



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 37 OF 2020

CIC GENERAL INSURANCE LTD.....APPELLANT

VERSUS

STEPHEN GITAU NDEGWA..... RESPONDENT

(Being an appeal as against the judgment arising out of the Chief Magistrate's Court in Nairobi in

Civil Suit No. 7175 of 2017 at Milimani Commercial Courts before Hon. K. Orege

(SRM) dated 4th December 2019.)

JUDGEMENT

1) Stephen Ndegwa, the respondent herein filed an action against CIC General Insurance Ltd, the appellant herein before the Chief Magistrate's Court whereof he sought for material damage for the insured sum of ksh.3,600,000/= in respect of motor vehicle registration no. KBU 581G, Isuzu lorry.

2) It is said that the appellant issued a comprehensive motor vehicle insurance cover. The aforesaid lorry is said to have been involved in a road traffic accident on 12th March 2017 along Mang'u-Gatundu road during the currency of the insurance policy. The appellant defended the suit. In the end, judgment was entered in favour of the respondent and against the appellant.

3) Being aggrieved, the appellant preferred this appeal and put forward the following grounds:

i. THAT the learned magistrate grossly misdirected himself in treating the evidence and submissions on liability before him superficially and consequently coming to a wrong conclusion on the same.

ii. THAT the learned magistrate erred in not sufficiently taking into account all the evidence presented before him in totality and particular the evidence presented on behalf of the appellants.

iii. THAT the learned magistrate by failing to follow and agree with the defendant's/appellants submission on record.

iv. THAT the learned magistrate wholly erred in law and fact by failing to appreciate that the appellant had sufficiently proved that there was material concealment by the respondent.

v. THAT the learned trial magistrate erred when he failed to find that the respondent had totally failed to discharge the onus of proof which lay on him.

vi. THAT the learned magistrate erred in law and fact by failing to take into account the evidence and the submissions on quantum of damages given on behalf of the appellant while considering the judgment.

vii. THAT the learned magistrate erred in law and in fact in failing to apply the proper legal principles regarding quantum, and thus arriving at a bad decision.

viii. THAT the leaned magistrate erred in law and in fact by failing to follow and be bound by the principles of stare decisis.

4) When the appeal came up for hearing, this court gave directions to have the appeal disposed of by written submissions.

5) I have re-evaluated the evidence that were presented before the trial court. I have also considered the rival written submissions plus the

authorities cited. It is the submission of the appellant that the learned trial magistrate erred by wholly apportioning liability on the part of the appellant yet there was evidence showing that the respondents concealed material facts from the appellant's private investigators.

6) It was pointed out that the trial magistrate failed to consider the appellants' submissions on the obligation of the insured to disclose material facts which could entitle the appellant to avoid the contract of insurance.

7) The appellant further argued that the trial court failed to determine the credibility of the evidence of the respondent's driver (PW 2) who claimed that the lorry rolled and got damaged though he was not injured.

8) It is also pointed out that the trial magistrate stated in his judgment that the respondent must have sustained injuries even though he jumped out of the lorry. It is the appellants' submission that the evidence of PW 2 was not credible nor truthful hence it shouldn't have been admitted.

9) The respondent opposed the appeal arguing that he proved his case on a balance of probability. The respondent pointed out that his driver, Peter Maina Njihia (PW 2) testified and informed the trial magistrate that he was a licensed driver employed by the respondent.

10) The respondent stated that his witness was reliable and credible hence the trial court should not be faulted in entering judgment in his favour.

11) I have carefully re-evaluated the evidence that were presented before the trial court. The respondent's driver and witness told the trial magistrate that he drove the insured lorry from Kinangop to Thika to deliver a load of cabbages after which he left for Gatundu town where he said he loaded household goods on the lorry. He said that he took the Mang'u-Gatundu road and was driving at a speed of 70km/hr. He said he lost control of the lorry while approaching Gatundu town at a sharp corner. PW 2's evidence was not controverted by the appellant.

12) Having re-evaluated the evidence, it is clear that the respondent tendered credible evidence hence the trial magistrate cannot be faulted for entering judgment in favour of the respondent. There is no dispute that at all material times the respondent's lorry was comprehensively insured. It is also apparent that the lorry was involved in a road traffic accident while the insurance policy was in force. The appellant tendered the evidence of a private investigator whose evidence was not corroborated, hence the same unreliable.

13) In the end, I find the appeal to be without merit. The same is dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 22ND DAY OF OCTOBER, 2021.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent