IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: ODOKI — AG. D.C.J., ODER - J.S.C. And TSEKOOKO - J.S.C.)

CIVIL APPEAL NO. 29 OF1994

BETWEEN

ECTA (U) LTD::: APPELLANT AND

1. GERALDINE S. NAMURIMU]::RESPONDENTS
2. JOSEPHINE NAMUKASA]

(Appeal from the judgment and decree of the High Court of Uganda at Kampala (Egonda, Ntende J) dated 10th May, 1991 in Civil Suit NO 81 of 1991)

JUDGMENT OF ODOKI - AG D.C. J

The two respondents were travelling in a motor vehicle along Kampala -Jinja road when it collided with the appellant's bus which was coming from the Ntinda road joining the Kampala -Jinja highway. The respondents sustained injuries as a result of the accident. The trial judge found that the accident was caused by the negligence of the appellant's driver and that therefore the appellant was responsible for the accident.

The learned judge awarded the first respondent Shs. 1,624,700/= as special damages and Shs 16 million as general damages, with interest on both sums at 25% p.a. The second respondent was awarded Shs 1,419,270/= as special damages and Shs. 9 million as general damages, also with interest at 25% p.a from judgment till payment in full.

The appellant has brought this appeal against the quantum of general damages and the interest awarded of appeal which relate to these matters.

The first ground of appeal is that the learned trial judge erroneously arrived at the quantum of general damages ordered to be paid by the Appellant to the first and second respondents.

Mr.Mugisha, learned counsel for the appellant, submitted that the principle, upon which this Court may interfere with an award of damages, has been decided in a number of cases among the earliest of. which is Patel V. Samaj and Another (1941) 11 EACA 1 where the Court of Appeal of Eastern African cited with approval Flint V Lovell (1935) 1 KB 360 where Greer LJ said,

> "In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this Court should be convinced
> either that the judge acted upon some wrong principle of law or that the amount awarded was so extreme1y high or so very small as to make it in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled"

This principle was affirmed in the case of Balikudembe, learned counsel for the respondents, namely Associated Architects V. Nazziwa (1985) H.C.B. 25, where it was stated that an appellate Court was not entitled to interfere with an award of damages merely because it was probable that if it had tried the case, it would have awarded a different figure. I respectfully agree with those principles which I think are now well settled.

On the quantum of damages Mr. Mugisha submitted that the learned judge erred in not taking into account the fact that the incapacity of the first respondent was not assessed at all. Secondly, the first respondent did not lose any future earnings because she had served for 25 years and given a handsome package. Thirdly, the award of 16 million was too high considering that her amputation was below the knee whereas in the case of Kiggundu V. UTC, Civil Appeal No. 7/93 (unreported) where the amputation was above the knee, this Court enhanced award from 5 million awarded by the High Court to 10 similarly in Matiya Byabalema V. UTC Civil Appeal NO. l0/93, where was an above knee amputation, with a permanent disability of 65%, Shs 9 million was awarded by this Court.
On the basis of these previous awards, Mr. Mugisha submitted that the learned judge made an erroneous estimate of damages and that that award should be reduced to 5 million.

Mr. Balikuddembe for the respondents submitted that although the degree of disability in respect of the first respondent was not given by Dr. Kamya, he found that her injuries were very grave and rendered her a wreck. Counsel pointed out that the first respondent gave detailed evidence of her serious injuries which included amputation of one leg, fracture of another and other multip1eUies on arms and face. Mr. Balikuddembe contended that her injuries were more serious than those in the cases of Kiggundu (supra) and Byabalema (supra) where only one injury was suffered. In this case, counsel pointed out the first respondent is inconvenienced in her daily life Like when going to the toilet, walking with difficulty and experiencing bruises on the stump where there is an artificial limb.

The learned judge evaluated the evidence the injuries suffered by the first respondent. She was examined by a Senior Consultant Surgeon Dr Kamya, twice. According to his report the first respondent sustained,

(i) Multiple lacerated wounds all over the body the biggest being in the forehead elbow;

(ii) Crush injury of the left foot,

(iii) Compound fracture left tibia and fibula;

(iv) Compound fracture right tibia with dislocation of the proximal tibia fibula joint, and

(v) Dislocation of the right stermo claricular joint.

He concluded:

> “She sustained multiple injuries and developed gross sepsis for which she had to be amputated to save her life. She is now walking with difficulty using artificial limb.

> She will continue to be greatly
> handicapped for the rest of her life."

In his second report, Dr. Kamya concluded that "Namirimu will continue to suffer as she cannot move easily due to injuries sustained by the remaining lower right limb," in his evidence Dr. Kamya testified that,

> "It is difficult to put her disability in percentage terms but is considerable disability."

In making the award to the first respondent, the learned judge

> "Taking into account the pain and suffering, the disability and loss of amenities, the loss of future earnings and loss of earning capacity suffered by the plaintiff, future expenses the plaintiff may incur, doing the best I can, I award the 1st plaintiff the sum of Shs. l6,000,000/= as general damages."

Given the grave injuries that the first respondent sustained, which seriously incapacitated her, I think that the learned judge was entitled to take into account the above consideration in assessing damages due to the first respondent. The injuries sustained by the first plaintiff were more serious than those suffered in the case of Kiggundu (supra) or that of Byabalema (supra). However, the sum awarded to the first respondent is so high as to warrant interference. I would reduce the award of Shs 16 million to 12 million.

With respect to the second respondent, Mr. Mugisha for appellant submitted that the degree of her injuries was not because her, permanent incapacity was not estimated. Second1y that the learned judge was wrong in finding that she would be get another job because of the accident since she had been retrenched for different reasons.

The second respondent sustained the following injuries:
(a) Lacerated wound frontal region,
(b) Deep Lacerated wound with multiple ones on left leg,
(c) Crush injury of left foot ,

(d) Simple fracture of both left and right femur.

Later on when Dr.Kamya examined her for the second time he concluded,

> “In summary Josephine still walks with a limp due to a 2 Cm shortening of her right lower limb. Both knees are still stiff, the right knee more stiff than
> the left knee. The range of movement has very much decreased on the left ankle giving painful ankle for which she has to see Orthopaedic surgeons later this month She will continue to suffer the inconvenience of using pit latrines.”

It is true that the doctor did not asses the degree of incapacity that these injuries had caused the second respondent. But the seriousness and effect of injuries on a party is a question of fact to be determined by the Court, taking into account all the evidence. The learned judge considered all the evidence before him and concluded,

> “The above injuries sustained by plaintiff NO.2 are likely to be permanent though less severe than those suffered by plaintiff NO. 1.”

In my view this finding was justified on the evidence before him.

In assessing general damages for the learned judge took into account the fact that she would not get a new job because of her injuries. He said,

> “the injuries suffered by the 2nd Plaintiff been set out above Much as she
> her lower limbs, their performance has been greatly impaired by the accident. She will permanently suffer pain in the legs. Movement is greatly impaired to the extent that she has not been able to obtain a new job much as she is a qualified Stenographer and Book keeper. She cannot use public transport.
> She cannot attend to her household chores. She is no longer able to dig and yet

> unable to obtain suitable other employment. Her social life was disrupted. She is no longer able to attend threatre and other places of social entertainment."

The learned judge therefore took into account "the pain and suffering, inconveniences, severe incapacity inflicted on the locomotion facility of the plaintiff, the future expenses the plaintiff will incur, the loss of earning capacity and future earnings" in awarding her Shs. 9,000,000/= as general damages.

There is no doubt that the injuries the second respondent sustained have adversely affected and would affect her prospects for future employment as Secretary or book keeper. She testified so and there was no evidence to the contrary. Medical evidence supports her physical incapacities. It is probable that these injuries contributed to the termination of her services. Therefore the learned judge was entitled to take into consideration the factors he took into account in assessing damages in respect of the second respondent.

However, the amount of Shs. 9 million was too high in the circumstances of this case. The injuries sustained by the second respondent were less severe than those suffered in the cases of Kiggundu and Byabalema (supra). I would therefore award to Shs. 6 million.

The second ground of appeal is that the rate of interest awarded on the decretal amount was erroneous. Mr. Mugisha, for the appellant submitted that while section 26 (2) of the Civil Procedure Act gives the Court a discretion to award reasonable rate of interest, there were no special circumstances to justify an award of interest at the
the decretal amount was not based on a commercial transaction but general damages.

Section 26 (2) of the Civil Procedure Act provides,

> "(2) Where and in so far as a decree is for payment of money, the Court may, in the decree order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition

> to any interest adjudged on such principal sum for any
> to the institution of the suit, with further interest at such rate as the Court deems
> reasonable on the aggregate sum so adjudged from the date decree
> to the date of payment or to such earlier date as the Court thinks fit."

Subsection (3) of the same section provides that where the decree is silent as to the payment of interest, the Court shall be deemed to have ordered interest at six percentum per annum.

In this judgment, the learned judge made this order,

> "The decretal amount shall bear interest at the rate of 25% per annum from the date of judgment till payment in full."

Clearly the Court has discretion to award reasonable interest on the decretal amount. But it appears that a distinction must be made between awards arising out of Commercial or business transactions which would normally attract a higher interest, and awards general damages which are mainly compensatory. In the present case, there is no challenge to the award of interest on special damages where a similar rate of interest was ordered. I think there is merit the complaint regarding the award of the interest of 25% on general damages. The rate of interest is definitely too high and I would reduce it to 8%.

In the result, I would allow this appeal. I wou1d set aside the awards for general damages and the interest thereon. I would substitute an award of Shs.12 million as general damages to the first respondent and Shs. 6 million to the second respondent. I would order that the awards of general damages carry interest at the rate of 8% from the date of judgment till payment in full. I would award the costs of this appeal to the appellant. As Oder Justice of the Supreme Court and Tsekooko Justice of the Supreme Court agree with proposed orders, it is so ordered.

Dated at Mengo this 25th day of July 1995.

B.J. ODOKI AG.

DEPUTY CHIEF JUSTICE.