

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IRINGA DISTRICT REGISTRY)
AT IRINGA**

CIVIL APPEAL NO. 7 OF 2022

*(Original Civil Case No. 5/2021 of the Resident Magistrate Court of Iringa, at Iringa before Hon.
E. A. Nsungalufu – SRM)*

PHOENIX OF TANZANIA ASSURANCE } **1ST APPELLANT**
COMPANY LIMITED }

MARIAM KAHA MOHAMED **2ND APPELLANT**

VERSUS

RAVICHANDRA VAGHELA **RESPONDENT**

JUDGMENT

08th November & 24th January, 2023

I. C. MUGETA, J:

There is no dispute from the pleadings and the evidence on record that the second appellant, while driving a motor vehicle insured by the first appellant, knocked down and caused bodily harm to the respondent who got treatment at Iringa Region Referral Hospital and later at Muhimbili National Hospital. Consequently, the respondent filed a suit claiming for several reliefs including specific and general damages. The trial court awarded him Tshs. 45,000,000/= as specific damages, Tshs. 30,000,000/=

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as general damages, interest at 12% from the date of judgment and costs of the case.

The appellants are aggrieved by the award of those reliefs, hence, this appeal under eight grounds of appeal which after dropping the 8th ground in the submissions, boils down to four grounds of complaint, namely:

- i). That the awarded specific damages were not proved.
- ii). General damages were awarded without supporting evidence from a medical doctor.
- iii). The Respondent did not prove his claim and the trial Magistrate ignored the evidence of the appellants and unjustifiably overruled the objection against admitting exhibit P1.
- iv). The trial court erred to award interest at 12%.

The appellants are represented by Julius Manjoka, learned advocate while the respondent enjoys the service of Theresia Charles and Moses Ambindwile, learned advocates. The appeal was argued by way of filing written submissions and both parties complied with the schedule.

Regarding the first complaint, it is settled law which needs no authority to prop it up that specific damages must be specifically pleaded and

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specifically proved. Counsel for the applicant cited **Zuberi Augustino v. Anicent Mugabe** [1992] TLR 137, among others, to support the said principle of law. I have read the pleadings and found that the respondent claimed Tshs. 100,000,000/= as specific damages without itemizing the costs which led to that total sum. I have also read his evident as PW1. He testified on having spent Tshs. 600,000/= for ambulance from Iringa Dar es Salaam, air flight cost from Dar es Salaam to Iringa without stating the figures and costs for treatment at Mhimbili without stating the actual costs too. However, he tendered exhibit P3 which includes the hospital bill and the air ticket. The air ticket shows Tshs. 1,573,200/=. The hospital bills and receipt tendered are so disorganized that is not easy to shuffle through and come up with the actual figure paid. During cross-examination it was put to the respondent that he has just proved Tshs. 1,350,000/= by the documents he tendered in court and this was his answer:

'It is not true that I proved only 1,350,000/= what I know I have tendered a lot of document to support it'.

By this answer he failed to state the actual costs incurred by his knowledge or documents tendered as exhibits.

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In his submissions, counsel for the appellants has argued that specific damages was not proved to the required standard. He maintains that through exhibit P3 only Tshs. 1,350,000/= has been proved. In reply counsel for the respondent has supported the trial court without pointing out which documents proves the costs of Tshs. 45,000,000/= awarded as specific damage. While admitting that, indeed, the trial Magistrate did not substantiate his finding, he has called upon this court, being the first appellate court, to step into the shoes of the trial court and re-evaluate the evidence supporting the claim. Unfortunately, he was not stated which documents I should analyse to reach a fair decision as exhibit P3, in my view, is shambolic. However, for the sake of justice, I shall attempt to make meaning out of the evidence and documents presented.

In his evidence the respondent testified to have spend Tshs. 600,000/= on ambulance without supporting documents. However, this fact is not disputed by the second appellant, who caused the accident, when she testified as DW1. She testified that she does not know the costs involved because it is the accountant who discussed the costs with the victim and his relatives. I take this fact as proved that the ambulance cost Tshs. 600,000/=. As I have said, the air ticket in exhibit P3 shows Tshs.



1,573,200/=. The Muhimbili provisional bill in exhibit P3 shows Tshs. 1,500,000/=. I would assume this amount was paid and that is why the patient was discharged. These figures amounts to Tshs. 3,673,000/= as proved specific damages. I, therefore, hold that the trial court erred to award specific damages which were not proved. The amount proved is Tshs. 3,673,000/=. There is merits in the first ground of complaint. The award on specific damage is varied to the stated extent.

I move to the second complaint. Counsel for the appellants has argued that general damages for personal injuries could not be proved without evidence from the medical doctor. He cited **Mujuni Kataraiya v. Samwel Luangisa** [1996] TLR 53 to buttress his argument. He challenged the award of general damages as not supported by reasons, evaluation or analysis of evidence since the medical examination filed shows that the respondent did not suffer any permanent physical incapacity. Therefore, he argued, the amount awarded is inordinately high. While admitting that an appellant court cannot interfere with any award of general damages, he prayed the court to interfere because the trial Magistrate did not take into account material facts.

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Counsel for the respondent has replied that general damages are awarded at the discretion of the trial court after considering the evidence on record and assigning reasons for the award. He cited **Afred Fundi v. Gelad Mango & 2 others**, Civil Appeal No. 49 of 2017, Court of Appeal – Mwanza (unreported). I agree with this submission.

Didn't the trial Magistrate assign reasons for awarding general damages? The answer is in the negative. The trial court found that, indeed, the respondent suffered injuries which led him to be hospitalised. He further found that in the process he failed to attend his business which formed a base for awarding general damages. I am satisfied the trial court made a fair finding. Since general damages are awarded at the discretion of the trial court, considering the circumstances and evidence in this case, I find no reason to interfere with the amount of the general damages awarded.

Coming to the third complaint, the counsel for the appellant has submitted that the respondent failed to prove that he runs any business and has suffered any financial loss. He challenges admission of the respondent's business extract from register as exhibit which was a photocopy. In reply, counsel for the respondent submitted that the respondent gave evidence

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that he runs a business in the name of Iringa steel and metal works and proof by BRELA'S extract from register was admitted as exhibit P1.

Indeed, an objection was raised against admission exhibit P1 and the same was overruled. I have failed to trace in the file the relevant ruling to see the reason for overruling the objection. This notwithstanding, I have examined exhibit P1 it is not a photocopy but an electronically generated document. Therefore, the objection was without merits. Further, the testimony of the respondent that he owns the said business is undisputed. Therefore, it is true that when he was in hospital he suffered loss of business. However, he failed to prove or substantiate his claim that his monthly income is Tshs. 6,000,000/= by his monthly business earning flow as alleged. Therefore, the claim of suffering injuries due to the accident was proved. What was not proved was the monthly income from business. Consequently, I hold that no evidence of the appellants was not considered.

Lastly, the award of interest. According to Order XX rule 21(1) of the Civil Procedure Code, interest on the judgment sum is 7% unless there is an agreement of the parties to the contrary. Therefore, the award of 12% by



the trial court, as argued by counsel for the appellant, is unjustified. There is merits in this complaint. I reduce the interest to 7%.

In conclusion, the appeal is partly allowed in that specific damages has been reduced to Tshs. 3,673,000/= instead of Tshs. 45,000,000/= and interest rate on the judgment sum has been reduced to 7%. The award for general damages remains undisturbed. As the appeal is partly allowed each party to bear own costs in this court.



A handwritten signature in blue ink, reading 'Mugeta'.

I.C. MUGETA

JUDGE

24/01/2023

COURT: Judgment delivered in the presence of Mr. Deus Masatu (Marketing Manager) on behalf of the appellants and Ms Theresia Charles, learned advocate for the respondent. Mr. Mpogole (clerk) also present.

Sgd: M. A. MALEWO

DEPUTY REGISTRAR

24/01/2023