THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA SUB - REGISTRY

AT MBEYA

CIVIL APPEAL NO. 28627 OF 2023

(Arising from the decision of the District Court of Rungwe at Tukuyu in Civil Case No. 7 of 2022, before SHEHAGILO PRM)

FIRST ASSURANCE CO. LTD.....APPELLANT

VERSUS

ABRAHAM SAMSON ISOTE (The Administrator of the Estate of the late John Samson Isote)**.....RESPONDENT**

JUDGMENT

Date: 8 April 2024 & 3 June 2024

SINDA, J.:

The Appellant was aggrieved with the decision of the District Court of Rungwe at Tukuyu (the **District Court**) in Civil Case No. 7 of 2022.

The brief facts of the case are that the respondent instituted Civil Case No. 07 of 2022 at the District Court against Enock Mwasomola (first defendant), Ernest Wilhem Mgala (second defendant) and the appellant

(third defendant), claiming for jointly and severally for payment of TZS 50,000,000/= for specific damages and TZS 300,000,000/= for general damages as a compensation for the negligence acts done by the first and the second defendants which caused the death of one John Samson Isote. The death caused a massive loss for the respondent.

Save for the appellant, the first and second defendants never filed written statements of defence. The case proceeded ex parte against them. The District Court awarded TZS 25,000,000/= for the claim of general damages. Regarding specific damages, the District Court found that the claim was not proved.

Against that decision, the appellant appeals on two grounds as follows:

1. That the learned Trial Magistrate erred in law and fact for awarding general damages, which is excessive and in the absence of justifiable reasons and evidence from the respondent to prove the same.
2. That the learned Trial Magistrate erred in law and facts for delivering the decision in favour of the respondent while totally he failed to prove his case in the required standard contrary to the procedure of law.

At the hearing of the appeal, the appellant was represented by Salma Abdallah, learned counsel, while the respondent was represented by Amani Angolwisye, learned counsel. The appeal was argued by way of written submission.

Ms. Abdallah argued both grounds jointly. She submitted that section 110 (1) of the Law of Evidence Act, Cap 6, R.E 2019 (the **LE**) requires a person alleging the existence of a particular fact to prove that fact, and the standard of proof is on the balance of probabilities. She referred to the case of ***the Registered trustee of Joy in Harvest vs. Hamza K. Sungura***, Civil Appeal No. 149 of 2017, CAT at Tabora (unreported).

She submitted that the evidence of the respondent did not prove the connection between the vehicle in question and the appellant. Still, surprisingly, the District Court awarded the respondent herein general damages. She found that the trial magistrate misdirected himself because the onus of proof lies to one who alleges and not on weak evidence of the defence. She referred to the case of ***Jasson Samson Rwekiza vs. Novatus Rwechangura Nkwamu*** Civil Appeal No. 305 of 20200 [2021] TZCA 699. She stated that the cover note was not produced to prove that the vehicle that caused the accident was insured by the appellant and that the trial magistrate was wrong to rely on evidence of

the appellant witness, which was also contradictory regarding the names of the second defendant.

Regarding general damages, she averred that the award of general damages must be exercised expeditiously and judiciously to achieve justice. The trial magistrate who granted general damages failed to consider guidelines and laws that guide insurance cases regarding factors to be considered in compensation.

In reply to the submission, Mr. Angolwisye submitted that there was no dispute about the relationship between the car owner and the appellant because the appellant admitted the said relationship in her filed pleading in paragraph three (3). According to the pleading, the second defendant is Ernest Wilhem Mgala. The appellant witness and their filed pleading admitted the existence of an insurance relationship between the second defendant, the car owner, and the appellant. So, there was no legal need for the respondent to tender the said cover note. He referred to the Case of **Abiki Nguwa vs. Ramadhani Hassani Kuteya and Another**, Civil Appeal No. 421 of 2020 Court of Appeal of Tanzania.

With respect to general damages awarded, he submitted that the District Court considered all factors in awarding general damages of TZS 25

million, including the reason why the court reached that figure on pages 10, 11, and 12 of the District Court judgment.

On the issue of the policy holder's name, he submitted that the appellant's counsel failed to read through the judgment and court proceedings, including her WSD. She could have discovered that the name of Holwing Itolam had been mistakenly typed. It was his submission that the appellant admitted that Ernest Wilhem Mgala was the policyholder, his car caused the death, and the said cover was valid at the time of the accident.

He submitted that general damages are awarded at the discretion of the court, and the appellant failed to show how the said discretion of the court has been unjudicial applied. He referred the case of ***Reliance Insurance Co. TZ Ltd vs. Jenesca Johansen Bwahama & Another Civil*** Appeal No. 17/2020, High Court of Tanzania, Arusha sub-Registry. He stated that the case of ***Jasson Samson Rwekiza vs. Novatus Rwechangura Nkwamu*** (supra) cited by the appellant is distinguishable.

I have considered the parties' submissions and the court records. This appeal raises two issues for determination.

1. Whether the respondent at the trial court proved his case to the required standard against the appellant. In case of issue number one is answered positively.

2. Whether the general damages awarded by the trial court were appropriate.

Starting with the first ground is whether, in the trial court, the respondent proved his case against the appellant to the required standard. **Section 110 of The Law of Evidence Act** Cap 6 R.E 2022

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

In this case, after perusing the court record, I find that the respondent was supposed to prove that on the material date, the first defendant, a driver, drove the car with registration No. T 980 DPG, Make Toyota Coaster negligently and caused the death of John Samson Isote. At that time, the second defendant was the employer of the first defendant and the owner of the car that caused the accident and death of the deceased. The appellant was the insurer of the car driven by the first defendant.

I find that the above narrated facts were proved by the respondent during the hearing. On page 24 of the typed proceedings of the District Court, it was witnessed that Enock Mwasomola was the driver of the vehicle that

caused the death of his brother, the deceased. Ernest Mgala was the owner of that car, and that first assurance had insured the vehicle which caused the accident. This evidence was corroborated by an appellant witness during cross-examination. He admitted that the appellant insured the second defendant. At the time the accident occurred, the cover note showed that the insurance was valid.

Regarding the complaint of the appellant that their witness gave contradictory evidence on the name of the second defendant, I find that he said that the name of the policyholder is Howling Itolam Mgala, and the vehicle is T 890 GPG. In my view, the contradiction of name was just a minor discrepancy which can not go to the root of the case because the said T 890 GPG is the car which was driven by the first defendant and knocked the deceased in accordance with exhibit PE2 and as per the evidence of the respondent the car driven by first defendant belongs to the second defendant.

It is a settled position that parties are bound by their pleadings. This was stated in the case of **Makori Wassagara vs. Joshua Mwaikombo & another** (1987) TLR 88. In this case, the appellant in their WSD agreed that they share a policy with the second defendant, so they admit that fact in WSD and through their own witness, as right argued by the

respondent, I find that there was no need for the respondent to tender cover note to prove a fact which was already admitted by appellant.

It is my considered opinion that this case at the District Court was proved to the required standard.

Coming to the second issue of whether the general damages awarded by the trial court were appropriate.

In principle, general damages are awarded based on reasons founded on evidence. See, for instance, Swabaha Mohamed Shosi v. Saburia Mohamed Shosi Civil Appeal No. 98 of 2018 and Anthony Ngoo & v. **Another vs. Kitinda Kimaro,** Civil Appeal No. 25 of 2014 (both unreported). In particular, in the latter case, it was observed:

" The law is settled that general damages are awarded by the trial judge after consideration and deliberation on the evidence on record able to justify the award. The judge has discretion in the award of genera! damages. However, the judge must assign reasons."

It is also trite law that interference with the award of damages is only permissible if it is seen that the magistrate or a judge assessed the said damages by using a wrong principle of the law. If it happens so, the appellate court should disturb the quantum of damages awarded by the trial court. In **Davies v. Powell** (1942) 1 All ER 657, which was approved

by the **Privy Council in Nance v. British Columbia Electric Rail Co. Ltd** (1951) AC.601 at page 613 it was stated as follows*:*

"Whether the assessment o f damages be by a judge or jury, the appellate court is not justified in substituting a figure o f its own for that awarded below simply because it would have awarded a different figure if it had tried the case ...before the appellate court can properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law (as taking into account some irrelevant factor or leaving out of account some relevant one); or, short of this that the amount awarded is so inordinately low or so inordinately high that it must be wholly erroneous estimate of the damage...."

In the case of **Admiralty Commission v. S Susqehanna** [1950] 1 All ER 392 where it was stated that:

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

In this case at hand, the respondent claimed to be paid 300,000,000/= as compensation for general damages, but the trial court reduced it to 25,000,000/= and gave a reason on pages 9-12 of the judgment. I reproduced the same parts

".... there is no dispute that, John Isote died out of the accident caused by the negligent act of the first defendant, therefore the third issue answered in affirmative that the plaintiff suffered damage.... one can not

imagine the anguish of losing a loved one, the award of general damages should only act a solitude of the loss of loved ones, I accordingly grant amount of 25,000,000/= as general damages"

I find no wrongdoing by the trial magistrate in granting general damages. The trial magistrate assigned a reason for awarding such general damages, and the amount awarded was reasonable, in my view, considering that the deceased left a family that depended on him.

In that regard, I find no reason for this court to interfere with the trial court decision.

The appeal is devoid of merit and is hereby dismissed with costs.

it is so ordered.

Dated at Mbeya on this 3 day of June 2024.

A. A. SINDA

JUDGE