it is apposite to subscribe my holding with a decision of the Supreme Court of Uganda in **Crown Beverages Limited vs. Sendu** (2006) 2 EA 4 where it was held;

“An appellate court will not interfere with the award of damages by a trial court unless the court acted upon wrong principles of law or the amount awarded was so large or so low as to make it an entirely erroneous estimate of the damages to which the plaintiff was entitled.....It was trite law that the amount of general damages which a plaintiff would be awarded was a matter of discretion for the court.....”.

(See also in **Cooper Motor Services vs. Arusha Occupational Health Services** (1990) TLR 9, **Gervas Justine vs. Said Mohamed Ndeteleni**, Civil Appeal No. 189 of 2004 (unreported) and decision of the defunct Court of Appeal in **Kilembe Mines Limited vs. David Bitegge**, Civil Appeal No. 46 of 1971 at page 4 (unreported).

In our instant matter, having meticulously examined the trial court’s record, I have observed that, the learned trial magistrate did give reasons in awarding Tshs 20,000,000/= through her well-reasoned judgment at page 10 where she categorically stated that, 1st respondent was entitled to compensation due to injuries that he sustained followed by permanent

incapacitation adding that he can no longer take care of his family as he previously used to be due to reason that he cannot do his usual business of motor cycle (Boda Boda business).

Assuming the trial court did not give reasons for its award yet this court as the 1st appellate court, it can therefore step into shoes of the trial court by re-evaluating the evidence adduced before the trial court. This position was judicially stressed in **Mwajuma Mbegu vs. Kitwana Amani** (2004) TLR 410 where it was held by the Court of Appeal of Tanzania that, a first appellate court has power to re-evaluate the evidence adduced at the trial and make factual findings therefrom but it cannot make such findings based on a document that was not before the trial Court.


Carefully examining the evidence on record especially that of the 1st respondent at page 25 of the typed proceedings, it is clearly established that, the 1st respondent was, prior to his involvement in the accident, dealing with motorcycle business but immediately after the accident he would not further engage in such business due to the injuries which he sustained particularly his left fingers which can no longer function properly as the same got fractured (“Vimekunja na kukakamaa”).

More so, the documentary evidence (PE1, PE2, PE3, PE4 and DE1) tendered during trial supported by the testimony of the 1st respondent. Having cautiously looked at the findings of the trial court and assessed the evidence on the trial court's record, I am therefore not supposed to buy the arguments by the appellant's counsel that, the award of general damages is an exorbitant quantum since it is amply established by the evidence so adduced before the trial court that, the 1st respondent sustained injuries and permanent incapacitation which inevitably hinder him to properly engage himself into various economic activities and since general damages are such as the law will presume to be direct, natural or probable consequence of the act or omission complained of. Therefore, I am of the firm view that, the amount award for the relief of general damages in the circumstances of this matter is reasonable. Consequently, this ground of appeal fails.

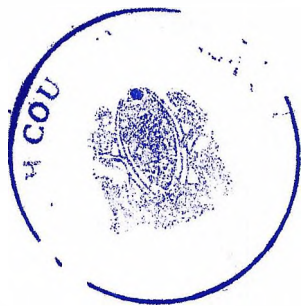
Having discussed as herein above, this appeal is dismissed entirely, the trial court's judgment and decree are upheld. The appellant shall bear the costs of this appeal.


It is so ordered

Dated at Arusha this 6th May, 2022


M.R. GWAE
JUDGE
06/05/2022

Court: Right of appeal to the Court of Appeal fully explained




M.R. GWAE
JUDGE
06/05/2022