

The Hon. Justice Tsekoo TSC

1. Amputee 5-544 → 10mf  
2. Inordinate award  
IN THE SUPREME COURT OF UGANDA  
AT MENDO

Fare pay  
passenger

(CORAM: MANYINDO, DCJ, ODOKI, JSC, PLATT, JSC )

R. E. 7/4 written  
argument

CIVIL APPEAL NO. 7/93

B E T W E E N

CHRISTOPHER KIGGUNDU ..... 1ST APPELLANT  
DANIEL SSENTONGO ..... 2ND APPELLANT

A N D

UGANDA TRANSPORT CO.  
(1975) LTD ..... RESPONDENT

(Original H.C.C.S. NO 994 of  
1994 of 1989, (Kalanda, J))

JUDGMENT OF MANYINDO, DCJ

The appellants and a third plaintiff, Safina Namwanje, sued the respondent in the High Court for general and special damages arising from an accident involving the respondent's bus in which they were travelling as fare - paying passengers. Namwanje's claim was settled out of Court. At the hearing of the suit liability was admitted by the respondent, so that the matter proceeded for the purpose of assessment of damages only.

The essential facts are that on 27-3-89, the appellants were travelling in the respondent's bus from Kampala to Lira when the bus overturned at or near a place called Nakasongola. The first appellant, Kiggundu, sustained a crush injury of the left leg. He was rushed to the nearest hospital. The doctors there could not save his leg so an amputation above the knee was carried out. According to Professor Sekabunga who examined him at Mulago Hospital on 10-5-90, for the purpose of this

case, the amputation of the leg left the first appellant with a 60% permanent disability. He was on 15-6-92, awarded Shs 5.5 million general damages. The Court took into account:-

"the nature of the injury, the amputated leg, above the knee, the age of the victim who is 42 years and the value of the shillings at this moment".

His claim for special damages was in respect of cash in the sum of Shs 200,000/= a wrist watch valued at Shs. 25,000/= and a pair of shoes valued at Shs 15,000/= which were lost as a result of the accident. The claim was disallowed on the ground that the special damages had to be proved strictly which the first appellant had not done. This is how the Judge dealt with the matter:-

"I shall start with what plaintiff No. 2 claimed. He stated that he was dealing in sell of chicken and ground nuts and had Shs 200,000/= with him. He did not go any further to explain where the money was or for what purpose. The mere claim that I had 200,000/= shillings on me and disappeared per se is not enough; nor is it enough to say that, I had shoes worth Shs. 15,000/= and a watch worth Shs 25,000/=. I do find the above too general to merit proof of the type, or actual value. This item, in my well considered opinion was not proved strictly to merit award." (sic).

He also claimed loss of earnings at a rate of Shs 150,000/= per month, but the claim failed on the ground that it was not proved. According to the admitted report of Professor Sekabunga who examined him on 23/8/90, the second appellant Sentongo, had sustained a fracture of the right femur and sprain in the right shoulder.

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The fracture was complicated by the wasting of the right thigh muscles and shortening of the right leg which resulted in a permanent limp. Permanent physical incapacity was put at 45%. But the trial Judge found that the doctor's report was contradicted by the testimony of the appellant which was to the effect that he had been injured on the right leg by metals and he could not walk properly. He said nothing about a fracture. The trial Judge thought that the injuries were fairly minor and awarded only Shs 600,000/= general damages. His claim for loss of earnings at Shs 50,000/= per month was rejected for want of evidence.

The appellants now appeal against the decision of the High Court on three grounds, namely:-

- " 1. That the learned trial Judge's award of general damages was inordinately low and was an erroneous estimate of the damages to which the appellants were entitled.
2. That the learned trial Judge erred in law when he failed to award special damages.
3. That the learned trial Judge erred in law and in fact when he held that the 2nd appellant had not proved that he suffered a fractured femur"

The first appellant also challenges the trial Judge's decision not to allow his claim for special damages. Mr. Mugabi, Counsel for the appellants presented written arguments under Rule 97 of the Rules of this Court to which a written reply was filed by Mr. Yesera Megeny, Counsel for the respondent.

Both Counsel also appeared in Court at the hearing of the appeal. Under sub - rule 4 of Rule 97 their presence was not necessary and they were not entitled to address the Court except with leave. I find this provision unnecessarily prohibitive. There may be matters in the written submissions on which Court may require clarification or even further argument. Indeed in this case we called upon both Counsel to submit on a point or two. This was necessary for the Court to arrive at a just decision of the case.

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I will deal with the claim for loss of earnings first.  
It is mentioned in paragraph 7 of the plaint thus:-

"7- The plaintiffs' claim from the defendant general and special damages for pain and suffering, loss of amenities of life and loss of earnings due to the injuries whereof appear below cause to them as a result of the said accident".  
(sic).

No details of the claim for loss of earnings are stated. At the hearing of the suit the first and second appellant simply stated that they earned Shs 150,000/- and Shs 50,000/- respectively per month from their business undertakings. It was not clear whether the sums were gross or net earnings. The trial Judge held that the first appellant had not proved his claim strictly, and accordingly rejected it. He did not consider the claim of the second appellant but it seems that he rejected it for the same reason.

Loss of earnings should be claimed as special damages and must be proved strictly. See: Bhogal v Burbidge & Another (1975) E.A. 286. In this case the claim was vague and was not proved. It was rightly rejected in my view.

Mr. Mugabi did not address the trial Judge on this matter at all. His claim, on appeal, that a sum of Shs. 27 million should have been included in the general



damages awarded as loss of earnings is clearly untenable. Nor do I agree with his submission that since the claim was not challenged it must succeed. There must be cogent evidences to prove it.

In dismissing the first appellant's claim for special damages the trial Judge had this to say:-

"I shall start with what plaintiff No. 2 claimed. He stated that he was dealing in sale of chicken and groundnuts and had Shs. 200,000/- with him. He did not go any further to explain where the money was or for what purpose. The mere claim that he had 200,00/= shillings on me and disappeared per se is not enough; nor is it enough to say that, I had shoes worth 15,000/= and a watch worth 25,000/=. I do find the above too general a merit proof of the type, actual value. This item, in my well considered opinion was not proved strictly to merit award." (sic).

I agree that the claim with regard to the watch and pair of shoes was not proved strictly. The first appellant could have produced receipts for the same if that was possible.

He could have stated what type of watch and shoes they were, when he bought them and for how much. He could also have testified as to the going price as at the time of trial. That information would have assisted the trial Judge to ascertain whether or not the value claimed was reasonable. In the circumstances the Judge was right to reject the claim.

As for the lost cash, I do not see what else the first appellant could have done to prove the claim.

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His evidence was that he was going to Lira, some 200 miles from Kampala, to buy groundnuts for sale. For that purpose he had on him Shs 200,000/= I do not think that was too much a sum for him to have. In my view the real question is whether the damage was remote. The man said that he was knocked down unconscious. He was taken to hospital. When he regained consciousness his money was nowhere to be seen. Sadly, it is common in this Country for victims of motor accidents to be stripped of their cash and other properties by wrong elements, especially while the victims are unconscious. This is a foreseeable consequence for which the errant driver or his master, as the case may be, will be liable to pay special damages, if the loss is established. I think that the first appellant should have been awarded tge ckaim under this head.

Finally, I will now consider the claim that the general damages were inadequate. With regard to the first appellant who was 42 years old at the time of accident, Mr. Mugabi contends that the working age, in case of a businessman, should be put at 65 years or more since there is no retirement age for business people. That is a novel point but I think that there must be a limit to age for the purpose of calculating damages. Courts of this Country have taken the position that normal working life expectancy is 50 to 55 years. In this case the first appellant clearly sustained a severe disabling injury. I agree that the award of Shs. 5.5 million general damages was on the lower side. 6/8 I would set aside that award and substitute a sum of Shs 10 million general damages.

In awarding the second appellant only Shs 600,000/= general damages the trial Judge was influenced by that appellant's evidence that:-



" I got injuries on my right leg. I was injured by metals and cannot walk properly. The pains come on and off. The leg pains me".

The learned Judge thought that evidence contradicted the medical report which showed that he had sustained a fracture of the right femur and sprain of the right shoulder; that a stannin's pin was inserted in the right femur but was later removed and a pin inserted on the fractured femur. The Judge thought that the failure of this appellant to allude to the fracture rendered his case " obscure" and contradicted the medical evidence.

In my view that conclusion was not justified on the evidence. The medical Doctor and not the second appellant was in the best position to classify the injuries. The medical evidence should have been accepted by the trial Judge. That evidence showed that the injuries were much more serious than the trial Judge thought. I have no doubt that had he properly considered the evidence he would have awarded substantial damages. I accordingly set aside the sum awarded and substitute therefore a sum of Shs 2 million general damages.

In the result grounds 1 and 3 of the appeal are allowed. Ground 2 succeeds only in part. The awards for general damages shall carry interest at Court rate from the date of judgment. The special damages awarded to the first plaintiff shall carry interest, at commercial rate, from the date of filing suit. The respondent shall pay the appellants the costs of this appeal. As Odoki, JSC and Platt, JSC also agree, it is so ordered

..../s....

Dated at Mengo this 20th day of ..... August, 1993.

S.T. MANYINDO

DEPUTY CHIEF JUSTICE

I CERTIFY THAT THIS IS A TRUE  
COPY OF THE ORIGINAL

  
J. MURANGIRA

REGISTRAR SUPREME COURT



IN THE SUPREME COURT OF UGANDA

AT MENGO

CORAM: MANYINDO, D.C.J., ODOKI, J.S.C. & PLATT, J.S.C.

CIVIL APPEAL NO. 7/93

B E T W E E N

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DANIEL SSENTONGO

A N D

UGANDA TRANSPORT CO. LTD.....RESPONDENT

(Appeal from the decision of the High Court  
(Hon. K. Kalanda) at Kampala dated 15/6/92)

IN

H.C. CIVIL SUIT NO. 994/1989

JUDGMENT OF PLATT, J.S.C.

I have read the judgment of Manyindo D.C.J. in draft. I agree and have nothing more to add.

Dated at Mengo this 20th day of August, 1993.

H.G. Platt

JUSTICE OF THE SUPREME COURT

I CERTIFY THAT THIS IS THE  
TRUE COPY OF THE ORIGINAL

.....  
J. MURANGIRA  
REGISTRAR SUPREME COURT.

IN THE SUPREME COURT OF UGANDA

AT MENDO

(CORAM: MANYINDO, D.C.J., ODOKI, J.S.C. & PLATT, J.S.C)

CIVIL APPEAL NO. 7 OF 1993

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DANIEL SSENTONGO .....APPELLANTS

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UGANDA TRANSPORT CO. (1975) LTD .....RESPONDENT

(Appeal from the Judgment of the High  
Court of Uganda at Kampala (Kalanda, J)  
dated 15-6-92

in  
Civil Suit No. 994 of 1989)

JUDGMENT OF ODOKI, J.S.C.

I had the opportunity of reading in draft the Judgement  
of Manyindo, D.C.J. and I agree with it and the orders made  
by him.

DATED at Mendo this 20th day of August, 1993.

B.J. ODOKI

JUSTICE OF THE SUPREME COURT

I CERTIFY THAT THIS IS THE  
TRUE COPY OF ORIGINAL

.....  
J. MURANGIRA  
REGISTRAR SUPREME COURT.