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SORAS AG Ltd v. UMUHOZA ET AL_304107_en

RLR V.4-2017

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Text**Page 1**

1 SORAS AG Ltd v. UMUHOZA ET AL [Rwanda SUPREME COURT – RCAA0049/14/CS (Nyirinkwaya, P.J., Mukanyundo and Rugabirwa, J.) November 25, 2016] Damages – Determination of damages resulting from the accident caused by motor vehicles – Damages for economic loss – Beneficiaries of damages for economic loss – Damages for economic loss are awarded to persons under legal responsibility of the deceased as well as other persons under his/her support as long as they prove it – Law N°41/2001 of 19/09/2001 on compensation for victims of accidents involving injury caused by motor vehicles, article 9(1). Damages – Damages for moral prejudice – Calculation of moral damages – Minimum wage – Moral damages are calculated on the basis of legally minimum wage – Presidential order No31/01 of 25/08/2003 on compensation for personal injury due to accidents caused by motor vehicles, article 23. Fact: After the death of Muhumuza that was caused by an accident of a motor vehicle which crashed his motorcycle, both having subscribed for the insurance in SORAS AG Ltd, Umuhoza Pacifique, Izabayo Sylvie and Niyoyita Jacques filed a claim praying the Intermediate Court of Nyarugenge to order SORAS AG

Ltd to pay them damages for economic loss, moral wrong and reimbursement of fees spent to get various certificates, deposited court fees and counsel fees. SORAS AG Ltd defended that they should not be awarded what they requested for because none of them was under support of the de cujus. The Intermediate Court ruled that the plaintiffs depended on the deceased basing on the document issued by Executive Secretary of Gitega Sector, and it ordered SORAS AG Ltd to pay the plaintiffs damages for economic loss, moral wrong, counsel fees and to reimburse them the court fees they deposited. SORAS AG Ltd appealed to the High Court alleging that the plaintiffs were awarded damages for economic loss while they did not deserve them because the certificate which they submitted demonstrating that they were supported by the de cujus is dubious, and in addition to this, that the earning rate should have been calculated on 8% fixed by the National Bank of Rwanda instead of being 4% referred to by ordinary banks. Furthermore, it stipulates that the determination of moral damages would not have been relied on annual net salary of the de cujus because the law provides for legally minimum wage. Umuhoza and his siblings filed a cross appeal stating that moral damages were wrongly computed because the judge omitted to multiply the result by twelve (12). The court found without merit the appeal of SORAS AG Ltd whereas that of Umuhoza and his siblings has merit. SORAS AG Ltd appealed against that judgment to the Supreme Court alleging that the Court disregarded the ground of appeal and awarded to the plaintiffs damages for economic loss while they do not deserve them because they were not supported by the victim; in addition to this, the Court computed moral damages on false rate since it used the earning rate of 8% while at the time of deliberation it was fixed on 7,960%. It also alleges that the court awarded to the respondents moral damages basing on the annual salary of the de cujus while they are calculated on the annual legally minimum wage of 2,500Frw as confirmed by the Supreme Court.

Page 2

2 Umuhoza and his siblings alleged that this ground of appeal lacks merit since SORAS AG Ltd does not produce any evidence proving that they are not supported by the de cujus. Held: 1. Damages for economic loss are awarded to persons who are dependents of de cujus but those who do not have the right to claim for maintenance are not excluded as long as they produce evidence that they were supported by the deceased; however the certificate issued by the Executive Secretary of Gitega should not be considered because it does not prove that Umuhoza and his siblings were regularly supported by the de cujus, especially that it does not demonstrate the special reason that would lead him to support them while they had all attained majority age.

2. The earning rate that should be used for computing damages for economic loss should not be examined because those damages were not awarded in this judgment.
3. Moral damages are calculated on the basis of legally minimum wage but due to the fact that the cost of living increases with the raise of the price of necessities which commends the increase of salary and remuneration to meet this inflation; the minimum wage (SMIG) should also increase to 3,000Frw, which amount should be used for awarding those damages to the siblings of the deceased.

4. The procedural and counsel fees are not awarded in case both parties have respectively won the case in part. Appeal has merit in part. The deposited court fees are equal to the expenses of this trial. Statutes and statutory instruments referred to: Law N°41/2001 of 19/09/2001 on compensation for victims of accidents involving injury caused by motor vehicles, article 9(1). Law N°42/1988 of 27 October 1988 instituting the preliminary title of civil code book I, articles 198, 199 and 200. Presidential Order No31/01 Of 25/08/2003 on compensation for personal injury due to accidents caused by motor vehicles, article 23. No case referred to. Authors cited: Laëtitia Stasi, *Droit Civil: Personnes, Incapacités, Famille*; Edition Paradigme, Orléans 2007, pp.259-260. Jean Carbonnier, *Introduction, les personnes, la famille, l'enfant, le couple*, 1ère édition, "Quadrige", Presses Universitaires de France, 2004, p.799. Yvonne Lambert-Faivre, *Droit du dommage corporel, système d'indemnisation*, 3ème édition, 1996, Dalloz, p.267.

Judgment

Page 3

3 I. BRIEF BACKGROUND OF THE CASE [1] This judgment originates from the death of Muhumuza Jean Pierre that was caused by the accident of motorcycle which crushed the motorcar both having subscribed their insurance in SORAS AG Ltd. Umuhoza Pacifique, Izabayo Sylvie and Niyoyita Jacques, the siblings of the deceased Muhumuza Jean Pierre filed a claim to the Intermediate Court of Nyarugenge praying it to order SORAS AG Ltd to pay them damages for economic loss, moral wrong and fees for various certificates, deposited court fees and counsel fees, the total of all requested damages worth 76,754,048Frw. SORAS AG Ltd argued that they should not be given what they request for because none of them was under support of the de cujus. [2] On 07 February 2014, the Intermediate Court of Nyarugenge rendered a judgment RC0656/13/TGI/NYGE and ruled that the de cujus was the one who supported the plaintiffs basing on the document of 30 July 2013 issued by the Executive Secretary of Gitega sector, whereas concerning damages for economic loss, it declared that it is calculated on the basis of monthly income generated by de cujus worth 499,289Frw and that he passed away at 38 years before retirement. Therefore, it ordered SORAS to pay the plaintiffs 58,726,799Frw for all damages including 57,677,866Frw for economic loss, 748,933Frw for moral wrong and 300,000Frw for Counsel fees as well as 12,000Frw of the court fees they deposited. [3] SORAS AG Ltd appealed against that judgment to the High Court stating that the plaintiffs were awarded the economic loss while they did not deserve it because the certificate issued by the Executive Secretary of Gitega Sector indicating that they were supported by the de cujus is dubious, and that the earning rate should have been calculated on 8% since it is a rate which is fixed by the National Bank of Rwanda instead of being 4% the ordinary banks uses. Furthermore, it alleges that moral prejudice should not have been based on annual net salary of the de cujus because the law provides for minimum wage (SIMG). Umuhoza Pacifique, Izabayo Sylvie and Niyoyita Jacques also filed a cross appeal alleging that the moral wrong was mistakenly computed because the judge forgot to multiply the result by twelve (12). [4] On 28 November 2014, that Court rendered

the judgment RCA0089/14/HC/KIG whereby it held that the appeal of SORAS AG Ltd has no merit. It held that apart from declaring only that the de cujus was not the one who supported the plaintiffs, SORAS AG Ltd failed to produce evidence to the Court which contradicts the certificate issued by the administration of the Sector submitted to the court, and also that it did not produce the evidence of other grounds of its appeal. Concerning earning rates, SORAS AG Ltd states that it should have been calculated at 8% the rate of BNR instead of 4% of Commercial Banks. [5] The Court found that apart from stating it, SORAS AG Ltd does not indicate the rate which was fixed by BNR at the time of payment, and the accident mentioned in the precedent it submits did not occur at the same time with the one dealt with in this judgment, and that the Presidential order No31/01 of 25/08/2003 on compensation for personal injury due to accidents caused by motor vehicles provides that the rate which is based on must at least equal to the interest rate used by banks, which implies the ordinary banks because it is higher rather than relying on BNR's which is a particular bank. It furthermore declares that concerning moral prejudice, the Intermediate Court should not have been based on the minimum wage (SMIG) while the salary of the de cujus is well known. In addition, it decided that the cross appeal filed by the respondent at appeal level stating that the calculations were mistakenly done has merit, because timing the result with 12 was omitted. That Court ordered

Page 4

4 SORAS AG Ltd to give to Umuhoza Pacifique, Izabayo Sylvie and Niyoyita Jacques all damages amounting to 67,465,068Frw which includes 8,987,202Frw of moral wrong, 57,677,866Frw of damages for economic loss and 500,000Frw procedural and counsel fees at the appeal level. [6] SORAS AG Ltd appealed against that judgment to the Supreme Court claiming that the Court disregarded the ground of appeal and awarded economic loss to the respondents while they do not deserve it because they were not supported by the victim, and that the Court relied damages on false investment rate since it calculated them at 8% while at the time of trial of the case it was on 7,960%. In addition, it awarded the respondents moral damages on the basis of annual salary of the de cujus while they are based on legally annual minimum wage. [7] On 04 November 2016, the judgment was heard in public and SORAS AG Ltd was represented by Counsel Mukanzigiye Donatille, whereas Umuhoza Pacifique, Izabayo Sylvie and Niyoyita Jacques were represented by Counsel Nzayisenga Charles. II. ANALYSIS OF LEGAL ISSUES

- a. Whether the siblings of the de cujus have the right on damages for economic loss for which they claim. [8] Mukanzigiye Donatille, the counsel for SORAS AG Ltd argues that the Court awarded damages for economic loss to the respondents whilst they do not deserve them because those damages are awarded to those who have the proof of being dependents of the victim as it is provided for by article 22 of Presidential Order No31/01 of 25/08/2003 on compensation for personal injury due to accidents caused by motor vehicles. She submits that the Court awarded those damages to the respondents on basis of the certificate issued by the Executive Secretary of Gitega Sector which indicates that they were dependents of the de cujus while it should not have been relied on because all respondents had the maturity ages including the one who was an employee and in addition to that, they do not reside in

the same sector with late Muhumuza Jean Pierre, therefore the court would not have the basis for confirming that he took care of them, because it is not understandable how the person who resides in Gitega can take care of the one from Rwezamenyo or Nyamirambo. She explains that these kinds of damages are awarded to the surviving spouse and orphans of the de cujus, but the latter did not leave aside any. She further makes clear that they did not carry out the research about the support, but normally someone takes care of persons they live together and where it is clear that he is responsible of that home. [9] Nzayisenga Charles, the counsel for Umuhiza Pacifique, Izabayo Sylvie and Niyoyita Jacques states that this ground of appeal has no merit because there is no evidence which proves that late Muhumuza Jean Pierre was not the one who provided a support to his siblings; and nowhere in article 22 of Presidential Order mentioned above on which SORAS AG Ltd relies its appeal it is provided that the beneficiaries of damages must be orphans of the deceased or his surviving spouse; and that the case file contains the certificate which proves that late Muhumuza Jean Pierre took care of his siblings. He explains that depending on another person does not imply living with him/her under the same roof or being fed by him.

OPINION OF THE COURT

Page 5

5 [10] Article 9, paragraph 1 of the Law N°41/2001 of 19/09/2001 on compensation for victims of accidents involving injury caused by motor vehicles provides that before commencing legal proceedings for compensation, the victim or his legal representatives or, in the event of his death, his dependents; must claim compensation from the insurer responsible for the accident or, to the guarantee fund for motor vehicles, through extra-judicial procedure and submit to it all documents justifying the merits of their application. [11] With regards to damages for economic loss, the interpretation of this provision of law mentioned above implies that the persons who are entitled to request for those damages must be those who were under the responsibility of the de cujus. [12] Concerning the interpretation of “person under support”, article 198 of CCB.I provides that “the obligation of support is that the law imposes on a person to provide the food to another person who is in need”. Article 199 stipulates that “the alimony obligation is paid in cash or in kind”. Article 200 provides that the alimony obligation exists between spouses. It also exists between the father and the mother on the one hand, and their children on the other, and vice versa. That article provides that children also owe food to their ascendants that are in need. This obligation is reciprocal. [13] In its pleadings, SORAS submits that the siblings of the de cujus should not be awarded damages for economic loss because he was not in charge of them. Therefore the certificate issued by the administration of Gitega Sector indicating that he supported them should not be considered. [14] In article 200 of CCB.I mentioned above, nowhere it is indicated that a person has a maintenance obligation toward his siblings. The Law scholar Laëtitia Stasi also states that there is strictly a direct maintenance of obligation only in a direct line and in relations between parents of the second degree or so, which means grandchildren and grandparents. Among the allies, marriage creates relations between the two families, but the obligation exists only as long as the marriage lasts. She concludes in stating that there is no

obligation of maintenance between siblings¹. [15] The Law scholar, Jean Carbonnier in his book *Droit Civil, les personnes, la famille, l'enfant et le couple* also emphasizes the statement of his fellow Laëtitia Stasi mentioned above, that there is no obligation of maintenance between siblings, whereby he states in general that not all humanly blood relationships give rise to the maintenance obligation, but only those to which the law gives rise to the maintenance obligation are those to which the law expressly attaches it. He continues demonstrating that the dietary relationship exists in direct line at all levels, never in collateral line². 1 Laëtitia Stasi, *Droit Civil: Personnes, Incapacités, Famille*; Edition Paradigme, Orléans 2007, pp.259-260. "On ne trouve donc d'obligation alimentaire stricto sensu qu'en ligne directe et dans les relations entre parents du deuxième degré et au-delà (par exemple dans les rapports petits-enfants et grands-parents). Entre alliés, le mariage fait naître des relations entre les deux familles mais l'obligation n'existe que tant que dure le mariage. La liste des obligés est très étroite : l'obligation alimentaire ne joue pas entre frère et sœur". 2Jean Carbonnier, *Introduction, les personnes, la famille, l'enfant, le couple*, 1ère édition, "Quadrige", Presses Universitaires de France, 2004, p.799. "Ce ne sont pas tous les rapports de famille humainement reconnaissables qui donnent lieu à l'obligation alimentaire, mais seulement ceux auxquels la loi donnent lieu à l'obligation alimentaire, mais seulement ceux auxquels la loi l'attache expressément. Entre parents, le rapport alimentaire existe en ligne directe à tous les degrés (père et mère et enfants-grands-parents et petits enfants, etc...), jamais en ligne collatérale".

Page 6

6 [16] Concerning this case, Umuhoza Pacifique, Izabayo Sylvie and Niyoyita Jacques argue that damages for economic loss for which they request, are based on grievance which they suffered by lacking financial support that they were provided by their sibling, Muhumuza Jean Pierre who died in a road accident. They submitted also to the Courts including the Supreme Court the certificate issued on 30 July 2013 by Nkurunziza Idrissa who was Executive Secretary of Gitega Sector which provides that the deceased used to support his relatives. [17] On 19 March 2011, the date the road accident occurred and caused the death of the de cujus named Muhumuza Jean Pierre; Umuhoza Pacifique was 30 years old, Izabayo Sylvie was 26 years old whereas Niyoyita Jacques was 22 years old, which means that all had the majority age. [18] Even though the law provides expressly the debtors of the obligation of providing maintenance to others which means the debtors of alimony as well as beneficiaries, the law scholar Yvonne Lambert-Faivre in her book, *Droit du dommage corporel*, in the chapter regarding the payment of damages for prejudice resulting from death caused by the road accident, she advances that those who do not have the right to claim the maintenance are not excluded if they can establish that they were dependents of the deceased. She provides an example of a sibling with disability, a godchild or an orphan³. [19] As far as this judgment is concerned, the Court finds there is a lack of elements of evidence because the certificate issued by the administration of Gitega Sector is qualified to prove that the respondents were regularly maintained by late Muhumuza Jean Pierre and that it does not indicate the reason that led him to support them while they all attained the age of maturity. Therefore there should be demonstrated the material evidence (like the medical

certificates proving whether they are with disability, bank slips, mobile money short message service etc...), which if produced, the court would still have to examine whether they deserve damages for economic loss which they request because basing on the law and the opinions of scholars raised above, there is no legal obligation that Muhumuza Jean Pierre had to support his siblings and if he did so, it should be considered as an ordinary family support. [20] Basing on the reasons stated above, the fact that the document of 30 July 2013 issued by the administration of Gitega Sector is not accompanied with documents provided for by article 9 of the Law N°41/2001 of 19/09/2001 mentioned above proving the merit of the respondents request, the Court finds that damages for economic loss should not be awarded in this judgment, which implies the appeal of SORAS AG Ltd has merit on this ground. [21] Concerning the earning rate of 4% which the High Court used for computing damages for economic loss by arguing that it is the one used by banks, which the Counsel for SORAS AG Ltd criticized stating that it should be 8% fixed by the National Bank of Rwanda (BNR) since it is the average of rates used by the banks operating in Rwanda, the Court finds that it shall not examine this ground of appeal because that rate is used for computing damages for economic loss while this court ruled above that the siblings of de cujus Muhumuza Jean Pierre do not deserve them, given that the Law does entitle them the right to damages for economic loss. 3Yvonne Lambert-Faivre, *Droit du dommage corporel, système d'indemnisation*, 3ème édition, 1996, Dalloz, p.267. "Ainsi ceux qui ne peuvent invoquer une créance alimentaire ne sont pas écartés s'ils peuvent cependant établir qu'ils étaient en fait régulièrement entretenus par le défunt".

Page 7

7

- b. Determination of the salary on which the computation of damages for moral prejudice as well as other damages that may be awarded shall rely. [22] Mukanzigiye Donatille, the counsel for SORAS AG Ltd states that the High Court awarded moral damages to the respondents by relying on net annual income of the deceased in contradiction of the provisions of article 23 of Presidential Decree mentioned above which stipulates that these damages are calculated on the basis of legally annual minimum wage (salaire minimum interprofessionnel garanti - SMIG), due to the fact that SMIG was not yet legally established by Rwandan Law, among the judgments rendered by Courts including the Supreme Court, a legal position for the minimum wage of 2,500Frw per day according to the common standard of living of population at that time, the standard of wages and market prices was set. [23] She submits that moral damages should have been calculated as follow: $0.5 \times \text{legally minimum wage (SMIG)}$, meaning $0.5 \times 2,500\text{Frw} \times 30 \times 12 \times 3 = 1,350,000\text{Frw}$, instead of 8,987,202Frw. [24] She explains that in the judgments which were delivered by the Supreme Court including the judgment RCAA0003/11/CS rendered on 12/10/2012, paragraph 29 and the judgment RCAA0212/07/CS rendered on 09/04/2009, paragraph 28, the amount of 2,500Frw was fixed as SMIG; which implies that it was not fair to base on annual net salary. [25] Nzayisenga Charles, the counsel for Umuhiza Pacifique, Izabayo Sylvie and Niyoyita Jacques argues that SORAS AG Ltd did not produce any evidence which contradicts the basis

of the previous courts and that it did not raise a ground as to why the computation of damages should take into account the legal minimum wage (SMIG). Concerning the case laws presented by SORAS AG Ltd, he states that the High Court motivated well that the deceased had a known annual salary, therefore, it should not be based on annual minimum wage, thus, those case laws should not be referred on in this case because the SMIG of 2009 could not be equal to that of 2016, especially that in the judgment which determined the SMIG to be 2,500Frw, the Court relied it on the standard of living without disregarding that there is no law establishing the annual minimum wage in Rwanda. THE VIEW OF THE COURT [26] Regarding the salary to be based on for computation of moral wrong damages, article 23(3) of the presidential decree N°31/01 of 25/08/2003 mentioned above provides that: “Compensation for loss of affection in case of death shall only be allocated to the restricted persons listed below and within the limits provided for by this Order: Spouse: 1 x guaranteed annual minimum wage; Parents and legitimate or recognized children: 0,75 x guaranteed annual minimum wage; Siblings: 0,5 x guaranteed annual minimum wage”. [27] According to the analysis of the salary provided in article 23 which is already mentioned above, the Court finds that it is a legally minimum wage called SMIG in French, which is different from the annual income of the victim as it was held by the High Court in paragraph 13 of the appealed judgment. Regarding the amount of SMIG, the Court finds that up to now no law establishing it was enacted but the Supreme Court in the judgment

Page 8

8 RCAA0202/7/CS, rendered on 09 April 2009, and others cases which referred to it (judgment RCAA0003/11/CS rendered on 12 October 2012 and the judgment RSOCOA0112/10/CS rendered on 15 February 2015), ruled upon its discretion and on the basis of market price that it must be 2,500Frw. [28] However, the Court finds that as the years pass on, the living standard gets higher due to the frequent increase of the price of necessities, as well as the increase of salary and remuneration for the buyers to meet this price variation, therefore, it finds that even the SMIG should increase and be fixed to 3,000Frw, which is the daily pay of workman. [29] Consequently, basing on the amount of SMIG fixed above, the Court finds that moral damages which should be awarded to three siblings of the deceased must be computed following the formula provided by article 23 of the Presidential Order N°31/01 of 25/08/2003 mentioned above on compensations given to the person who lost a relative due to road accident: $0,5 \times \text{SMIG of } 3,000\text{Frw} \times 30 \text{ monthly working days} \times 12 \text{ months} \times 3 \text{ siblings} = 1,620,000\text{Frw}$, this implies that each one is awarded 540,000Frw of moral damages.

- c. Concerning the procedural and counsel fees awarded on the first instance. [30] Mukanzigiye Donatille, the Counsel for SORAS AG Ltd states that the judge awarded 500,000Frw of the counsel and procedural fees, disregarding that its appeal had merit. [31] Nzayisenga Charles, the counsel for Umuhoza Pacifique, Izabayo Sylvie and Niyoyita Jacques argues that the cross appeal submitted to the High Court was based on relevant ground of the clear mistake committed by the Intermediate Court of Nyarugenge (omission to multiply by 12 months in the calculation), and the prejudice which the plaintiffs of the damages suffered because

SORAS was denying to give them damages resulting from the accident which caused the death of their brother. He states that the omission to multiply by 12 was a serious mistake they should not ignore, which is the reason why they appealed against it and damages it was charged did not rely on it, rather, there are other reasons which were relied on in the discretion of the Court. THE VIEW OF THE COURT [32] The court finds that, since the High Court examined the cross appeal filed by Umuhoza Pacifique, Izabayo Sylvie and Niyoyita Jacques concerning moral damages and held that it has merit, there is no reason it would not awarded them the procedural and counsel fees, therefore this ground of appeal of SORAS AG Ltd lacks merit.

- d. Concerning the procedural fees on this instance. [33] Nzayisenga Charles, the counsel for Umuhoza Pacifique, Izabayo Sylvie and Niyoyita Jacques filed cross appeal advancing that the fact that SORAS AG Ltd continues to drag his clients into vexatious litigation, it should give them 1,000,000Frw of moral damages and 1,000,000Frw of the counsel fees in addition to those it was ordered to pay by the High Court. [34] The counsel for SORAS AG Ltd states that the defendants should not be awarded damages which they request for, rather, he prays for overturning the case in respect of damages for economic loss and moral wrong, and SORAS be given 500,000Frw of

Page 9

9 procedural fees and 500,000Frw of counsel fees and be reimbursed 75,000Frw of court fees deposit to the High Court and 100,000Frw to the Supreme Court. [35] Concerning the amount which SORAS AG Ltd requests to be reimbursed, Counsel Nzayisenga Charles states that it should not be awarded them, because if it amicably paid damages before initiation of lawsuits as provided for by the Presidential Order, it would not have been necessary to resort to court of law and hired lawyer's services. THE VIEW OF THE COURT [36] The court finds that no party deserves to be awarded the procedural and counsel fees on this instance while each party wins the case in part. III. DECISION OF THE COURT [37] Holds that the appeal of SORAS AG Ltd has merit in part. [38] Holds that Umuhoza Pacifique, Izabayo Sylvie and Niyoyita Jacques should not be awarded damages for economic loss. [39] Orders SORAS AG Ltd to allocate Umuhoza Pacifique, Izabayo Sylvie and Niyoyita Jacques 1,620,000Frw of moral damages, which implies 540,000Frw for each one, in addition to 800,000Frw of the counsel and procedural fees which they were awarded by the two previous courts, all totalling 2,420,000Frw. [40] Overrules the ruling of the judgment RCA0089/14/HC/KIG rendered by the High Court sitting in Kigali on 28/11/2014. [41] Orders that the court fees deposited by SORAS AG Ltd are equal to the expenses of the trial.

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