

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

CIVIL APPEAL NO 31 2009

AHMED MOHAMED MAULY.....APPELANT

VERSUS

MUSA H. MWITA.....RESPONDENT

Date of last order 15/07/2009

Date of Judgement 07/08/2009

JUDGEMENT:

MURUKE, J.

Musa H. Mwita, the Respondent sued Ahmed Mohamed mainly in the district court of Ilala at Ilala for general and special damage to the tune of 2,400,000, following the Respondent being knocked down by passenger car Toyota Coaster with Registration Number TZK 7502 owned by the Appellant.

The trial Court awarded the sum of 500 T.sh with costs without specifying the kind of damages being general or specific by saying the following:-

“on the circumstance of this case, the plaintiff is awarded to be paid T.shs.

500,000/= in this accident. The defendant to pay T.shs 500,000 to the plaintiff in this accident, with costs.”

Appellant Ahmed Mohamed Mauly being dissatisfied by the Judgement and decree of Civil Case No. 23 of 2003 at Ilala District Court appealed to this Court on the following grounds:

1. That the trial Magistrate erred in law and fact and fact in awarding Tshs. 500,000 without elaborating whether the said sum is specific or general damages and/or for what purposes.
2. That the trial Magistrate erred in law and fact for awarding Tshs. 500,000 to the Respondent through no any documentary evidence was tendered to substantiate the Respondent's claims.
3. That the trial Magistrate erred in law and fact to award Tshs. 500,000 after making a finding that the Respondent has failed to prove his case.

4. That generally the trial Magistrate erred in law and fact for failure to evaluate properly the evidence in record and thus arising at erroneous decision.

On the hearing date parties consented for hearing of the Appeal be by way of written submission. Consequently court ordered appeal be disposed of by way of written submission.

In support of memorandum of appeal it was submitted by the appellant that, Respondent had simply sought for some sort of compensation from Appellant, and that is why he has argued that there was no need of specification. According to his understanding a court order for payment can be for several specific reasons. For example, it could be for compensation or indemnification or refund, or interest, or damages. It could be for any reason. However, the court issuing the order has to specify the nature. That is also the reason why prayers in a plaint have to be itemized and have to be specific.

That the trial Magistrate erred in law and in fact by awarding Tshs. 500,000 to the Respondent after making a

finding that the Respondent has failed to prove his case referring this court to the case of Rugarabamu Archard Mwombeki V. Charles Kizigha and Three Others, (1985) TLR 59 where by the plaintiff claimed general damages in the sum of Tshs 1,000,000 for defamatory information published of him by defendant. However, he was awarded only Tshs. 200,000 because he did not show to what extent his business suffered after the publication of the offending article in the Daily News newspaper, nor did he produce his books of accounts to substantiate his claim. It was held that the assessment of damages cannot be based on his unsubstantiated figures.

It was further submitted by the Appellant that not only did the trial Magistrate erred in law and in fact by awarding Tshs 500,000 to the Respondent, but the trial magistrate also erred in law and in fact by awarding damages (irrespective of the amount) after making a finding that the respondent has failed to prove his case.

Respondent on the other hand submitted that: It is a pity that the trial magistrate for no reasons refused to let the respondent tender the medical receipts and report showing

the history and extent of injury and damage. At page 2 of paragraph 3 of the trial court's judgement as can be shown by the following words on **"The plaintiff tried to produce his medical record bills which he incurred during his treatment....."**

Since he was so prevented to prove his case by the documents he had, and whose copies were attached to the plaint and made part of the pleadings. This honourable court is now requested to allude to them and exercise its inherent powers to dispense justice to the respondent. Respondent submitted further that the Appellant's ground 3 of his memorandum of appeal is misleading. Page 2 paragraphs 3 of the trial courts Judgement does not say that the court made a finding that the respondent had failed to prove his case. What the court found was that the reasonability or reasonableness of the amount claimed as damages of Tshs 2.3 Million was not adequately proved to the satisfaction of the court. This was lack of proof of entitlement to all that large sum of damages claimed, but that there was a failure of proof of the respondents case.

Even if the trial court failed to state specifically under what item of damage the amount of Tshs. 500,000 was awarded, the context of the whole paragraph two (2) of page 3 of the trial court's judgement clearly shows that these damages were awarded as general damages vicariously payable by the appellant for the negligent act of his employee who in the course of his employment caused the injury to the respondent. Respondent submitted that the case of Cooper Motors Corporation (T) Ltd Vs. Arusha International Conference Centre 1991 TLR 165 cited by the Appellant is distinguishable and cannot be held to be applicable in this matter since that case concerned with the issue of special damages.

After reviewing the submission by the Appellants and the Respondent and the authority cited, I would like to make the following observations. Damages are the pecuniary compensation payable by one person to another for injury, loss of damage caused by the one to the other by breach of legal duty or commission of tort. They are distinguished into general damages, and special damage. General damage compensation for the tort presumed to follow from a breach of contract or a tort, and special damages, being

compensation for particular losses not presumed but which in fact have followed in a particular case: The underlying principle of damages is restitution, to restore, so far as money can do so, the plaintiff to the position he would have been in if the.....tort in question had not been done to him.

Damages serve the double purpose, they satisfy the injured person and also act as a punishment to the guilty, in order to deter him from any such steps in future. They are limited to the actual loss which a person sustains. The defendant is liable to answer any damage that follows directly from his unlawful act, no matter he intended the consequences or not, and whether he could have reasonably foreseen them or not.

With due respect to the respondent submission; Order VII Rule 7 of the Civil Procedure Code as interpreted by Court of Appeal in the case of Cooper Motors Corporation (T) Ltd Vs Arusha International Conference Centre (1991) TTR 165 that special damages must be proved and evidence be given and in terms of Order VII Rule 7 of the Civil Procedure Code, but the same must be specifically pleaded and the

relief being claimed. Since the cause of action was one based on the defendant's/appellant's employee's negligence the plaintiff/respondent had a duty to establish both, the fact that damages were actually sustained and the amount of such damages. And to establish that he sustained damages, the plaintiff/respondent was required to prove with a reasonable degree of certainty that his damages did in fact exist. Speculation, guessing or estimates as to the existence of damages was not sufficient to meet the showing of a feasible degree of certainty.

In order for the plaintiff to be entitled to damages for medical expenses, it was crucial for him to have produced medical records and bills to establish such medical expenses and before he can obtain damages for medical expenses, he was supposed to establish that such charges are reasonable. A mere fact that a physical injury condition is permanent as stated in the medical record does not alone constitute a sufficient basis for an award of damages. There must have been some evidence of the cost of the treatment.

Cleary Court records indicate that there was no proof of expenses incurred by the Respondent therefore cannot be awarded special damages, because did not satisfy requirement of section 110 of the Evidence Act Cap 6 (R.E. 2002) which provide that:-

“Whoever desires any court to give judgment as to any legal right or liability depend on the existence of facts which he asserts must prove that those facts exist”

Complain by the Respondent that he was refused by the magistrate to produce evidence of medical report is not supported by the record. It is a mere allegation without basis. The request by the Respondent to deal with evidence at appeal leave, also cannot be entertained because, at appeal leave court do not receive evidence, but under special circumstance evidence can be taken in an appropriate procedure not the way respondent is asking this court to look at the evidence attached to the plaint and exercise inherent powers of the court to dispense justice.

On the issue of the general damages it is the Court which determines the quantum of damages to be awarded to the

injured party. Even in the case where the Plaintiff mentioned a specific figure, this does not take away the function of the Court to determine and quantify the damage suffered. As Lord Dunedin stated in the case of Admiralty Commissioners v. SS Susquehanna (1950) 1 ALL ER 392:-

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

In awarding Respondent damages trial magistrate said:-

“On the circumstance of this case, the plaintiff is awarded to be paid Tshs. 500,000/= in this accident. The defendant to pay T.shs. 500,000 to the plaintiff in this accident, with costs”.

The award was not specified whether it is special, or general and there is no evidence to prove special damage. Given the established legal position I up hold ground No. 1 and 2, dismiss ground No. 3 and 4 of the appeal with no order as to costs bearing in mind the circumstance of this case.



A handwritten signature in black ink, appearing to read "Z. G. Muruke".

Z. G. Muruke

JUDGE

17/08/2009

Ruling delivering in the presence of both of Appellant and Respondent in person.



A handwritten signature in black ink, appearing to read "Z. G. Muruke".

Z. G. Muruke

JUDGE

17/08/2009