

TANZANIA / JUDGMENT

uap insurance tanzania limited vs wankyo benjamin minor and of sound mind by next friend benjamin hamis 2 others 2022 tzhc 15286 24 november 2022

COURT
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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MUSOMA DISTRICT REGISTRY
AT MUSOMA CIVIL APPEAL NO. 01 OF 2022 (Arising from the Decision of the Court of the
Resident Magistrate of Musoma at Musoma in Civil Case No. 6 of 2020) BETWEEN UAP
INSURANCE TANZANIA LIMITED..... APPELLANT VERSUS WANKYO
BENJAMIN (Minor and of sound mind by next friend BENJAMIN
HAMIS) 1st RESPONDENT PROJESTUS EMMANUEL
VENANT..... 2nd RESPONDENT XIAOWEN
CHEN..... 3rd RESPONDENT

JUDGMENT

A. A. MBAGWA, J.: This is an appeal against the judgment and decree of the Court of the Resident Magistrate of Musoma in Civil Case No. 06 of 2020. The 1st respondent WANKYO BENJAN (minor) through her next friend Benjamin Hamis instituted a suit against the appellant, UAP Insurance Tanzania Limited, 2nd respondent Projestus Emmanuel Venant and 3rd respondent Xiaowen Chen claiming for the following reliefs; i

- a) Specific damages to the tune of Tanzanian shillings one hundred fifty million (Tshs 150,000,000/=).
- b) General damages to the tune of Tanzanian shillings thirty million (Tshs 30,000,000/=).
- c) Costs of the suit
- d) Any other relief(s) that the court could deem fit to grant. The basis of claims was injuries that the plaintiff (1st respondent) sustained following her involvement in a road accident in which the 2nd respondent Projestus Emmanuel Venant, while driving a motor vehicle T 577 DNA make Toyota Harrier crashed the 1st respondent, Wankyo Benjamin thereby causing her to suffer body injuries. In a bid to prove her claims, the 1st respondent called three witnesses namely, Benjamin! Hamis Sabi (PW1), Mathias Isdory Ngembe (PW2) and Azimio

Nkili (PW3). Besides, the plaintiff tendered six documentary exhibits including x-ray pictures, medical payment receipts, hotel receipts, tax cum bus tickets and proceedings together with judgment copy of Traffic Case No. 105 of 2019. 2 Briefly, it was the 1st respondent's case (WANKYO BENJAMINI) that on 10th September, 2019 at Kirumi village within Butiama district in Mara region she was crashed by the motor vehicle No. T 577 DNA make Toyota Harrier which was being driven by Projestus Emmanuel Venant (the 2nd respondent). The said car was the property of Xiaowen Chen, 3rd respondent and was insured by the appellant, UAP Insurance Tanzania Limited. Following the accident, the plaintiff (1st respondent) Wankyo Benjamini sustained body injuries to wit, her right hand and leg were broken. She also sustained head injuries. As such, she was rushed to Musoma Referral Hospital and later was referred to Bugando hospital for further medical treatment. According to PW1 Benjamini Hamis Sabi who is the plaintiff's father, the victim was hospitalized at Bugando hospital for about ten days and thereafter he removed her from the hospital as he could not afford the expenses. He thus appealed to traditional treatment where he entered into agreement with a traditional healer one Mathia Isidory Ngembe (PW2) to cure her daughter at the costs of Tanzanian shillings seven hundred thousand (Tshs 700,000/=). PW1 supported his claims with an agreement deed (exhibit P2). 3 In addition, PW1 tendered the proceedings and judgment in Traffic Case No. 105 of 2019 in which the 2nd respondent, Projestus Emmanuel Venant was charged with an offence of causing injuries through careless driving and consequently convicted upon his own plea of guilty. It was against this background, the plaintiff brought this suit to claim for damages. In defence, Projestus Emmanuel Venant (DW1) stood to defend himself whilst Shadrack Isack Stanley (DW2) testified for the 3rd respondent Xiaowen Chen who was the owner of the motor vehicle involved in the accident. Nsomi Kuruma (DW3) gave evidence on behalf of the appellant, UAP Insurance Tanzania Limited. In essence, it was undeniably conceded by the defence that the accident occurred and the plaintiff Wankyo Benjamin sustained injuries. It was further undisputed that following the injuries she sustained, the plaintiff was taken to Musoma Referral Hospital and later referred to Bungando Hospital. The defendants only parted company with the plaintiff (1st respondent) on the extent of injuries the plaintiff sustained and the amount of costs incurred by PW1 in taking her medical care. 4 Upon conclusion of the trial, the trial magistrate was opined that the claims in particular the specific damages were not proved. He, however, entered judgment and decree in favour of the plaintiff thereby ordering the appellant UAP Insurance Tanzania Limited to pay the 1st respondent Wankyo Benjamin the sum of Tanzanian shillings thirty million (30,000,000/=) as general damages and Tanzanian shillings forty-five million (45,000,000/=) as compensation for permanent disfigurement. The appellant was not satisfied with the judgment and decree of the trial court hence she appealed to this court. In the memorandum of appeal, the appellant raised four grounds of appeal as follows;

1. The learned trial magistrate erred in law and fact for holding that the 1st respondent proved his case to the required standard while on record the plaintiff failed to prove his case

2. The learned trial magistrate erred in law and fact for ordering the appellant to pay the 1st respondent general damages at the tune of Tshs. 30,000,000 and compensation for permanent disfigurement at the tune of Tshs 45,000,000/= while the on the 1st respondent's pleading there was no prayer for permanent disfigurement as an independent prayer. 5
3. That the learned trial magistrate erred in law and fact for holding that the appellant is liable to pay the 1st respondent general damages and compensation for permanent disfigurement while on record there was no any damages suffered by the 1st respondent to be termed as permanent disfigurement to warrant the trial court to order for extra compensation apart from the general damages awarded.
4. That the learned trial magistrate erred in law and fact for declaring the case in favour of the 1st respondent who failed even to be brought (sic) into court to be assessed the extent of damages suffered by him to warrant the court to decide in his favour. In this appeal, the appellant was ably represented by Omary Mdemu, learned counsel whilst the respondents enjoyed the services of Ostack Mligo, learned advocate. When the matter was called on for hearing, upon request by the parties, this court ordered the appeal to be argued by way of written submissions. I commend both counsel for their enriching submissions which were timely filed in court. 6 Upon appraisal of the record of appeal, memorandum and written submissions by the parties, the point of controversy which calls for determination by this court is whether the plaintiff (1st respondent) sufficiently proved the claims for which the trial court granted the reliefs. Throughout the record, there is no dispute that on 10th September, 2019, the plaintiff was crashed by the motor vehicle No. T 577 DNA which was driven by the 2nd respondent Projestus Emmanuel Venant. This was clearly established through PW1 Benjamini Hamis along with x-ray pictures (P1) and judgment and proceedings of Traffic Case No. 105 of 2019 (P6). Further, this fact was confirmed by DW1 Projestus Venant and DW2 Shadrack Isack Stanley. DW2 further testified that he visited the plaintiff when she was hospitalized at Musoma Referral Hospital and also, he gave PW1 some money for transport of the plaintiff from Musoma Referral Hospital to Bugando Hospital. Further, it is in evidence that PW1 incurred costs while taking medical attention of his daughter (the plaintiff). This was further supported by hospital receipts (exhibit P2), hotel receipts (exhibit P3) and bus cum tax tickets. Whereas it is common cause that PW1 incurred costs in 7 treating the victim (plaintiff), there is no evidence as to the exact amount or costs that PW1 spent. Some of the receipts which PW1 tendered in evidence to prove the costs were not intelligibly readable whereas others were annotated by handwriting in such a way the trial magistrate doubted their credence. Moreso, during cross examination at page 31 of the typed proceedings, PW1 admitted that he did not know the total amount he incurred in attending the plaintiff. In the written submission, the appellant's counsel forcefully submitted that the plaintiff failed to prove the specific damages as well as general damages as such, the trial court was not justified to grant her the reliefs. Conversely, the respondent's counsel strongly argued that the specific damages were sufficiently proved through x-ray pictures. It is a trite law that specific or special damages should be specifically pleaded and strictly proved. See Tanzania Electric Supply Limited vs Timber Enterprises Limited, Civil

Appeal No. 26 of 2000 (unreported) and Reliance Insurance Company (T) LTD & 2 others vs Festo Mgomapayo, Civil Appeal No. 23 of 2019, CAT at Dodoma. 8 Looking at the evidence presented during trial, it is clear that specific damages were not proved. This is because even PW1 could not tell the court the exact amount he incurred. Further, PW1 tendered various payment receipts some which were not readable while other were highly doubted by the trial court. Applying the principle of law that specific damages must be specifically pleaded and strictly proved, I am at one, on this account, with the appellant's counsel that the plaintiff failed to prove the specific damages. With regard to the general damages, as indicated above, it is my findings that the evidence is overwhelming that the plaintiff through PW1 incurred costs arising from injuries she sustained. The costs include medical expenses, transport, meals and accommodation. It is a clear position of law that general damages need not to be specifically proved rather suffice it even just to aver that the damage was suffered. See Reliance Insurance Company (T) LTD & 2 others (supra). Furthermore, it is the discretion of the trial court to determine the extent of general damages based on the material evidence and the circumstances of particular case. In this case, the trial court awarded the respondent general damages to a tune of Tanzanian shillings thirty nine million (30,000,000/=). I have dispassionately considered the circumstances obtaining in this appeal including bodily injury suffered and consequential expenses incurred indicated above. I have also taken into account that the plaintiff failed to prove specific damages hence all the costs incurred fall under the general damages. On my part, I am opined that the plaintiff was entitled to general damages of Tanzanian shilling forty million (Tshs. 40,000,000/=). As such, I hereby increase the amount of general damages from Tanzanian shillings thirty million (Tshs. 30,000,000/=) to Tanzanian shillings forty million (Tshs. 40,000,000/=) only. Besides, the appellant faulted the trial court for awarding the 1st respondent Tanzanian shillings forty-five million (45,000,000/=) as compensation for permanent disfigurement of the 1st respondent. The appellants counsel lamented that the compensation for permanent disfigurement was nether pleaded nor proved. The appellant's counsel continually submitted that the compensation was not among the reliefs prayed in the pleadings. On the contrary, 1st respondent's counsel submitted that the same was sufficiently established. The counsel for the respondent further argued that the remedy was falling under io paragraph (d) of the prayers in the plaint namely, any other relief (s) which the court could deem fit to grant. In disposing this complaint, the relevant issue is whether the alleged permanent disfigurement was proved. I have keenly canvassed the trial court record but I was unable to find any reliable evidence proving permanent disfigurement apart from the PW1's mere verbal. The plaintiff did not tender any medical evidence (expert evidence) to prove the alleged disfigurement nor did the said plaintiff (victim) appear in court to testify and demonstrate to the court how she was permanently disfigured. PW1 simply told the court that the plaintiff (victim) did not come to court because she was sick without elaborating more. Indeed, permanent disfigurement was to be proved via either medical evidence or the victim appearing in court and demonstrate her permanent impairment. The X- ray photos (exhibit P1) only indicate the extent of injuries that the plaintiff sustained but does not prove permanent disfigurement after treatment. In view of

the above deliberations, I join hands with the appellant's counsel that the plaintiff did not prove her permanent disfigurement hence the trial court was wrong to award her the sum of 45,000,000/= 11 as compensation for permanent disfigurement. In the result, I set aside the order for payment of Tanzanian shillings forty-five million (45,000,000/=) as compensation for permanent disfigurement. In the upshot, I uphold the order for payment of general damages and increase the same from Tanzanian shillings thirty million (30,000,000/=) to Tanzanian shillings forty million (40,000,000/=). In the meantime, I quash the findings of the trial court on the permanent disfigurement and set aside the order for payment of Tanzanian shillings forty-five million (45,000,000/=) as compensation for permanent disfigurement. The appeal is therefore partly allowed as indicated. Each party should bear its own costs. It is so ordered. 12

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