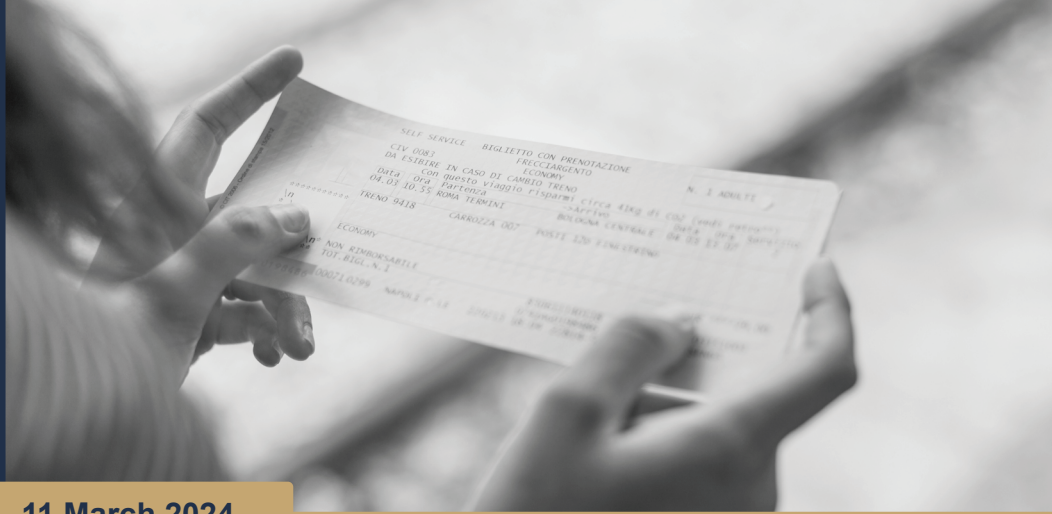




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LEGAL NEWS

11 March 2024



Court Condemns a Banker for Negligence Involving Dishonoured Cheques

The Court of Appeal of Tanzania (the Court), on 20 February 2024, delivered a judgment in Civil Appeal No. 82 of 2016 by condemning a banker for negligence as a result of the banker's failure to honour payments on cheques. In this case, the Court provides guidance on determination of special and general damages in negligence cases and the interests thereon. Also, it makes a useful finding on award of costs.

Background of the Case

The appellant was operating a bank account at the respondent's bank for purposes of paying school fees for his children who were studying in Uganda. The Appellant's two cheques dated 31 January 2009 and 2 February 2009 were payable to Mugwaya Preparatory School and Sacred Heart Primary School both in Uganda, respectively. When the two cheques were deposited by the payees for payment through their banks, they were each returned with a remark "refer to the drawer", signifying that the appellant's account had insufficient funds. Consequently, the payees informed the appellant what transpired and requested him to pay the relevant school fees as soon as possible otherwise his children would be expelled from school.

When the appellant approached the respondent for explanation, the latter expressly apologized to the two collecting banks maintaining that her representation on status of the appellant's account culminating in the dishonour of the cheques was by mistake. Unhappy with what happened, the appellant filed a suit against the respondent at the District Court of Ilala (the trial court) for negligence. He claimed for payments of USD 5M as general damages, USD 5,640.48 as special damages and interest thereon at the bank rate from 15 May 2009 to the date of judgment. In addition, he prayed for interest on the decretal sum from the date of judgment to the date of payment in full.

The trial court held that the respondent acted negligently in the process and, therefore, it awarded him all the reliefs sought in the plaint with costs. Dissatisfied with the decision of the trial court, the respondent appealed to the High Court which concurred with the trial court on its finding on negligence and the award of USD 5,640.48 as special damages. However, the High Court awarded only TZS 50M as general damages, instead of USD 5M. The point of departure between the trial court and the High Court was on the appropriateness of the quantum of general damages and pre-judgment interest on both general damages and special damages which prompted the appellant to appeal to the Court of Appeal.

Arguments Raised by the Parties

When the appellant lodged his appeal to the Court, he was essentially faulting the High Court on three grounds, namely: (i) the High Court unreasonably reduced general damages from USD 5M to TZS 50M; (ii) not confirming the interest on the special damages awarded by the trial court; and (iii)

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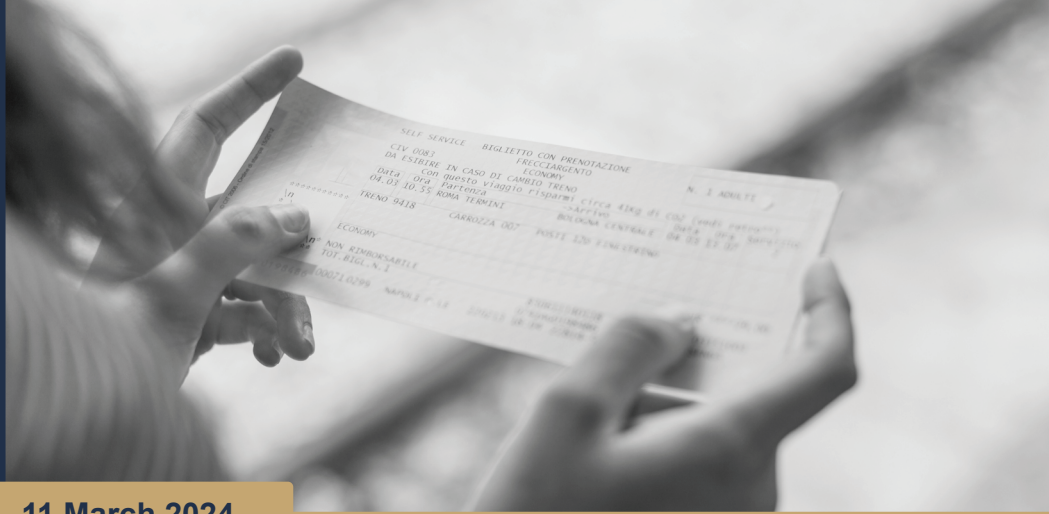




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unreasonably denying him costs of prosecution of the suit.

The appellant was of the view that the reduction of the quantum of general damages from USD 5M to TZS 50M by the High Court was erroneous because it had concurred with the trial court that the established negligence on the part of the respondent directly resulted into inconveniences, embarrassment, humiliation, mental torture and blood pressure on the part of the appellant. Thus, since the said injuries were the basis of the award of general damages by the trial court, the High Court was not expected to reduce the same. It was also argued that the assessment of damages is within the discretion of the trial court, thus the High Court could not interfere with such discretion by substituting a figure of its own unless it was satisfied that the trial court applied a wrong principle of law or the amount awarded was inordinately low, which was not the case. The appellant supported his arguments by using precedents in *Cooper Motors Corporation Ltd v. Moshi/Arusha Occupational Health Services* [1990] T.L.R. 96 and *Materu Leison and J. Foya v. R. Sospeter* [1998] T.L.R 102. Further, the appellant argued that the High Court did not properly exercise its discretion in substituting the quantum of general damages by not explaining the basis for the substitution, thus its decision on that aspect was without reason.

The Respondent was of the view that the High Court was entitled to reevaluate the evidence and come up with its own conclusion apart from what was determined by the trial court. He further submitted that the appellant quantified the amount of general damages unreasonably which in law was not proper. Also, he added that the trial court awarded the claim in the pleadings as they were without demonstrating how it arrived at the said figure. In his view, that was an abuse of the court discretion as the decision in question was not based on fact, logic and reason, and, therefore, arbitrary. The respondent, therefore, prayed that the appeal be dismissed with costs.

Determination of Issues and Decision of the Court

With regard to the mandate to determine general damages, the Court held that assessment of damages is within the discretion of the trial court. However, for a decision arising therefrom to be valid, the discretion must have been exercised reasonably, judiciously and on sound legal principles. If that was not done, the correctness of such assessment by the trial court can be a subject of determination on appeal. The Court made reference to the cases of *Swabaha Mohamed Shosi vs. Saburia Mohamed Shosi*, Civil Appeal No. 98 of 2018 and *Cooper Motors Ltd.* (supra) in support of its argument. It observed further that the trial court erred in law by awarding such excessive damages. Regarding the finding by the High Court on special and general damages, the Court held that the High Court could not, as it did, substitute the award of the trial court with its own figure unless there is violation of the basic principles of law. Since the measurement of general damages by the trial court was not on reasons founded on evidence as the law requires, that by itself was a violation of the basic principles of law, and thus justified the High Court to, upon reassessment of evidence, come up, as it did, with its own conclusion.

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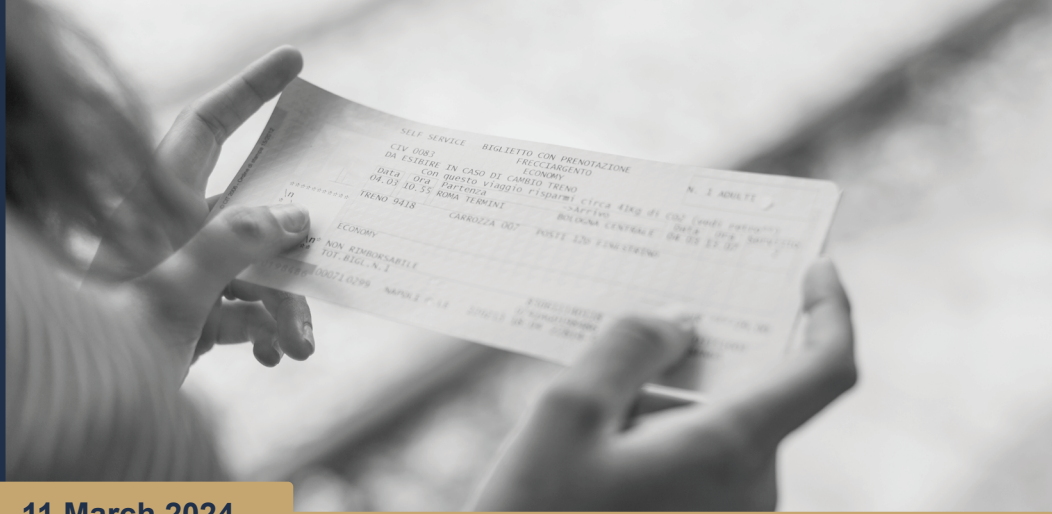




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The Court added further that the criticism raised against the High Court for substituting the amount of damages from USD 5M to TZS 50M was without justification as good grounds were given for such reduction, that is, being unreasonably excessive. The Court added that unlike in special damages where the court can arrive to a particular figure basing on pleadings and evidence, in general damages, where the claim is generally pleaded, what the court is required to do is to consider some factors from evidence upon which it will, using common sense and experience, decide what amount is, in the circumstances, appropriate. As the High Court considered, among others, the established five heads of injuries (inconveniences, embarrassment, humiliation, mental torture and blood pressure), the Court found no reason to depart from the amount of general damages awarded by the High Court, thus proceeded to dismiss the first ground of appeal for want of merit.

Regarding the award of interest, the Court made reference to section 29 of the Civil Procedure Code, Cap. 33 [RE. 2019] which deals with awarding interests by courts. The Court noted that as the undisputed special damages under discussion emanate from the actual expenses the appellant incurred as a result of the respondent's negligence, the same was due and payable as of the date of accrual of the cause of action and, therefore, it attracts interest. The Court then proceeded to quash and set aside the order of the High Court quashing interest on special damages from the date of accrual of cause of action to the date of judgment. It then replaced that order with a decree of interest on the same at bank rate as of the date of the accrual of cause of action to the date of judgment.

On failure by the High Court to award costs to the appellant, the Court held that as the trial court's determination on the negligence of the respondent and its direct consequences to the injuries sustained by the appellant has not been disturbed in the first appeal but only the quantum of general damages, the respondent cannot escape from being blamed for the costs of prosecution of the suit at the trial court. The respondent can only be partly excused for the costs of prosecution of the appeal to the High Court. The Court then went on to uphold the finding and order of the trial court as to costs.

At the end, the appeal partly succeeded to the extent of the second and third grounds of appeal as stated above. Consequently, the award by the trial court of interest on special damages at the bank rate from the date of accrual of cause of action to the date of judgment as well as the costs of prosecution of the suit were upheld. Further, the award of interest on the decretal sum from the date of judgment to the date of full settlement of the same was varied so that the rate of interest was declared to be 7% per annum. Each party was to bear its costs.

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