

**IN THE HIGH COURT OF TANZANIA**  
**DODOMA SUB - REGISTRY**  
**AT DODOMA**

**CIVIL CASE NO. 02 OF 2022**

**BETWEEN**

**AJUAYE AINEA.....PLAINTIFF**

**AND**

**OMBENI ELISALE.....1<sup>ST</sup> DEFENDANT**

**GLOBAL RIC LIMITED.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**30<sup>th</sup> May, 2024**

The story telling behind this case is that the plaintiff, one Ajuaye s/o Ainea (PW1) was a motorcycle driver on the fateful day. He is a husband of one wife and father of four children. And as of now, according to what he reveals in the plaint, since 2015 after he sustained a severe injury caused by road accident, his life has miserably changed due to health challenges. Because of that, he has been going up and down looking for redress from the damage he has encountered.

As for the case at hand, it has been alleged by witnesses that the accident occurred on 28<sup>th</sup> April, 2015 at about 11:30hours. On the material day, Mr. Ajuaye was on the road riding his motorcycle. He was in the company of his beloved wife. At that time, his wife Rebecca Emmanuel Sendeu was his only passenger and he was passing along the main road heading from Dodoma to Morogoro. While passing across Kibaingwa area within Kongwa District in Dodoma Region, he was hit by a lorry which was coming from behind. The lorry had registration number T. 904 BWR, adjoined with a trailer whose registration number is T. 199 BVP Volvo. The lorry was driven by the 1<sup>st</sup> Defendant, one Ombeni Elisale.

As a result of the said accident, the plaintiff sustained serious injuries and his motorcycle was severely damaged. In his efforts to look for reparation, the plaintiff had struggled to seek compensation from the lorry owner, one **GLOBAL RIC LIMITED** as well as an insurance company which the lorry seems to have been insured with. However, all efforts end up in vain. Now, before this court, Mr. Ajuaye Ainea raises his claim for damages, which include:

- a) TZS. 420, 000,000/-being the compensation for the incapacitation caused by negligent driving, costs for the*

*medical treatment and transport through the entire period of attending medical, loss of income resulted from the accident as well as disturbance which occurred out of his expectation.*

*b) General damages to be assessed by the court.*

*c) Interest at the court's rate from the date of the judgment until satisfaction of the decree.*

*d) TZS. 2,500,000/- as costs for purchasing a new motorcycle following the damage of motorcycle No. T 961 BNG T-better.*

*e) Costs of the suit.*

*f) Any other relief the court may deem fit.*

At the hearing of this case, the Plaintiff was represented by Mr. George Sing'uji, learned Advocate. On the other side, defendants were absent. Efforts were made including publication to secure attendance of the defendants to the trial, though it all went in vain. Thus, matter proceeded with hearing *ex-parte* under Order VIII Rule 14 (1) of the Civil Procedure Code, [Cap. 33 R.E. 2019].

Before commencement of hearing, the following issues for determination of the parties' dispute were framed by the court to wit:

- 1. Whether the 1<sup>st</sup> defendant was in the cause of employment of the 2<sup>nd</sup> defendant during the time the cause of action arose.*
- 2. Whether the 1<sup>st</sup> defendant was reckless and or negligent in the discharge of his responsibilities.*
- 3. Whether the accident occurred as a result of the said negligence.*
- 4. To what reliefs are the parties entitled to.*

To prove his case, the plaintiff called upon two witnesses plus himself to testify in his favour. These includes, **F. 6460 PC ALFRED** (PW1), a police officer and **Thobias Michael Bundala** (PW2), who is a human being doctor.

**F. 6460 PC ALFRED** (PW1), a police officer who in his evidence, he averred that, during the time when the accident occurred, he was working at Dodoma Central Police station. And that, he was an investigator of the traffic case which involved the plaintiff and the 1<sup>st</sup> defendant. He further testified that; he knows Ajuaye Ainea as a victim of road accident. And that, on 28/04/2015 there was a road accident which involved a lorry and a motorcycle. The lorry collided with a motorcycle and caused injury to the

motorcycle driver and damage of motorcycle. He added that, the accident occurred at Kibaigwa village within Kongwa District in Dodoma region.

Testifying on his role to the accident, PW2 testified that when the accident occurred, he was a police officer who worked in the traffic section. And that, he was a constable by rank. He further went on to explain that, with respect to the said accident, he visited a scene of accident and thereafter drew a sketch map of which, he identified before the court by his force number, F. 6460 PC ALFRED; the lorry number T. 904 BWR; and its trailer number T. 199 BVP Volvo. It also has a motorcycle number T. 961 BNQ T-Better. Therefore, at the end, he tendered a sketch map which was admitted by the court and marked as exhibit PE1.

Testifying about victim, PW1 testified to have issued a PF3 to the injured motorcycle's driver. He further attested by identifying the said PF3 that it has victim's names, that is Ajuaye Ainea, and police stamp. He then tendered the PF3 which was admitted in evidence and marked as PE2. He stressed further that, PF3 was issued because of the injuries sustained to the plaintiff from the said accident.

Moreover, PW1 stated that, to proceed with investigation, he contacted a vehicle inspector for inspection of the lorry. And after inspection,

police form No. 93 (PF. 93) was issued. PW1 identified an inspection report through the lorry number T. 904 BWR Volvo, driver's name (1<sup>st</sup> defendant) which is Ombeni Elisale, inspector's name which is Witson Baitain, and a stamp from vehicle inspection's office. The vehicle inspection report was admitted in evidence and marked exhibit PE3.

Likewise, PW1 averred to have prepared a first information report (PF. 90) of which, was admitted in evidence as exhibit PE4. The said report contains among others, his name as investigator, the name of vehicle inspector and a signature of District Traffic Officer Kongwa. Thereafter, PW1 prepared a charge sheet for prosecution of the lorry's driver (1<sup>st</sup> defendant). The charge sheet contains the accused's name, a lorry and motorcycle registration numbers and the name of the victim Ajuaye Ainea. PW1 went on to testify further that after successful prosecution, the 1<sup>st</sup> defendant was convicted. He identified a certified copy of the judgment by its case number which is TC. NO. 9 of 2015, parties' names and the date of judgment. Thus, a copy of judgment was admitted in evidence as exhibit PE5.

PW1 continued to testify that, during that time, from the date of accident, the plaintiff Ajuaye Ainea continued to undergo medical treatment. He further testified that, at the end, after judgment was pronounced, he

prepared a final case report (PF. 115) which was also admitted in evidence as PE6. Additionally, PW1 admitted that he understood the 1<sup>st</sup> defendant via his driver's license. Further to that, he identified the 1<sup>st</sup> defendant's driver's license which was admitted as exhibit PE7.

Furthermore, PW1 admitted that he understands a company called Global Ric Limited via the lorry registration card. He explained further that the lorry had two registration numbers, that are, one for the lorry and another one for the trailer. The vehicle registration card as well as trailer registration card were admitted in evidence and marked as exhibit PE8 and PE9 respectively.

There is again the testimony of **Thobias Michael Bundala** (PW2), who is a human being doctor. He averred that he has more than 25 years experience in his duty as a human being doctor. PW2 testified to have understood one Ajuaye s/o Ainea that he was his patient. And that, he had attended him for treatment since 2015. He went on to testify that, it was on 29/04/2015 when the plaintiff first approached him with PF3 which was admitted in evidence as exhibit PE2. And that, together with doctor Ibence who then filled the said PF3, they have attended the plaintiff. PW2 further identified the said PF3 by the name of the plaintiff who was a patient and

stamp of hospital. He further testified that; on that date he was a doctor on duty.

Explaining on the PF3, he testified that PF3 is normally filled on the date a patient arrives in the hospital or after he receives treatment and allowed to leave. He also testified that; he is working at Dodoma referral hospital where the plaintiff was treated. He continued to testify that, after examination of the patient, they observed that the plaintiff had sustained some injuries. That is, he broke his right foot to the extent that he could not use his leg. And that, the plaintiff was admitted for two months in order to receive treatment.

Besides, PW2 added that they discharged the plaintiff at hospital upon condition that, he should attend after every month for check up because his bone was not properly connected. He went on testifying that, coming on 2020, the plaintiff approached the hospital asking for medical report. PW2 identified the medical report by the plaintiff's name, his name, that is Thobias, stamp and his signature. The medical report with reference No. BG.90/132.02/29 was admitted as exhibit PE10. In conclusion, PW2 testified that since the plaintiff's bone was broken, the bone is still not properly connected and that will have great effect to his body.



And finally, the testimony of **Ajuaye Elisale** (PW3), who is the plaintiff in this case. Under oath, PW3 testified that, on 28/04/2015 he was involved in the road accident. That is, he was hit by vehicle with registration number T. 904 BWR which was connected with trailer No. T. 199 BVP Volvo. And that, the accident occurred at Kibaigwa main road heading from Dodoma to Morogoro and the lorry hit him from behind. PW3 testified further that, he was riding his motorcycle which has registration No. T. 961 BNG T-better. And that, he was heading to the same direction with the lorry, that is, the lorry was behind him. He had one passenger Rebecca Emmanuel Sendeu who is his beloved wife.

Testifying on the cause of accident, PW3 explained that, the cause of accident is negligence driving of the lorry's driver. He further testified, that the lorry is owned by one, Global Ric Limited. He added that, he came to know the lorry's owner is Global Ric Limited because of its registration cards which bears its name. PW3 further identified a lorry card which was then admitted in evidence as exhibit PE8 (lorry registration card) and PE9 (trailer registration card) respectively.

PW3 continued to testify that he has his motorcycle registration card's which he can identified by its motorcycle registration No. T. 961 BNG. The

registration card bears the name of Merodine Company. He justified the card name that, he bought the said motorcycle from another person with that name, and ever since, he had not changed that name. PW3 also mentioned a lorry driver by the name of Ombeni Elisale as it appears in his driver's licence which was admitted in evidence as exhibit PE7. He further testified that after accident, he went to the police station to take PF3. He identified the said PF3 (exhibit PE2) by having his name and the name of the police station which it was issued, that is Kibaigwa Police Station.

Moreover, PW3 testified further that after accident, he was admitted at hospital for two months. And after he was discharged, he was instructed to report for checking after every month. Following the doctor's instruction, he attended checking schedule at Dodoma General Hospital from 2015 to 2020. And that, all the time through, he was treated by Doctor Thomas Bundala and Doctor Ibenze Ernest. Further to that, PW3 identified the medical report which was earlier on admitted in evidence as exhibit PE10.

Going further, PW3 testified that after accident, a lorry driver was prosecuted for the road traffic offences, and he was convicted for the same. He identified a copy of the judgment (exhibit PE5) and preferred the same to be part of his evidence. PW3 went on to testify that he has not been

supported financially by neither the lorry driver nor the owner. Adding to that, he said, an accident has caused to him a permanent headache, and leg damage as a result of bone displacement. He further said that, the accident has caused him a serious damage to his normal work. That is, as a peasant who normally cultivates a sunflower and groundnuts, he used to earn around 80 bags annually. He explained further that, because of the damage he sustained from accident, at meantime, he cannot afford to manage his family. To show the extent of his family, PW3 testified to have four (4) children namely; Ombeni Ajuaye, Hilda Ajuaye, Matha Ajuaye and Ainea Ajuaye. To attest that, he tendered birth certificates for all four children which were collectively admitted in evidence as exhibit PE11.

With respect to the insurance status of the lorry, PW3 testified that he did not benefit from insurance cover. He went on that, during the accident, the lorry seemed to have had an insurance cover. He attested that he was given a copy of that insurance cover from police station. Thus, PW3 identified an insurance cover from Reliance Insurance Co. Ltd which bears the insured name of Global Ric Limited. He further testified that, it seems the insurance cover was issued on 20/11/2014 and it was supposed to expire on

19/11/2015. The insurance cover was accordingly admitted in evidence as exhibit PE 12.

Looking for redress, PW3 testified further that, he made the follow up at Reliance Insurance Co. Ltd for compensation but they refused to pay any compensation. And, instead, they directed him to send his claim to the vehicle owner.

He further testified that, in his undertaking to claim for compensation, he had issued a demand notice which he issued to the Reliance Insurance Company Limited through his advocate NNKO & ATTORNEY CHAMBER. He also issued another demand notice to the vehicle owner through his advocate PAA PURITY ATTORNEY & ASSOCIATE which was received by the company Director Mr. Salim. The said demand notices were collectively admitted in evidence as exhibit PE 13. Moreover, PW3 testified that, in spite of the demand notice, the vehicle owner refused to pay the demanded compensation in writing vide a letter which was then admitted as exhibit PE 14.

PW3 attested more that, after all effort to seek for compensation went in vain, he then applied for leave for extension of time to file a suit to the

Minister of Constitution and Legal Affairs of which he was granted. The order was admitted in evidence as exhibit PE 15. Moving forward with his claim, PW3 testified that he did not include Reliance Insurance Co. Ltd in the case because it is in the mandate of the 2<sup>nd</sup> defendant to join his insurance company in the suit.

Consequent to the accident, and accumulated damage thereof, the plaintiff prays the court for order of compensation against the 2<sup>nd</sup> defendant, Global Ric Limited as follows:

- i. Compensation of TZS 420,000,000/= for permanent disability caused in the accident.
- ii. Payment for treatment and transportation from 2015 to 2020 in the tune of TZS 4,800,000/= which he justified vide taxi receipts from Kibaigwa to Dodoma General Hospital. The said receipts were admitted in evidence as PE 16.
- iii. Payment of 2,500,000/= for repair of motorcycle which remain unrepaired since then.
- iv. Payment of any other relief which this court may think fit to award.

This marked the end of the Plaintiff's case. And thereafter, through his counsel the Plaintiff filed final written submissions of which, I am not prepared to reproduce as I will be making reference in the course of determination of the framed issues.

Now, having gone through the evidence, exhibits tendered and the Plaintiff's final submissions, this court is now enjoined to address and determine the four issues earlier on framed by the court. However, for the easy reference of the legal position, first and for most, I wish to imitate the laws relevant to the matter at hand. For instance, provision of section 42 of the Road Traffic Act, Cap. 168 [R.E. 2002] stipulates what reckless driving includes:

*"The driving a motor vehicle or trailer at a speed which, having regard to all the circumstances of the case, is or might be dangerous to the public or to any person or drives a motor vehicle or trailer in a manner which, having regard to all the circumstances of the case, is or might be dangerous to the public or to any person."*

See also persuasive decision in **Sam v. Atkins** [2005] EWCA Civ 1452 as per May L.J he states:

*"The assessment of whether the Defendant's driving fell below the requisite standard cannot be conducted in a vacuum; it must be done by reference to the actual circumstances of the actual collision against which the standard is to be judged."*

Further to that, with respect to assessment of remedy by the court, it has been marked in **Zuberi Augustino Vs. Anicet Mugabe**, (1992) TLR 137 that:

*"It is trite law, and we need not cite any authority, that special damages must be specifically pleaded and proved." (Emphasis supplied)*

That said, in analysing the first issue, that is whether or not the 1<sup>st</sup> defendant was in the course of employment of the 2<sup>nd</sup> defendant during the time the cause of action arose. The issue has been proved by the evidence of PW1 and PW3 (the plaintiff). In their evidence they have clearly proved that the 1<sup>st</sup> defendant was in the course of employment of the 2<sup>nd</sup> defendant

during the time when the cause of action arose. On that effect, PW1 has testified that when the accident occurred, the 1<sup>st</sup> defendant was a driver of the vehicle whose registration number is T. 904 BWR/ T. 199 BVP Volvo which had caused the accident which resulted into injury of PW3 and damage to his motorcycle. His evidence about the lorry which caused the accident and damage the plaintiff's motorcycle was also corroborated by the testimony of PW2 who treated the plaintiff at General Hospital. To cement his evidence, PW1 tendered a driving licence of the 1<sup>st</sup> defendant (exhibit PE7). PW1 testified further that the 1<sup>st</sup> defendant was prosecuted for the offence of reckless driving vide Traffic Case No. 9/2015 and he entered own plea of guilty to the charge. To prove this assertion, he tendered a certified copy of judgment which was admitted as exhibit PE5. Additionally, PW1 testified further that the motor vehicle which hit PW3 has registration card (exhibits PE8 and PE9) which shows that, the owner of the vehicle was GLOBAL RIC LIMITED who is the 2<sup>nd</sup> defendant. At this far, as to the submission fronted by the plaintiff's counsel, I am in full support of his analysis and plus an attached authority. See for instance, in the case of **Mrs. Huba Hashim Kasim v. M/S Ton Da Express Ltd & 2 Others, Civil Case No. 75 Of 2010 (Unreported)** at Dar es Salaam. In my considered



view at this juncture, I will make reference in **Launchbury v. Morgans** [1973] AC 127, where plaintiff had authorised his friend to drive him home and later, they got accident on the way. Reflecting on the circumstance, the House of Lords had this to say:

*"To fix vicarious liability on the owner of a motor car in a case such as the present, it must be shown that the driver was using it for the owner's purposes under delegation of a task or duty."*

That being so, based on the evidence in disposal, as of PW1 and PW3 with respect to the ownership of the lorry, it was well testified that the lorry is owned by GLOBAL RIC LIMITED as per registration card (exhibits PE8 and PE9). In my judgment based on the evidence adduced, it is impossible to hold that the principle of vicarious liability was not proved. Since the lorry was owned by a company, it was obvious that the 1<sup>st</sup> defendant was acting upon delegation of a task or duty of the 2<sup>nd</sup> defendant either as an agent or employee. Thus, in circumstance, the 2<sup>nd</sup> defendant cannot side-step his vicarious responsibility. For this reason, I hold the first issue proved in affirmative.

Moving forward to the 2<sup>nd</sup> issue that whether the 1<sup>st</sup> defendant was reckless and or negligence in the discharge of his responsibilities. To canvass on this issue, I will be guided by the principles emanated by Vivienne Harpwood, in the book of Principles in Tort Law, 4th Edition, Cavendish Publishing Limited, 2000 at page 24, on proof of action of negligence stated thus:

*"...it is now well established that, in order to succeed in an action for negligence, the claimant must prove each of three elements: first, that a legal duty of care is owed to him or her by the defendant; secondly, a breach of that duty; thirdly, a causative link between the breach of duty and the injury or loss."*

Therefore, to prove this issue, PW1 presented that the 1<sup>st</sup> defendant was prosecuted for the offence of reckless or negligence driving and he was convicted upon his own plea of guilty. To cement that assertion, PW1 tendered a copy of judgment (exhibit PE5) to strengthen his attestation. Thus, I am alive, that it is now settled principle provided under section 43A of the Evidence Act, Cap. 6 [R. E. 2019] thus, the criminal Judgment which

has never been challenged, is relevant to Civil Case. Section 43A of the Act reads as follows:

*"43A. A final judgment of a court in any criminal proceedings shall, after the expiry of the time limit for an appeal against that judgment or after the date of the decision of an appeal in those proceedings, whichever is the later, be taken as conclusive evidence that the person convicted or acquitted was guilty or innocent of the offence to which the judgment relates."*

As rightly referred by plaintiff's counsel in his final submission, See also decision in **Grace Joseph Zeramula (being the plaintiff and administratrix of the estate of the late Paul Kato Zeramula) v. Felix John Fasi & 2 Others**, Civil Case No. 201 of 2018 (unreported) Dar es Salaam of which I am fully subscribed to, the court states:

*"...I so find as the 1<sup>st</sup> defendant in exhibit P4 was convicted of the offence of causing death through careless driving of the motor vehicle, the conviction which was never challenged as that criminal judgment is relevant to*

*this civil case as provided under section 43A of the Evidence Act, [Cap. 6 R. E. 2019].”*

Furthermore, to prove the reckless and or negligence conduct of the 1<sup>st</sup> defendant, PW1 proceeded to testify on how he was involved during investigation of the traffic case which is associated with this claim. On that he averred to have drawn the sketch map of the scene of accident, and fetching the vehicle inspector for inspection of the lorry. To bolster his evidence, he tendered exhibits PE1 the sketch map, PE2 Police Form No. 3 (PF3), PE3 Police Inspection Report, PE4 First Information Report and PE6 Final Case Report which confirmed that, the 1<sup>st</sup> defendant was reckless and, or negligence in the discharge of his responsibility.

Additionally, PW3 also testified on the point that, on 28/04/2015 he was involved in the road accident. That is, he was hit by vehicle with registration number T. 904 BWR connected with trailer whose registration No. T. 199 BVP Volvo. Tthe accident occurred at Kibaigwa main road going from Dodoma to Morogoro, and the lorry hit him from behind while he was driving his motorcycle in the same direction as that of the lorry.

In view of the above, and judging from the state of affairs, it is palpable that the standard of care is that of the reasonably careful driver, armed with common sense and experience of the way pedestrians and particularly other frequent users of the road are likely to behave. In the circumstance thereof, the drivers must always bear in mind that a motorcar is potentially a dangerous weapon and thus, ought to take all reasonable care to avoid damage on the road against other users. See **Lunt v. Khelifa** [2002] EWCA Civ 801.

Now looking on the instant case, since the 1<sup>st</sup> defendant was driving and hit the plaintiff's motorcycle from behind, it is therefore the finding of this court that, the accident was caused by the 1<sup>st</sup> defendant's reckless and negligent driving. In the circumstance, as a reasonable driver, he was supposed to foresee the danger emanating ahead of him and side-stepped. That means, failure to do so, the standard which can be used to measure as to whether the driver was reckless or otherwise, as traced in Vivienne Harpwood's book (supra), stand ticked. Thus, with these findings the second issue that the accident occurred as a result of reckless or negligence driving is answered positively.

On the 3<sup>rd</sup> issue as to whether the accident occurred as a result of the said negligence. PW1 submitted that, exhibit PE1 (sketch map of the scene of accident) has established that the accident was a result of careless and negligence driving of the 1<sup>st</sup> defendant. More so, PW1 paved that the 1<sup>st</sup> defendant has himself admitted to the charge of reckless and or negligence driving by his own plea of guilty (exhibit PE5).

Based on this evidence, at this point, it is not possible to contrast with the submission canvassed by the plaintiff's counsel of which, he held in favour of the plaintiff. In the similar way, I subscribe to the decision referred by the him in of **Grace Joseph Zeramula (being the plaintiff and administratrix of the estate of the late Paul Kato) (supra)**. In the end, in my judgment, on the evidence adduced by plaintiff's witnesses, this issue is affirmatively proved.

Coming into the last issue as to what reliefs parties are entitled. Thus, plaintiff has claimed for both special and general damages. His claims appeared in paragraphs 19 and particularised in the prayer clause of the Plaint. To find as to whether the said claims has been strictly proved, I find it imperative to examine one after another.

In the circumstance, to start with, I am alive that the starting point into the measure of damages which an injured plaintiff is entitled to recover is the recognition that damages in the tort are purely compensatory. Thus, the plaintiff should recover from the tortfeasor no more and no less than what he has lost. In our jurisdiction, when it comes to special damages the position is as in the case of **Reliance Insurance Company (T) LTD & Others v. Festo Mgomapayo**, Civil Appeal No. 23 of 2019 TZCA (unreported) where the court held:

*"The law in specific damages is settled, the said damages must be specifically pleaded and strictly proved..."*  
*(Emphasis supplied).*

Therefore, in the effort to prove the damage which the plaintiff incurred, PW3 testified that as a result of the said accident he sustained a severe injury of which, led him to suffer financial damages in the tune of TZS 4,800,000/=. Itemising the costs he incurred, PW3 testified that this cost includes, payment for treatment and payment for transportation fare from Kibaigwa where he was living to Dodoma General Hospital from the year 2015 to 2020 when he was following treatment after accident.

In this aspect, to strengthen his claim, he tendered taxi receipts to prove transportation entitlement that he demanded. The receipts were collectively admitted in evidence as exhibit PE 16. In my endeavour, going through the evidence of PW1 and PW2 including the said receipts (exhibit PE 16), and medical report (exhibit PE10), I am satisfied that the special damages of the said amount as claim for transportation has been strictly proved and the same is hereby awarded.

With respect to the claim for compensation of TZS 420,000,000= resulting from permanent disability caused to the plaintiff in the cause of accident. PW2 testified that as a result of the said accident, he had sustained a serious injury which led to his permanent disability. His evidence with respect to disability suffered was corroborated by the testimony of PW2, a human doctor who diagnosed the plaintiff, who in the end tendered a medical report (exhibit PE10) to cement his attestation.

However, as a special damage, there is no evidence adduced which prove that the plaintiff had suffered a permanent disability that is worth the amount claimed. At this juncture, guided with the position of the law in **Reliance Insurance Company (T) LTD & Others v. Festo Mgomapayo** (supra), I find it difficult to believe that the said suffering has justified the



payment of Tsh. 420,000,000/= as specific damages. The reason for such disbelief is that, special damages involve the real costs incurred by the Plaintiff of which, for it to be compensated, there must be a strict proof of the same. For instance, in **Alfred Fundi v. Geled Mango & Others**, Civil Appeal No.49 Of 2017 (Unreported), the Court of Appeal had dismissed the appeal on the facts that, the appellant did not produce any documentary evidence to substantiate and justify the claim. The Court of Appeal was of the finding that, without any supporting documents tendered that the appellant incurred specific costs there was no verifiable evidence to prove that the appellant incurred costs.

That said, in this case, nothing targetable was presented in evidence to justify the claims. To say the least, I am aware that the Plaintiff tendered some documents to support his claims which included the Birth Certificates for his four children, (Exhibit PE.11) and the rest were a mere claim coming from plaintiff's words of mouth without having any documentary proof thereof. In such a case, since claim of specific damages involves payment of real costs incurred by the Plaintiff for the permanent disability alleged, I find those certificates have not proved special damages to a tune of Tzs. 420,000,000/= as pleaded by the Plaintiff or any other amount due.

Therefore, plaintiff has failed to prove his claim, and thus, this relief is also rejected.

Reflecting on the damage caused to his motorcycle. The Plaintiff testified that because of the accident, his motorcycle was extremely damaged and it cannot move or be used. To that effect, evidence of PW3 was corroborated by the evidence of PW1, a Police Officer who tendered exhibit PE.5. At this point, PW3 claims Payment of 2,500,000/= for repair of his motorcycle which he averred to remain unrepaired since then.

Going through the evidence, the basic question to ascertain here is, whether the sum claimed by the plaintiff is justified. In my view, looking on the evidence adduced, there is nothing which can prove the claimed cost. I am again alive that, in his oral testimony, PW3 testified for the damage caused to his motorcycle. However, he did not tender any documentary proof, say it, for instance, an evaluation report which show the estimated costs for repair, of which, the amount claimed can be justified.

On that note, in my view and owing to the nature of accident as revealed by means of exhibits PE.4 and PE.5, yet, the amount claimed is

unfounded. That being the case, I hold the claim in negative and it is rejected.

The last in the chain of claims is general damages. On the other hand, the plaintiff has claimed for general damages of which he left the court to quantify. In this aspect, the law is settled that General Damages are awarded by the trial Judge after consideration and deliberation of the evidence on record has able to justify the award. In Black's Law Dictionary, 8th Ed, (2004) at page 1174, general damages is defined as follows:

*"Damages that the law presumes follow from the type of wrong complained of compensatory damages for harm that so frequently results from the tort for which a party has sued that the harm is reasonably expected and need not be alleged or proved. General damages do not need to be specifically claimed."*

From the above meaning, it is well settled that general damages must be pleaded but not necessarily quantified. The Judge has discretion in awarding general damages although, he has to dispense reasons in awarding it. This principle was surfaced by the court of appeal in the case of **Peter**

**Joseph Kibilika v. Patric Aloyce Mlingi**, Civil Appeal No. 39 of 2009 (CAT-unreported) when quoting the case of **Admicibility Commissioners v. Ss Susqehanna** [1950] 1 ALL ER 392, that:

*"If the damages be general, then it must be averred that such damage has been suffered, but the quantification of such damage is a jury question."*

It was also stated in the case of **Anthony Ngoo & Another v. Kitinda Maro**, Civil Appeal No. 25/2014 (CAT - unreported) that:

*"General damages are those presumed to be direct or probable consequences of the act complained of."*

At this point, to prove whether the plaintiff is entitled for general damages. I find that the Plaintiff is entitled to compensation for general damages. The reason for my judgment is that, if we can refer from the evidence of PW3, he testified that due to this accident he has sustained injury which led to his permanent disability.

In his testimony, PW3 testified that he has not been supported financially by neither the lorry driver nor the owner. Attesting to the extent of injury, PW3 averred that the accident has caused him a permanent

headache and leg damage as a result of bone displacement. His evidence was corroborated by the evidence of PW2, a human doctor who treated the plaintiff while he was admitted at the hospital and even after his discharge. In brief, explaining the patient's condition, PW2 testified that as a result of accident the plaintiff had broken his right foot to the extent that he could not use his leg. And that, the plaintiff was admitted for two months in order to receive treatment. And after he was discharged, he was consulted to attend hospital for check up monthly because his bone was not properly connected. To cement his evidence, PW2 tendered a PF3 (exhibit PE. 2) and the medical report with reference No. BG.90/132.02/29 (exhibit PE 10).

Further to that, PW3 whispered that, this accident has caused him a serious damage to his normal work. To that effect, as a peasant who normally cultivate sunflower and groundnuts, of which he used to earn around 80 bags annually which was enough to run his family, he now because of the damage he sustained from accident, cannot afford to manage his family. To show the scope of his family, PW3 testified to have four (4) children namely; Ombeni Ajuaye, Hilda Ajuaye, Martha Ajuaye and Ainea Ajuaye. To attest that, he tendered birth certificates for all four children which were then collectively admitted in evidence as exhibit PE 11.

In my view, owing to the circumstance at hand, I can see no fault to grant award to the plaintiff based on his attended treatment, future cost of care to his family as well as to his future loss of earnings. As rightly submitted by plaintiff's counsel refuge be taken in the case of **Leonard Paul Kisenha v. Kilimanjaro Truck Company Ltd & 2 Others**, Civil Case No. 47 of 2022 (unreported) at Dar es Salaam, which at page 23 and 24, the court states:

*"Indeed, one cannot definitely measure the anguish of a close member of the family in monetary value. However, as stated earlier, the rationale is at least to act as a solitude for the anguish suffered. Thus, the ultimate determination is to be viewed with objectivity."*

On the other hand, PW3 testified that because of this accident his motorcycle was damaged and thus, it remains unrepaired since then. Although, PW3 failed to provide a quantified estimate of the damage which could have allowed him to seek special damages, the fact that it was damaged and it is still unrepaired deserves consideration of the court.

Now, after all facts have been considered and evidence analysed this court find the award of TZS. 150,000,000/= (Tanzania Shillings one hundred and fifty million only) as general damages would meet the end of Justice. In the making of these awards, I am alive that assessment of damages is not and never can be an exact science, it is clear that there can be too many imponderables. But looking on the factual circumstance of this case in totality, the amount awarded is justified in my view. See for instance in **A. S. Sajani v. CRDB** (1991) TLR 44, where the principle *restitutio in integrum* was promulgated.

All said and done, at the end the judgment is entered in favour of the plaintiff as hereunder:


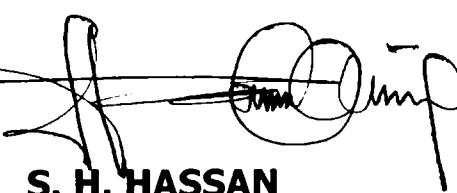
1. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants shall jointly and severally pay the Plaintiff TZS. 4, 800, 000/= as transportation fare from Kibaigwa to Dodoma Regional Hospital from 2015 to 2020.
2. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants shall jointly and severally pay the Plaintiff TZS. 150, 000, 000/= as general damages.
3. The Plaintiff shall also have his case costs from the Defendants accordingly.

It is so ordered.

**DATED** at **DODOMA** this 30<sup>th</sup> day of May, 2024.

   
**S. H. HASSAN**  
**JUDGE**  
**30/05/2024**

Judgment delivered this 30<sup>th</sup> day of May, 2024 in the presence of the plaintiff and his advocate and in absence of both Defendants.

   
**S. H. HASSAN**  
**JUDGE**  
**30/05/2024**