

GODFREY RUWONDE
versus
TADIOUS ZIMA

HIGH COURT OF ZIMBABWE
CHITAKUNYE & NDEWERE JJ
HARARE, 1 October 2015

Civil Appeal

Appellant in person
Respondent in default

NDEWERE J: The respondent issued summons in the court *a quo* as the plaintiff on 12 July 2010. His claim was for:

- a) Payment of \$170-00 for medical expenses
- b) \$1 830-00 for 30% permanent disability, loss of vision and pain and suffering and costs of suit.

The appellant had been convicted for assaulting him.

The matter went to trial. On the claim for \$170-00 medical expenses, the trial court noted an error in the mathematical calculation in that whilst the respondent's claim was for \$170-00 the receipts submitted added up to \$145-00 for medical expenses.

On the claim of \$1 830-00 for 30% permanent disability, loss of vision and pain and suffering, the trial court ordered the appellant to pay \$1 200-00. The appellant was also ordered to pay costs of suit.

On 7 November 2014, the appellant noted an appeal against the whole judgment of the Honorable Magistrate. In his grounds of appeal, he challenged the magistrate's reliance on the criminal conviction and on the claims for damages, he said the receipts were fake and the quantum of damages was on the exorbitant side. The appellant sought the following relief:

“Wherefore appellant prays for the setting aside of the magistrate court’s order and its substitution with the following order:

- a) \$100-00 for special damages since he already had a cataract
- b) \$20-00 medical expenses since the respondent had already had a mandate and is still attending at Parirenyatwa Hospital as an outpatient according to their records yet on the conflicting medical affidavit adopted by the honourable magistrate he claims he was discharged on 7 January 2010.
- c) No order as to cost”

It is clear from relief he sought that the appellant does not deny liability. He accepts liability, but is requesting the appeal court to reduce the quantum of damages. The acceptance of liability by the appellant in the relief he sought means the appeal court need not deal with grounds (a) to (b) in the notice of appeal which were challenging the magistrates’ reliance on the criminal conviction in finding him liable. Grounds (c) to (e) are on quantum of damages.

With regards to medical expenses, the trial magistrate saw the receipts and listened to oral evidence from the appellant and the respondent on that issue. In his analysis of the evidence, he ruled that the receipts were genuine and not fake. He then noted a calculation error which reduced the medical expenses awarded from \$170-00 to \$145-00.

We have no basis to interfere with the magistrate’s findings of fact, after considering both the documentary and viva voce evidence during the trial. Consequently, the trial court’s decision to award \$145-00 as medical expenses after considering all the evidence must be upheld. Appellant’s appeal on this issue therefore has no merit and must be dismissed.

On the award of \$1 200-00, we were concerned by the absence of reasons by the magistrate on why he/she reduced the claim from \$1 830-00 to \$1 200-00. We were also concerned by the combining together of special and general damages into one figure instead of separating them for purposes of clarity. We were of the view that the magistrate did not go far enough in assisting the unrepresented respondent, who was plaintiff in the court *a quo*, in clarifying the basis of his claim of \$1 830-00. We had hoped to get clarity from the respondent himself at the appeal hearing, but he did not turn up in court, despite having been served. Further we were of the view that there was a measure of duplication in the combined award for special and general damages for 30% permanent disability, loss of vision and pain and suffering since the loss of vision is the permanent disability being referred to.

The omissions referred to above by the Honourable Magistrate, in our view, amount to a misdirection.

The appellant's case in the appeal was for the reduction of the quantum of damages. Unfortunately, due to the gaps in the evidence referred to above during the trial, all the appeal court has to guide it on how much the appellant should pay is the medical report.

The medical report gives the degree of permanent disability as 30%. It refers to complete loss of vision in the right eye. However, in its para (e), the medical report says the patient is still able to perform his duties as a guard.

On the other hand, appellant has offered \$100-00 as special damages, his reason being that the respondent already had a cataract. In our view, \$100-00 to someone who has lost vision permanently is too little. At the same time, maintaining the award at \$1 200-00 when the trial court did not justify the figure would be unfair to the appellant.

The respondent himself compounded the issue by not turning up for the appeal hearing to shed light on his claim. Consequently, the court will allow the appeal against the award of \$1 200-00 as special and general damages. The magistrate's decision on that issue is accordingly set aside and substituted by an award of \$600-00 as special damages.

The appellant in his relief asked for no order on costs. There will therefore be no order on costs. The magistrates court order is therefore set aside and substituted with the following:

The appellant shall pay the respondent:

- (a) The sum of \$145-00 for medical expenses as special damages.
- (b) The sum of \$600-00 as general damages for loss of vision, pain and suffering.
- (c) Each party to pay its own costs.

CHITAKUNYE J: agrees:.....