

TANZANIA / JUDGMENT

CIVIL APPEAL NO 223 OF 2020 HUSSEIN ALLY KANDORO VS KISMA TRANSPORT COMPANY LIMITED

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IN THE COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM (CORAM: MWAMBEGELE. J.A., MAIGE, 3.A.. And MDEMUS, J.A/) CIVIL APPEAL NO. 223 OF 2020 HUSSEIN ALLY KANDORO..... APPELLANT VERSUS KISMA TRANSPORT COMPANY LIMITED.....RESPONDENT (Appeal from the Judgment of the High Court of Tanzania at Dar es Salaam) fMuaeta. J.^ dated the 7th day of February, 2019 in Civil Case No. 60 of 2017 JUDGMENT OF THE COURT 6th February & 15th April, 2024 MWAMBEGELE, J.A.: Hussein Ally Kandoro, the appellant herein, unsuccessfully sued the respondent, Kisma Transport Company Limited, in the High Court of Tanzania for payment of special damages at the tune of Tshs. 5,000,000/=, compensation of Tshs. 500,000,000/= for the injury suffered and general damages as well as costs of the suit. The matter was heard ex-parte since the respondent failed to file a Written Statement of Defence timely. The High Court (Mugeta, J.) dismissed the suit on the ground that it was not established to the required standard. Aggrieved, i the appellant preferred this appeal on eight grounds which, upon a close scrutiny, revolve around faulting the trial court for not holding that the respondent owed the appellant duty of care and that, such duty was breached causing the appellant to suffer damages entitling him compensation for the injury suffered. The appeal was argued before us by Mr. Gabriel Simon Mnye, learned advocate for the appellant and resisted by Mr. Karoli Valerian Tarimo, also learned advocate, for the respondent. Counsel for the parties had earlier on filed their respective written submissions for or against the appeal in compliance with rule 106 (1) and (7) of the Tanzania Court of Appeal Rules, 2009. At the hearing of the appeal, both learned advocates stood by their written submissions and clarified on some points. The appellant's suit at the trial, as can be gleaned from the plaint and the appellant's testimony at the trial, was premised on the following facts: by an oral agreement entered in January, 2014, the appellant was employed by the respondent as a driver. His employment commenced immediately but it was terminated following an accident he faced which is the genesis of the suit the subject of this appeal. The termination letter was tendered in evidence as Exh. PI. The record of appeal bears out that 2 the appellant was assigned to drive a motor vehicle with registration No. T546 BUT make Leyland DAF, the property of the respondent. Sometime in February, 2014, he was assigned to ferry a consignment of drums of tar from Dar es Salaam to

Lusaka, in Zambia. Before the trip commenced, the truck had to undergo some maintenance as it had some mechanical defects in the brake system and compressor. While on the way, at Makambako area to be particular, the truck brakes failed and the compressor developed some defects. The appellant informed the respondent on the defects and requested that a new compressor be fitted. The respondent, through her Manager, a Mr. Koshi, connected the appellant by phone to a mechanic who instructed the appellant how to fix the problem. Having done a series of some trouble shooting, he managed to repair it and proceeded with his journey to Tunduma, a township bordering Tanzania and Zambia. The measure taken at Makambako was meant to be temporary before sending a new compressor. At Tunduma, the appellant stayed for five good days waiting for the spare part to be sent but to no avail. While still there, he received yet another instruction from the respondent's manager, the said Mr. Koshi, to the effect that he should proceed to drive to Lusaka. The reason given was that if he managed to drive from Makambako, he would certainly make it to Lusaka. The appellant did not defy the order; he drove to Lusaka where he offloaded the cargo. There at Lusaka, the appellant received yet another instruction to go to Mufulira where he could load a cargo of copper to ferry it to Dar es Salaam. All along/ the brake system and its compressor had not been fully repaired. Nevertheless, he went thither and loaded the cargo of copper and started his drive back to Dar es Salaam. All was not well on the way back home, for at Mbeya, the truck developed the same mechanical defects again. The appellant notified the respondent who sent a mechanic from Tunduma to repair them. After the repairs, the appellant proceeded with the journey, but alas! at Inyala slopes, not very far from Mbeya City, the brakes failed again and the truck hit another car from behind. The appellant was severely injured in that accident which saw him breaking his leg and his foot crushed. Photographs of the accident and a medical report were tendered in evidence as Exh. P3 and P4, respectively. The appellant was treated at Mbeya Referral Hospital and, later on, was referred to Muhimbili Orthopaedic Institute (MOI) for further treatment. He tendered an air ticket from Mbeya to Dar es Salaam (Exh. P5), tax fare receipts to and from the hospital (Exh. P6) and medicine receipts (Exh. P7). The appellant maintained that the respondent contributed to the accident which led him sustain personal injury by allowing the defective truck to be driven. At the trial, four issues were framed for determination; first, whether the plaintiff (the appellant herein) was employed by the defendant (the respondent herein); secondly, whether the accident leading to the injuries suffered by the plaintiff (the appellant herein) was due to mechanical defects of the motor vehicle; three, whether the defendant (the respondent herein) was negligent to maintain the motor vehicle leading to the occurrence of the accident; and, fourthly, to what relief(s) are the parties entitled. In establishing his case, the appellant testified as a sole witness for the plaintiff's case which, as already stated above, was proved ex parte. The version of what actually transpired is found in the background facts of the case narrated above. After hearing the appellant's evidence, the trial High Court determined the first issue in the affirmative. The second and third issues were determined in the negative, the trial court being satisfied that the appellant was not competent to testify on the defects of the motor vehicle as he was not a mechanic. The learned trial Judge was also of the view that the appellant did not establish any negligence on the part of the respondent that would have led to the accident in question. He was also of the view that the appellant had not led any evidence showing and proving that the

accident was caused by defects of the motor vehicle complained of. In the end, in answer to the fourth issue, the suit was dismissed. No order as to costs was made given that the suit proceeded ex parte. At the hearing of the appeal, Mr. Mnyele, in addition to the written submissions earlier filed by which he stood at the hearing, highlighted on three points relating to; first, proof of the respondent's negligence; secondly, breach of the duty of care by the respondent; and, thirdly, proof of the appellant's injury. As regards negligence, the appellant's counsel submitted that the appellant was employed by the respondent as a truck driver. The accident occurred while the appellant was on duty and there was evidence that the motor vehicle had mechanical defects. Relying on the principle enunciated in *Donoghue v. Stevenson* [1932] AC 562, Mr. Mnyele argued that the respondent had a duty of care to the appellant and she breached that duty by permitting a defective motor vehicle to be driven. On proof of negligence, counsel referred us to a book titled *Winfield and Jolowicz on Tort*, 13th Ed., and our decision in *Winfred Mkumbwa v. SBC Tanzania Ltd* (Civil Appeal No. 150 of 2018) [2019] TZCA 685 (29 October 2019) TanzLII. The appellant's counsel submitted further that breach of the duty of care was proved by the respondent permitting the motor vehicle to be driven while she was aware that it had a defective brake system and compressor and when the defect was reported to her by the appellant while stranded at Makambako, she did not send a mechanic to fix the defect. Neither did she send the spare part as promised. Despite that, the respondent directed the appellant to load another cargo from Mufulira and the motor vehicle got an accident at Inyala in Mbeya Region on his way back because of the unrepaired mechanical defects reported to her well in advance. Thirdly, Mr. Mnyele submitted that the appellant proved to have suffered damages because of the accident by producing a Medical Report and Disability Assessment (Exh. P4) which appears at p. 20 of the record of appeal as well as a photographs (Exh. P3) showing the extent of the injury suffered. The appellant also testified on the injuries suffered that he can no longer drive (at p. 66 of the record of appeal) and that his wife ran away from him because he is unemployable. Mr. Mnyele contended that special damages were pleaded and proved through his testimony as appearing at p. 66 of the record of appeal and documentary exhibits appearing from pp. 32 though to 49 of the record of appeal by showing receipts which make a total of Tshs. 3,076,000/=. Mr. Mnyele had another string left to his bow. He fronted an alternative argument to the effect that if the Court finds that negligence was not proved, it should invoke the doctrine of *res ipsa loquitur*, a rule of evidence which means a thing speaks for itself. The learned counsel invited us to be persuaded by the decision of the High Court in *Fr. Sylvester Hittu v. Mr. Yohana Juma* (Civil Appeal No. 4 of 1995)

[1995] TZHC 708 (22 August, 1995) TanzLII, in which the court held that the doctrine of *res ipsa loquitur* is a rule of evidence. He also referred us to the principle of equity that where there is a right there is a remedy and therefore, the appellant should be refunded the medical expenses for the injury suffered. Prompted, he argued that compensation for injury falls under general damages which may be claimed along with general damages reflecting the practice obtaining in cases relating to personal injuries. Having argued as above, the learned counsel invited us to allow the appeal by reversing the judgment of the High Court and order payment of the full amount as prayed by the appellant in the High

Court or such other amount as the Court may deem it fit to grant. Given that the matter was advocated for under legal aid scheme, the learned counsel refrained from pressing for costs. For his part, Mr. Tarimo, standing by the reply submissions he earlier filed on 13th October, 2020, clarified on the issues raised by Mr. Mnyele in his submissions-in-chief. The learned counsel submitted that the appellant was contributorily negligent by agreeing to drive a motor vehicle which was allegedly mechanically defective. Unlike Mr. Mnyele, he submitted that the doctrine of *res ipsa loquitur* was not applicable in the case at hand because the appellant was contributorily negligent to the occurrence of the accident. Counsel referred us to our decision in *Saidi Kibwana and General Tyre E.A. Ltd v. Rose Jumbe* [1993] T.L.R. 175 in which we held that: "The position has, however, been complicated and obscured by the use in many cases of the maxim *res ipsa loquitur*. As *Morris U* has said, the maxim 'possesses no magic qualities, nor has it any added virtue, other than that of brevity, merely because it is expressed in Latin. When used on behalf of a plaintiff it is generally a short way of saying: I submit that the facts and circumstances which I have proved establish a *prima facie* case against the defendant' There are certain happenings that do not normally occur in the absence of negligence, and upon proof of these, a court will probably hold that there is a case to answer. In other words, the maxim does no more than express in three words what has just been said." Then the learned counsel went on to quote from the said decision the following on the applicability of conditions behind the doctrine of *res ipsa loquitur*, "From the above passage three conditions for the application of the maxim can be extracted. These are: 10

- (1) That the thing causing the damage be under the control of the defendants) or his servants).
- (2) That the accident must be such as would not in the ordinary course of things have happened without negligence.
- (3) Absence of any explanation, by the defendant, in other words there must be no evidence of the actual cause of the accident This is because if the facts are sufficiently known the question ceases to be whether they speak for themselves, the only question being whether on the facts as established negligence is to be inferred or not" Mr. Tarimo went on to argue that the three conditions extracted by this Court are non-existent in the case at hand and therefore the doctrine of *res ipsa loquitur* cannot apply. He distinguished the case of *Fr. Sylvester Hittu v. Mr. Yohana Juma* from the facts of the present case before us as based on facts which are not similar. As regards special damages, Mr. Tarimo submitted that it is trite law that they must be specially pleaded and strictly proved. For this proposition, the learned counsel relied on, among other cases, *Bolag v. Hutchison* [1905] A.C. 515, at 525 and *Zuberi Agustino v. Anicet Mugabe* [1992] T.L.R. 137, at 139, *Stanbic Bank Tanzania Limited v. Abercrombie & Kent (T) Limited* (Civil Appeal 21 of 2001) [2006] TZCA 7 (3 August, 2006) *TanzLII*, *Anthony Ngoo & Another v. Kitinda Kimaro* [2015] T.L.R. 54 and *Arusha International Conference Centre v. Edward Clement*, Civil Appeal No. 32 of 1988 (unreported). Relying on the above cases, he argued that the appellant did not strictly prove the special damages prayed for and, therefore, the trial court was quite right in refusing to

grant the relief. The respondent concluded by imploring us to dismiss the appeal with costs. Having considered the submissions from either side and the grounds of appeal as well as the entire record of appeal, we think there are three main issues calling for our determination; first, whether the respondent owed the duty of care to the appellant and, if yes, whether she breached that duty. Secondly, whether the appellant suffered any damages as a result of such breach of duty of care by the respondent; and, thirdly, if the answer to the second issue is answered in the affirmative, whether the appellant is entitled to any relief for the injury suffered and, if yes, to what extent. Before we delve into the determination of the issues of contention in this appeal, we find it compelling to make one clarification. Since the suit the subject of this appeal was determined *ex parte*, we are minded to state two things; first, that it is elementary law that the standard of proof in civil cases is on the preponderance of probability. It may not be irrelevant to recall the statement of Lord Denning (M.R.) in *Miller v. Minister of Pensions* [1937] 2 All ER 372,374 on what this kind of proof entails: "It must carry a reasonable degree of probability but not so high as required in a criminal case. If the evidence is such that the tribunal can say "We think it is more probable than not", the burden is discharged but if the probabilities are equal, it is not". Likewise, in *Re H. & Others (Minors)* [1996] AC 563, 586 it was held: 13 "The balance of probability standard means a court is satisfied an event occurred if the court considers that, on the evidence the occurrence of the event was more likely than not". We adopted with approval the position taken in *Miller v. Minister of Pensions* (supra) and *Re H. & Others (Minors)* (supra) in our previous decision in *Mr. Mathias Erasto Manga v. M/S Simon Group (T) Limited* [2014] T.L.R. 518 and we recite it here as depicting the correct position of the law in our jurisdiction. Secondly, that the standard of proof in a civil case that proceeds *ex parte*, is the same standard that obtains in a normal civil case. Simply put, a plaintiff in a suit that goes *ex parte*, is not exonerated from the standard of proof that is required in civil cases. That is to say, a plaintiff in a civil case that proceeds *ex parte*, has the duty to prove his case on the preponderance of probabilities, just like it is in a normal civil case. That is what we stated in *Standard Chartered Bank Tanzania Ltd v. Samwel Nyalla Nghuni* (Civil Appeal No. 45 of 2020) [2023] TZCA 73 (28 February, 2023) TanzLII, in which, relying on our previous decisions in *Kalyango Construction and Building Contractors Limited v. China Chongqing International Construction Corporation (CICO) 14* (Civil Appeal No. 29 of 2012) [2012] TZCA 19 (23 May 2012) TanzLII and *Mustafa Ibrahim Kassam t/a Rustam and Brothers v. Maro Mwita Maro* (Civil Appeal No. 76 of 2019) [2022] TZCA 228 (29 April, 2022) we observed: 'We also wish to add\ for the benefit of the legal fraternity that,; regardless of whether or not the matter proceeded *ex parte*, a plaintiff in a civil case is not relieved or absolved of the duty to prove the case against the defendant on the required standard.... In other words, where a suit proceeds *ex-parte* against the defendant, the trial Judge or Magistrate does not assume the role of an umpire as to act as a conduit pipe for the plaintiffs averments to flow freely throughout and formally endorse them in the judgment See also: *Bright Technical Systems & General Supplies Limited v. Institute of Finance Management* (Civil Appeal No. 12 of 2020)

[2023] TZCA 17284 (30th May, 2023) TanzLII. We are guided by the above standpoint of the law. In the case at hand, the burden of proof before the trial court was on the appellant to prove the case on a balance of probability, a standard legally required in civil cases, irrespective of the fact that the case proceeded *ex parte* 15 against the respondent. Did the appellant prove the case to the standard required in civil cases? This is the subject of discussion to which we now turn. Adverting to the issues for determination, the first one, is two-pronged; whether the respondent owed the duty of care to the appellant and, if so, whether that duty was breached. We do not think the determination of this issue will detain us much. It is an uncontroverted fact that, by an oral agreement, the appellant was employed by the respondent as a truck driver and was handed a truck with registration No. T546 BUT make Leyland DAF to ferry a cargo containing drums of tar to Lusaka in Zambia. This evidence is in the testimony of the appellant and Exh. Pi; the termination letter. What then is the duty of care? In Winfred Mkumbwa (*supra*), in an akin scenario, we cited the following passage from a book titled *The Principles of Tort Law*, 4th Ed., Vivienne Harpwood, Cavendish Publishing Limited 2000 at p. 25: "The first matter to be proved is that the defendant owed a duty of care to the claimant. Unless it is possible to establish this in the particular circumstances of the case; there will be no point in considering whether a particular act or omission which has resulted in harm was negligent The existence of a duty of care depends upon oversight proximity and other complex factors. It should be noted that in the vast majority of negligence cases there is no dispute about the existence of a duty of care." Likewise, we associate ourselves with the now famous dictum in legal parlance by Lord Macmillan made in *Donoghue v. Stevenson* (*supra*) at p. 619; that "the categories of negligence are never closed". We cannot resist the urge of citing the relevant passage here: "What, then, are the circumstances which give rise to this duty to take care? In the daily contacts of social and business life human beings are thrown into, or place themselves in, an infinite variety of relations with their fellows; and the law can refer only to the standards of the reasonable man in order to determine whether any particular relation gives rise to a duty to take care as between those who stand in that relation to each other. The grounds of action may be as various and manifold as human errancy; and the conception of legal responsibility may develop in adaptation to altering social conditions and standards. The criterion of judgment must adjust and adapt itself to the changing circumstances of life. The categories of negligence are never closed. The cardinal principle of liability is that the party complained of should owe to the party complaining a duty to take care, and that the party complaining should be able to prove that he has suffered damage in consequence of a breach of that duty". [Emphasis added - as cited in *Grace Abel v. Eva Haule*, Civil Application No. 211 of 2013 (unreported)]. Subjecting the above to the case at hand, given that the respondent was the employer of the appellant, she owed a duty of care to the latter which would not be likely to result in the injury of the latter. Put differently, the respondent owed the duty of care to the appellant to make sure that the truck handed to the latter was in good running condition. Was that duty breached? We now turn to answer this question. The evidence available is the uncontroverted testimony of the appellant,

given that the case proceeded ex parte. The appellant testified that he was handed a truck which had mechanical defects in the brake system. The brake system failed at Makambako but the appellant, was asked to make some troubleshooting with the help phone instructions by a mechanic, and was told to drive to Tunduma where the defect could be repaired. That was not done. He was told to make a drive to Lusaka, the reason being that if he managed to drive from Makambako to Tunduma, he could make it to Lusaka. In view of the above discussion, it is our considered view that given that the respondent handed a motor vehicle to the appellant which had mechanical defects, that amounted to breach of duty. We are therefore satisfied that the respondent owed a duty of care to the appellant and breached that duty. The first issue is therefore answered in the affirmative in both limbs. The second issue we have posed above is whether the appellant suffered any damages as a result of the breach of duty of care by the respondent. The material we have in determining this issue is, like the first issue, the evidence on record; through the testimony of the appellant and the exhibits tendered. The appellant narrated how the truck he was driving to Lusaka encountered a mechanical defect at Makambako and some other places, the last one being at Mbeya. That last repair was done by a mechanic from Tunduma asked by the respondent to do so but the problem persisted. The appellant narrated the story in his testimony on how the accident occurred as follows: 19 "/> loaded copper and started journey back to Tanzania. On my way at Mbeya, the motor vehicle got mechanical defects. The brake system and compressor were not working properly, I reported to the office. I was told a mechanic from Tunduma would come to repair the motor vehicle. I do not remember the dates. The mechanic camef took the compressor and fixed it again. Later, I tried the car and started my journey. At Inyala slopes of Mnyoka mountain the brake failed and the motor vehicle lost direction. It accelerated and I hit the car ahead o f me and overturned. We were three in the motor vehicle. After the accident, I [realized that I] broke my leg and some bones in the head were broken." Mr. Tarimo contended that it was not proved that the accident was caused by the mechanical defects of the motor vehicle. We, respectfully, hold a different view. The chronology of events from Dar es Salaam to Makambako and later to Tunduma where the appellant waited for a spare part for five good days, the persistent defect at Mbeya coupled with the difficulties experienced by the appellant due to the unrepaired mechanical defect as well as the endeavour to repair the same defect at Mbeya, makes us believe that it is highly probable than not that the accident was 20 caused by the persistent mechanical defect under consideration. The appellant thus satisfactorily established that the accident occurred as a result of the mechanical defect of the motor vehicle which they kept on attempting to repair. We thus find and hold that the appellant suffered damages as a result of the respondent's breach of her duty of care. The last issue is whether the appellant is entitled to any relief for the injury suffered and, if yes, to what extent. We start with the first limb. It is a cherished principle of law that where there is a breach there is a remedy. It is our considered view that the appellant is entitled to reliefs for the injury suffered. The extent of that relief is, of course subject to discussion. At the centre of this discussion will be the appellant's belligerent behaviour of driving the motor vehicle which

he knew it had mechanical defects as the brakes were not working well. Despite this full knowledge of the defect, he drove the motor vehicle from Makambako to Tunduma where he stayed for five days waiting for the spare part. The spare part was not sent but still he drove it all the way to Lusaka. As if that was not enough he loaded a cargo of copper and started to make his drive to Dar es Salaam. To clinch it all, the mechanical defect of the motor vehicle persisted but, still again, proceeded with the journey until the 21 accident occurred. The appellant, we are afraid, contributed to the occurrence of the accident. This must certainly have a repercussion on the extent of the reliefs to be awarded to the appellant. As stated at the beginning of this judgment, the appellant prayed for special damages of Tshs, 5,000,000/=, compensation of Tshs. 500,000,000/= for the injury suffered and general damages as well as costs of the suit. We shall start with the prayer for special damages. It is settled law that for a prayer on the award of special damages to succeed, they must be specially pleaded and strictly proved. In this jurisdiction, we have more often than not relied on the following definition of special damages by Lord McNaghten in *Bolag v. Hutchison* [1905] AC 515, 525: "Special damages.... are such as the law will not infer from the nature of the act. They do not follow in the ordinary course. They are exceptional in their character, and therefore, they must be claimed specially and proved strictly." We have cited this passage in many of our decisions, some of which we have rendered in the very recent past - see: *M/S Universal Electronics & Hardware (T) Limited v. Strabag International GmbH Tanzania Branch* (Civil Appeal 122 of 2017) [2021] TZCA 125 (19 April 2021) TanzLII, *SAN LAM General Insurance Tanzania Ltd*

- v. *Dennis Charles & Another* (Civil Appeal No. 51 of 2021) [2024] TZCA 105 (23 February 2024) TanzLII and *Oscar Karsan Kanji v. Abdallah Hassan* (Civil Appeal No. 9 of 2020) [2024] TZCA 161 (6 March

2024) TanzLII, to mention but a few. In the trial court, the appellant pleaded special damages in the plaint. In his attempt to strictly prove the same, he testified on them and tendered as appearing at p. 66 of the record of appeal: an air ticket (Exh. P5), taxi service payment receipts (Exh. P6), receipt for payment at MOI (Exh. P7) and receipts for purchasing drugs (Exh. P8). All these make a total amount of Tshs. 3,076,000/=. We are of the considered view that the appellant, on the balance of probabilities, specially pleaded special damages and on the same standard of proof, strictly proved them at the tune of Tshs. 3,076,000/=. We grant this prayer for special damages in that quantum. The appellant also prayed for Tshs. 500,000,000/= compensation for the injury suffered. We are cognizant of the fact that, as per Exh. P4, the appellant suffered 100% total temporary incapacity for 37 days, 50%, 23 partial temporary incapacity for 164 days and 25% total permanent incapacity. Much as we are aware that the award of compensation for injury suffered in cases of this nature fall under the realm of general damages and therefore awardable at the discretion of the court, we think the amount prayed for is on the high side. In our considered view, a modest amount of Tshs. 50,000,000/= as compensation for the injury suffered meets the justice of the case. For the avoidance of doubt, we are unable to agree with Mr. Mnyele that in personal injury cases, compensation for injury may be claimed along with general

damages. Our research on the point has it that in suits for personal injuries, the damages are always divided into two main parts; special damage which has to be specially pleaded and strictly proved and general damage which the law implies and is not specially pleaded. This elucidation was made by Lord Goddard in the decision of the House of Lords in *British Transport Commission v. Gourley* [1955] 3 All ER 796, 803 in the following terms: "In an action for personal injuries, the damages are always divided into two main parts. First, there is what is referred to as special damage which has to be specially pleaded and proved. This consists of out of pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation. Secondly, there is general damage which the law implies and which is not specially pleaded. This includes compensation for pain and suffering and the like and, if the injuries suffered are such as to lead to continuing or permanent disability, compensation for loss of earning power in the future." We are satisfied that the foregoing elucidates well the position in the case at hand and subscribe. It is on this basis we are unable to give countenance to Mr. Mnyele's contention to the effect that compensation for injury may be claimed hand in hand with general damages. As alluded to above, in suits for personal injuries, the damages are always divided into two main parts; first, special damage which has to be specially pleaded and strictly proved and; secondly, general damage which the law implies and is not specially pleaded. In view of the above discussion, the appellant, for the personal injuries suffered, is entitled to compensation in the form of special damages which, as we have found and held above, he specially pleaded and strictly proved as well as general damages grantable at our discretion. However, given that he contributed to the occurrence of the accident as already observed above, we order that he is entitled to only 75% of the total amount awarded as special and general damages. The decretal sum shall attract an interest of 7% at the court's rate from the date of judgment to the date of its satisfaction in full. This appeal succeeds to the extent stated. Given that the appeal was prosecuted on legal aid, we make no order as to costs. DATED at DAR ES SALAAM this 9th day of April, 2024. J. C. M. MWAMBEGELE JUSTICE OF APPEAL I. j. MAIGE JUSTICE OF APPEAL G. J. MDEMU JUSTICE OF APPEAL The Judgment delivered this 15th day of April, 2024 in the presence of Ms. Victoria Gregory, learned counsel for the respondent also holdings brief for Mr. Gabriel Mnyele, learned counsel for the appellant is hereby certified as a true copy of the original.

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