IN THE SUPREME COURT OF UGANDA

AT MENGO

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

CIVIL APPEAL NO.10 OF 1993

BETWEEN

MATIYA BYABALEMA

SAM KAFAYI

MARY
NDIMUKABAGO ::APPELLANTS

AND

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

(Appeal from the decision of the
High Court at Kampala (Ouma, J.)
dated 29th January, 1993
IN
HIGH COURT SUIT NO. 5O4 OF1991

JUDGMENT OF ODOKI, J.S.C:

The Appellants were passengers, in the respondent's bus when it was involved in a collision with an army lorry on the Kampala
- Masaka Road, on 8th August, 1988. The appellants sustained personal injuries as a result of the accident and sued the respondent for recovery of general and special damages. When the suit came up for hearing, the respondent admitted only 80% responsibility for the accident. The balance of liability was attributed to the army lorry but the Attorney General was not

joined as a defendant. The parties could not agree or the quantum of damages. The matter was therefore set down for assessment of damages.
The learned trial Judge awarded the first appellant shs 4,000,000/= and the second appellant shs 600,000/= as general damages for the injuries they sustained. The claim of the third appellant was dismissed. It is against this decision that the appellants now appeal to this Court.

There are three grounds of appeal. The first is that the learned trial Judge awarded the second appellant Sam Kafayi, inordinately low damages. The second ground is that the learned trial Judge awarded the first appellant Matiya Byabalema inordinately low damages. The third ground is that the learned trial Judge misdirected himself when he dismissed the third appellant's suit and failed to assess the quantum of damages due to him if he had been successful.
Both counsel submitted their written arguments in accordance with Rule 97 of the Supreme Court Rules and did not wish to be heard in Court.

It is convenient to deal first with the second ground of appeal which relates to the award of in respect of the first appellant. Mr. Mugabi submitted that the award of shs 4 million was inordinately low and the trial Judge erred in his assessment of damages by not considering the element of loss of future earnings. According to counsel the first appellant who was a mason and painter had been earning 2,000/= per day or approximately 50,000= per month. The appellant was aged 40 years and could therefore have continued to work for another 20 years. Taking a multiplier of 13 the 1st appellant could have earned only 3,000/= which amounts to shs 7,800,000/=. But now the appellant was earning only 3,000/= per month as cobbler.

The second error complained of was that the trial Judge grossly under valued the appellant's loss of body integrity. The appellant had sustained an amputation of his leg with a permanent disability of 60%. It was submitted that the trial Judge misdirected himself when he held that as far as he was concerned the difference was the same. Whether the amputation was below or above the knee, whereas an amputation above knee attracts a higher award.

Thirdly Counsel submitted that the trial Judge erred in basing his award on 1980 cases when Uganda shillings were equivalent to $1. He suggested that the Judge should have had recourse to the pre 1981 floating Uganda currency court decisions as the most realistic guide. Finally counsel submitted that the learned trial Judge misdirected himself when he awarded a sum of shs 4 million to the 1st appellant.

Mr Mugenyi for the respondent submitted that there was no complaint that a wrong principle was applied but merely that the quantum of damages awarded was inordinately low. He contended that what is inordinately low or high is a very subjective matter and that judges have widely differing perceptions of what is inordinately low or high. He conceded that recent cases show that awards have been going up in step with the devaluation of the currency. He also conceded that the award to the first appellant was the lowest on record thus reversing the upward trend, but he defended the award on the ground that the Judge was exercising his discretion against the evidence he had before him and using his personal perceptions of the present social and economic conditions in the country.

It is now a well settled principle that an appellate court may only interfere with an award of damages when it is so ordinately high or low as to represent an entirely erroneous estimate. It must he shown that the Judge proceeded on a wrong principle or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low. This principle was stated by the Court of Appeal for Eastern African in Henry H. Ilanga V. Manyoka (1961) EA 705 where the Court quoted with approval the decision of the Privy Council in Nance v. British Columbia Electric Railway Co. Ltd (1951) A.C. 601 at page 613 to this effect:

“The principles which apply under this head are not in doubt. Whether the assessment of damages be done by a Judge or jury, the appellate court is not justified in substituting a figure of its own for that awarded below simply because it would have awarded a different figure if it had tried the case at first instance. Even if the tribunal of first instance was a Judge sitting alone, then before the appellate Court can properly intervene, it must be satisfied either that the Judge in assessing the damages applied a wrong principle of law (as.by taking into account some irrelevant factor or leaving out of account some relevant one) or short of this

that the amount awarded is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage: Flint v. Lovel (1935) 1 KB 354 approved by the House of Lords in Davies v. Powell Duffyrun Associated Colleries Ltd (1842) A.C. 601"

These principles were re-affirmed by the predecessor to this Court in the case of Associated Architects v. Christine Nazziwa, Civil Appeal No. 5 of 1981 (unreported).

In the present case, Counsel for the appellant had already raised matters which indicate that the learned trial Judge applied wrong principles in assessing the damages to be awarded and also that the quantum of damages was inordinately low. The complaint that the trial Judge did not take into consideration the loss of future earnings of the first appellant cannot be sustained in view of the approach taken by trial Judge that it was necessary finally to award a composite general sum because of the many intangibles involved. In my view, the trial judge must have taken the item of loss of future earnings in determining the amount of damages he awarded.

However, the learned trial Judge erred on a matter of principle when he said,

"In this present case there was an above knee amputation of whatever leg was amputated. In the cases I have cited, there was below the knee amputations. In my view the difference is the same as what is material is the incapacity."

As it was said in the case of yg v_Jmbe Mines Ltd (1972) EA 341, when considering the leg injuries where amputation has been effected, it is important to bear in mind the distinction between an injury which involves an amputation below the knee and one which involves amputation above the knee: As a rule, there is greater disability where amputation takes place in the thigh and cases show that larger sums are awarded in those circumstances. It was submitted that the learned trial Judge erred in basing his award of damages on the cases decided in 1980 when the value of the Uganda shillings was different from today. The learned trial Judge discounted the cases referred to by learned Counsel for the appellant

because they had been decided in 1970's. His reason was that "the cases cited by Counsel for the plaintiff are of little if any relevancy to cases of today since the economic situation then cannot be comparable with today's economic situation." He considered the 1980 awards more recent than those of 1970s.

In my view the learned Judge was right in basing his award on more recent cases. However, considering the drastic devaluations that the Uganda shilling has suffered since 1980, the awards made ten years ago are of little guidance in assessing the amount of damages. I do not think that mere conversion of the amounts awarded in 1970s or 1980s into US dollars using the exchange rate at the time, and then multiplying the amount in dollars by the current exchange rate can offer a realistic guide to the appropriate award today. I am inclined to the view that courts ought to assess the amount of damages taking into account the current value of morley in terms of what goods and services it can purchase at present. The most recent decisions of the courts in Uganda provide the best guide arid ensure conformity in the level of awards which should be maintained.

In order to decide whether the award in favour of the first appellant was inordinately low as to amount to a wrong estimate of damages it is necessary to consider the recent cases which were cited by counsel as well as those which have been decided by the Court. In Kyambadde v. Uganda Electricity Board, HCCS No. 1 of 1990, the plaintiff, a minor aged 10 years, was electrocuted and burnt on the left arm and armpit with resulting ugly hypertrophic scars and reduced shoulder movements. He also sustained injuries on the left thigh, with a total disability of 35%. He was awarded shs 9 million as general damages. In Godfrey Katerega v. U.E. HCCS No. 93 (b) OF 1989, the plaintiff who was working with the defendant Board as a technician was electrocuted and suffered head injury, injury to urethra which severely limited his sexual life and fracture of the pelvis which had united. He had a permanent disability of 30%, and was awarded shs 15 million as general damages. The injuries in these two cases are not quite similar to those sustained by the first plaintiff.

Two cases cited by counsel for the respondent which have similar injuries to the present are Wamala Stephen v. Abdu Kabuzi, HCCS No. 981 of 1989 where, according to Counsel, shs 6 million was awarded for amputation above the knee. The other case is Erisa Musamali v,

U.E.B. HCCS No 8 of 1990 where Counsel stated that shs 20 million was awarded for amputation above the knee. Unfortunately these authorities were not available for me to peruse in order to appreciate the extent of the injuries and the factors which influenced the awards.

In a recent decision of this court, Christppher Kiggundu and Another v. UTC (1975) Limited, Civil Appeal No. 7 of 1993, the first appellant was awarded shs 10 million as general damages for an amputation above the knee with permanent disability of 60%. The High Court award of 5.5 million was considered inordinately low.

In the present case the first appellant who was a builder and painter aged 40 years sustained a crush injury on the right ankle and right foot as a result of, which an above—knee amputation of the leg was carried out. His permanent disability was assessed at 60%. The injuries in this case are similar to those in the case of Kiggundu v. UTC, In view of this I think that the award of shs 4 million for the first appellant was so inordinately low as to justify interference. Taking into account all the circumstances of the case the fact that the respondents liability was only 80%. I would substitute the award of shs 4 million with that of shs 9 million as general damages.

The first ground of appeal is in respect of the award of damages for the second appellant. He was a carpenter aged 32 years. He sustained a compound fracture of the left femur. The fracture had united with a shortening of the lower third of the leg by one inch, with stiffness of the left knee joint. Permanent disability was estimated at 25%. The learned trial Judge awarded him shs 600,000/ as general damages.

The learned Judge relied on the case of Marion Akankwasa v. Attorney General (1982) H.C.B. 69 where an award of shs 70,000/= was, made for similar injuries. It is not clear how this decision guided the Judge in arriving, at a figure of shs 600,000/=. Moreover, this figure was below that of shs 800,000/= suggested by Counsel for the respondent.
In my view, the amount f shs 600,000/= is so inordinately low as to amount to a wrong estimate. Taking into account the relevant circumstances, I would substitute an award of shs

1,500,000/= as general damages.

As regards the third ground of appeal Mr. Mugabi submitted that the trial Judge was wrong in dismissing the third appellant's claim when the respondent had admitted 80% liability and the case was merely for assessment of damages. I think Mr. Mugabi must be correct. Once liability is admitted it is not proper for the trial Judge to reverse that admission unless there are valid grounds for doing so.

The main ground upon which the trial Judge based his decision was the apparent contradiction between the evidence of the 3rd appellant when she testified that she sustained a dislocation of her right hip, but Dr. Sekabunga who examined her stated that she had sustained a fracture of the right hip which was reduced by 30 degrees. The learned Judge then concluded,

"Fracture and dislocation are different injuries. From the evidence it is difficult to, ascertain which injury is proved by the scanty confused evidence, upon which assessment of damages can be based."

With respect to the learned Judge, there was no material contradiction between the evidence of the third appellant and that of the doctor examined him. To a lay person a fracture and dislocation my mean the same thing. It is only a doctor who may give an authoritative description or classification of an injury. The doctor's evidence should have been believed on this aspect of the case. In my view this apparent contradiction in the description of the injury sustained by the 3rd appellant was minor and did not justify the dismissal of her claim. On the contrary, there was sufficient evidence to prove the injuries she sustained. The Judge erred in not assessing the damages he would have awarded had the appellant been successful in her claim.

From the evidence it is clear that she sustained a fracture of her right hip which was reduced by 30 degrees, and remained painful. Permanent disability was assessed by 30%. She was aged 32 years and was previously a tailor at Nsangi S.S.S., but was now selling fried cassava.

Mr. Mugabi submitted that hip/pelvis injuries are more serious for women because of the burden of child bearing. However, I think that the figure of shs 6 million suggested by Counsel is too high. I would award the 3rd appellant shs 2 million as general damages.

In the result I would uphold the three grounds of appeal and allow the appeal with costs to the appellants. I would set aside the awards and order of the trial court. I would substitute an award of shs 9 million for the first appellant, shs 1.5 million for the second appellant and would award the 3rd appellant shs 2 million, as general damages.
Dated this 8th day November of 1993.
B.J. ODOKI
JUSTICE OF THE SUPREME COURT

JUDGMENT OF MANYINDO *D.C.J*

I have read in draft the judgement of Odoki, J.S.C. I agree with it and as Oder, J.S.C. also agrees, there will be judgement in those terms. The Appellants shall have the costs of the appeal and the proceedings in the High Court.
Dated at Mengo this 8th clay of November, 1993.

S.T MANYINDO
DEPUTY CHIEF JUSTICE

JUDGEMENT OF ODER,

I have had the benefit of reading in draft the judgment of Odoki, J.S.C with which Iagree. I think that the respective appeals of all three Appellants should succeed. Iwould also award the first Appellant shs 9 million, the second Appellant shs 1.5 million and the third Appellant shs 2 million as general damages plus the cost

Of the suit and of the appeal.
Dated at Mengo this 8th day of November, 1993.

A.H. ODER

JUSTICE OF THE SUPREME COURT