

## HABAKUBAHO v SORWATRACO ET AL.

Rwanda COURT OF APPEAL – RCAA 00003/2020/CA (Nyirandabaruta, P.J.,) 04 December 2020]

*Contracts – Damages related to occupational hazards – When the victim of a hazard is already insured as an employee (social security) and the hazard is caused by another person other than his employer or his employer’s employee, the hazard victim or his or her descendants, have the right to claim damages from the victim under ordinary laws, in the event where such damages are not provided for by labor laws.*

*Insurance – The difference between an occupational hazard, a traffic accident and an accident caused by something else due to the negligence of its owner – In the event where the accident is not caused by a motor vehicle on the road, the ordinary laws or other special rules related to reparation of damages are applicable – an accident that occurs in the course of loading and unloading is differentiated from road accidents and occupational hazards, the victim only indicates the person responsible for the damages, that he/she is the owner of the property that occasioned the accident and that such property contributed to his/her claim for damages.*

*Insurance – Insurance contract – Delay in notifying the accident itself does not remove the obligations contained in the insurance contract.*

**Facts:** The case began before Gicumbi Intermediate Court, with Habakubaho claiming for damages related to the accident caused by a car door which broke his back, he is accordingly suing Sorwatraco the owner of the vehicle; during the hearing, Sorwatraco sought for the intervention of Bralirwa- Habakubaho's employer and Sanlam Sorwatraco’s Insurer at the time. The court ruled that his claim was well-founded and accordingly ordered Sanlam, Sorwatraco's insurer to pay Habakubaho damages resulting from such accident.

Sanlam was not satisfied with that ruling and thus appealed before the High court on grounds that it was ordered to pay damages which are not under the obligations of an insurer disregarding that the owner of the vehicle had not notified the accident, the High Court ruled that the appeal was well-founded; that Habakubaho’s accident which was caused by a motor vehicle is not a traffic accident accordingly Sanlam cannot pay damages resulting from such accident on ground that Habakubaho was injured by the door of the car which was not on the road, the court found that what occurred was an occupational hazard, and the liability thereof should be covered by his former employer at the time of the accident, or the National Social Security Board .

Habakubaho was not contented with the ruling, and accordingly appealed to the Court of Appeal, claiming that he was not awarded damages occasioned by the accident on the grounds that Sorwatraco's contract with Sanlam does not cover them, it is accordingly his stance that in the event where Sorwatraco fails to indemnify him, Sanlam Ltd should do so given that he cannot be the victim of the vehicle owner’s failure to notify the accident.

Whereas Sorwatraco and Sanlam contend that Habakubaho should not receive compensation for the accident because he did not have a road accident to warrant the awarding of such damages, and that there was no reason for the notification of that accident because he had an occupational hazard.

**Held:** 1. When a victim of an occupational hazard is insured under (social security) as an employee and the hazard is occasioned by another person other than his employer or his employer's employee, the hazard victim or his or her descendants, have the right to claim damages from the party responsible for the accident under ordinary law in case the damages are not provided for under labor laws, accordingly Bralirwa as Habakuba's employer should not be held liable for damages on ground that the accident was caused by Sorwatraco.

2. In the event where the accident is not caused by a motor vehicle on the road, ordinary laws or other special rules related to reparation of damages are applicable - an accident that occurs in the course of loading and unloading is differentiated from road accidents and occupational hazards, the victim only indicates the party responsible for the damages; that he/she is the owner of the property that occasioned the accident and that such property contributed to his/her claim for damages. Accordingly, Sorwatraco shall be liable for moral damages sought by Habakubaho on grounds neglecting the property it is supposed to protect.

**The lodged appeal has merit;**

**Statutes and statutory instruments referred to:**

Law No 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, articles 12 and 111;

Law N° 15/2004 of 12/06/2004 relating to evidence and its production, article 2;

Presidential Order N° 31/01 of 25/08/2003 on compensation for personal injury due accidents caused by motor vehicles;

Civil Code Book III, articles 258 and 260.

**Cases referred to:**

RS/REV/INJUST/CIV 0015/14/CS, Ntahnkiriye et al vs Icyitegetse Léa rendered on 31/07/2015

RS/INJUST/RCOM 00005/2020/SC rendered on 27/11/2020 about BPR ATLAS MARA PLC VS NKUSI Evariste, paragraph 18;

RS/REV/INJUST/CIV 0023/16/CS rendered on 27/09/2019, in Rutabayiru et al vs Mukamabano Charlotte, paragraph 28.

**Authors cited:**

Yvonne Lambert- Faive et Laurent Leveneur, Droit des assurances, 12 ed. Paris, Dalloz, 2005, pp. 576, 579, 109

Yvonne Lambert- Faive et Stephanie Parchy- Simon, Droit du dommage corporel, systeme d'indemnization, 8 ed. Paris, Dalloz, 2016, p.451

Raymond Guillien na Jean Vincent; Lexique des termes juridiques, Dalloz, Paris 1988 p 4

## **Judgment**

### **I. BRIEF BACKGROUND OF THE CASE**

[1] On 09/03/2017, when Sorwatraco Ltd vehicle, plate No RAB 856Q carrying Bralirwa drinks was parked, its rear door opened and slammed into the back of Habakubaho Samson, causing him rendering him permanently incapacitated. Habakubaho Samson sued Sorwatraco Ltd before Gicumbi Intermediate Court, requesting compensation for the foregoing accident, the former in turn requested for the intervention in the case of both Bralirwa, the alleged Habakubaho Samson's employer, and Sanlam AG Ltd (formerly Soras AG Ltd) the insurer of the car said to have caused the accident.

[2] Gicumbi Intermediate Court pronounced itself on case No RC 00073/2018 /TGI/GIC on 16/5/2019, and held that Habakubaho Samson's claim was well-founded, and accordingly ordered Soras AG Ltd the Sorwatraco Ltd's insurer to pay him economic damages amounting to 86,400,000 Frw, damages related to incapacity amounting to 1,080,000 Frw, but it did not grant him medical expenses as he could not justify them

[3] Sanlam AG Ltd appealed against the case before the the High Court on grounds that it had been charged damages that are not covered by the insurer and that the owner of the vehicle had not notified the accident, the High Court pronounced its on case case No RCA 00242/2019/HC/KIG on 8/5/2020, and held that the appeal of Sanlam AG Ltd has merit; that Habakubaho Samson's accident caused by the vehicle with plate NoRAB 856 Q was not a road accident, thus such accident could not be covered by Sanlam AG Ltd because Habakubaho Samson was injured by the door of the car which was not on the road, cutting his back as he was unloading it, it is rather in the finding of the court that what actually occurred was an occupational hazard, the liability of which must be borne by the former employer at the time of the accident, or by Rwanda Social Security Board.

[4] Habakubaho Samson was not satisfied with the High Court decision, he accordingly lodged an appeal before the Court of Appeal, on grounds that he was not compensated for the accident on the grounds that Sorwatraco Ltd's contract with Sanlam AG Ltd had not provided for it, he is therefore of the stance that he should be compensated by SORAS AG Ltd that has now become Sanlam AG Ltd in case Sorwatraco Ltd fails to do it, on the ground that he cannot be a victim of the vehicle owner's failure to notify the accident.

[5] The Representative of Sorwatraco Ltd and Sanlam AG Ltd contend that Habakubaho Samson does not deserve compensation for the accident because he did not have a road accident to warrant compensation, and there was no reason for the notification of that accident because he had an occupational hazard.

[6] The case was heard in public on 21/10/2020, wherein Habakubaho Samson represented by learned Counsel Mutabaruka Jean, Sorwatraco Ltd represented by learned Counsel Munyandamutsa Jean Pierre and Sanlam AG Ltd represented by learned Counsel Mukandori Brigitte.

## **II. LEGAL ISSUES AND THEIR ANALYSIS**

- **To determine whether the absence of accident notification removes the obligation to honour the contract Sanlam AG Ltd signed with Sorwatraco Ltd**

[7] Mutabaruka Jean argues that the fact that no accident notification was made does not invalidate the contract that Soras AG Ltd which became Sanlam AG Ltd signed with Sorwatraco Ltd seeing that Sanlam AG Ltd was supposed to compensate Habakubaho Samson and then ask Sorwatraco Ltd to refund it as there is no indication of what the driver of Sorwatraco Ltd and turn boy (boy chauffeur/ turn boy) did when they saw that their car had an accident.

[8] Learned Counsel Munyandamutsa Jean Pierre, avers that there was no need for Sorwatraco Ltd to make accident notification in the event where no accident occurred that was covered by the insurer, but in the event the court finds otherwise the compensation should be sought from Sanlam AG Ltd, although in principle it is their stance that it was not necessary for them to appear before the court, but they were requested to intervene in the case in order to prevent the increase of cases.

[9] Learned Counsel Mukandoli Brigitte alleges that learned Counsel Mutabaruka Jean states that they have requested compensation because the car door hit Habakubaho Samson, but did not specify what the law provides for in view of such accident, as no accident file was made to notify the insurer, which is why Sanlam AG Ltd should not award any compensation.

## **DETERMINATION OF THE COURT**

[10] Article 9 of the agreement between Soras which became Sanlam AG Ltd and Sorwatraco Ltd dated 09/07/2013 stipulates that the insured undertakes to notify the insurer of any accident involving a third party and in accordance with Article 2 & 1 of Decree-Law No. 32/75 of 7 August 1975 relating to the compulsory insurance of civil liability in respect of motor vehicles, to do everything in his power to notify the insurer of the road accident established by the traffic police and to provide the report of the accident, failure to do so would lead to a deduction of 10% of the insured damages as a penalty, or else to the the insurance will lose validity depending on the circumstances of the accident (l'assuré s'engage pour tout accident impliquant un tiers et ce conformément à l'article 2 & 1 de décret-loi No 32/75 du 7 Aout 1975 relatif à l'assurance obligatoire de la responsabilité civile en matière des véhicules automoteurs à tout mettre en œuvre en vue de faire constater l'accident par la police de roulage et en fournir le procès-verbal. Tout manquement à cette obligation entraîne automatiquement l'application d'une pénalité égale à 10% qui sera déduite de la valeur du sinistre ou à la déchéance de garantie selon les circonstances de l'accident).

[11] The Court finds, as elucidated above that, the agreement between Sanlam AG Ltd's and Sorwatraco Ltd provides that an insured person who fails to disclose the accident, shall be charged a certain amount of money by the insurer due to such negligence, though the agreement does not stipulate that in the event where an accident is proven, the insurer cannot compensate the injured party, which means that the delay in notifying the accident itself does not remove the obligations contained in the insurance contract Soras AG Ltd, which became Sanlam AG Ltd, with Sorwatraco Ltd got the insurance.

- **Whether Habakubaho Samson can be awarded the damages he is seeking by the party which might be held liable between Sorwatraco Ltd and sanlam AG Ltd**

[12] Learned counsel Jean Mutabaruka submits that the judge motivated in paragraph 13 of the judgment under appeal that the damages claimed by Habakubaho Samson would not be paid by the insurer in accordance with the provisions of Article 8 of the general terms of the insurance agreement between Sanlam AG Ltd and Sorwatraco Ltd ( general conditions), and accordingly moved the court to rectify that on grounds the first paragraph of the agreement Sorwatraco Ltd entered into with Soras AG Ltd, currently Sanlam AG Ltd, which insured the liability of vehicles belonging to Sorwatraco Ltd including the car involved in the accident, and that the agreement does not state whether the vehicle is moving or not, but rather it states in 4, that insurance is effective from the moment the vehicle moves, during loading and offloading , and this is inconsistent with Article 8 upon which the the High Court based its ruling as it relates to the compensation of the vehicle on fire, stolen vehicle, [...], which has nothing to do with the accident Habakubaho Samson had, in lieu ,the Court would have relied on Article 4 and 9 of the contract and award Samson the compensation he is seeking..

[13] Learned Counsel Jean Mutabaruka adds that they sued Sorwatraco Ltd on grounds that door of its vehicle opened itself and hit Habakubaho Samson, and it is on such backdrop that they seek damages in accordance with Article 258 of the of Civil Code Book III, applicable at the time of the accident, and Sorwatraco Ltd argued that it has an insurer and demanded that he intervene in the case, and there was an issue of traffic accident which they later turned into an occupational hazard yet Habakubaho Samson was a daily wage earner paid for the crates he packs or unloads, and has nothing to do with the vehicle, but the driver and his assistant (Boy Chauffeur/turn boy) left it and went away, they should accordingly be held liable of their lack of precaution , that the reason Bralirwa did not pay compensation was that it was not the owner of the car or its insurer.

[14] Learned Counsel Mukandori Brigitte argues that the agreement between Soras AG Ltd and Sorwatraco Ltd should not be based on for awarding compensation on ground that no road accident occurred, instead Habakubaho Samson had an accident when the car was parked and the engine turned off, that if the door fell on him it was due to the manipulations and his messing around such accidents are insured, only those that occur on the road when the engine is turned on are ensured, which is why she finds the damages sought by Habakubaho Samson unfounded, especially that even the Police was not immediately called in to investigate the matter, on the contrary, the investigations were carried out four years after the accident, after Habakubaho Samson had lost in labor lawsuits.

[15] Learned Counsel Mukandori Brigitte goes on to submit that the statement of learned counsel Mutabaruka Jean's averments to the effect that that the court should base itself on Article 4 of the is not true, because the clause would apply only if the vehicle was moving, but if person hits himself on it while parked, that would be his/her fault, accordingly there was no traffic fault made by the vehicle under its insurance, on the contrary what actually happened to Habakubaho Samson was an occupational hazard that should have been insured by his employer the « Intwali » Cooperative whereas Article 9 he alluded to is not related to the accident in question, while Article 8 adumbrates the exclusions in the general contracts (exclusions). She submits that all the grounds raised by learned Counsel Mutabaruka Jean can be valid only in the event where the car is moving, which is why Sanlam AG Ltd would not have been requested damages when it was notified of the accident as provided for under article 19 of Decree-Law No. 32/75 of 7/08/1975 on Motor Vehicles.

[16] Learned Counsel Munyandamutsa Jean Pierre, submits that Habakubaho Samson's accident is not covered by insurance, that it was an occupational hazard because he immediately sued Bralirwa fully aware that what occurred to him was an occupational hazard, it is thus in his stance that if he was not satisfied with the court ruling in the labor cases, he would have resorted to the application for review due to injustice. With regard to learned Counsel Mutabaruka's averments to the effect that the fact that the door of Sorwatraco Ltd's opened itself, it does not preclude it from being called an accident covered by the insurer because their contract does not specify whether the car is moving or not, he further submits that HABAKUBAHO Samson signed a contract with "Intwali" Cooperative which also signed a contract with Bralirwa to supply workers to unload which service Habakubaho Samson was offering at the time.

## **DETERMINATION OF THE COURT**

[17] Article 2 of the Law N° 15/2004 of 12/06/2004 relating to evidence and its production stipulates that "Evidence is the demonstration of the truth of fact". And Article 3 of the said law provides that "Each party has the burden of proving the facts it alleges".

[18] Article 12 of the Law No 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure provides that "The claimant must prove a claim, failing which the respondent wins the case".

[19] Article 260 of the Law of 30 July 1888 establishing Civil Code Book III relating to duties and responsibilities or contracts, into force at the time of the accident of Habakubaho Samson provides that: «One is responsible not only for the damage caused by one's own act, but also for that which is caused by the act of persons for whom one is responsible, or of under one's care».

[20] The contract between Sorwatraco Ltd's and Soras AG Ltd which became Sanlam AG Ltd on 09/07/2013 provides, in its first paragraph, page one that in the general provisions of the contract on insurance policy model 2501 issue 10/84 and in these special articles Soras Assurances Generales Ltd, PO BOX 924 Kigali, undertakes to ensure the civil liability of the motor vehicles of Sorwatraco Ltd KIGALI from 12/07/2013 until 11/07/2014 (couvre la responsabilité civile des véhicules automoteurs de Sorwatraco Ltd KIGALI à partir du 12/07/2013 jusqu'au 11/07/2014).

[21] Article 4 of that contract provides that the person insured admits that his insured vehicles covered shall be used either for tourism activities, transport or delivery of different goods, excluding any transport of goods and persons for consideration (L'assuré déclare que les véhicules couverts sont utilisés soit pour la promenade et les affaires, soit pour le transport ou la livraison des biens divers, à l'exclusion de tout transport de biens ou de personnes à titre onéreux).

[22] Article 8 of the aforementioned contract, provides that: "Damages caused by the sole fact of the transported goods or by the manipulations necessary for the transport and not resulting from the use of the vehicle are excluded from the insurance" (Sont exclus de l'assurance les dommages causés par le seul fait des choses transportées ou par les manipulations nécessitées par le transport et ne résultent pas de l'usage du véhicule).

[23] The case file shows that on 25/01/2018 the Gicumbi Police Station conducted an investigation into the case of Habakubaho Samson, and confirmed that Habakubaho Samson was

an employee of Bralirwa from 2004 to 2014 in charge of unloading vehicles that had supplied the beverages but he had no written contract, he was paid on a daily basis (daily wage) because he was a member of the Intwali Cooperative, and on 9/3/2014 when he was at work with his colleagues Gahamanyi Jean born in 1981 and Rukundo Jean d'Amour born in 1971, confirmed that as they unloaded the vehicle with plate NoRAB 856 Q belonging to Kayombya Robert that was carrying Bralirwa drinks as usual, its back door broke up and hit Habakubaho Samson and broke his back, as indicated by Habakubaho Samson's medical records.

[24] The investigation also revealed that Sorwatraco Ltd (Societe Rwandaise de transport et Commerce au Rwanda)'s vehicle with plate No RAB 856 Q was being driven by Ruhumuriza Bralirwa Ltd employee as established by witnesses who worked for Bralirwa Ltd, Gicumbi branch in their statements.

[25] The case file shows the a medical report dated 8/2/2015 made by Dr. A.E Nkusi who works at King Faisal Hospital, confirming that Habakubaho Samson sustained an 80% permanent disability/incapacity.

[26] With regard to the compensation Habakubaho Samson had claimed in connection with the accident that caused him 80% disability, the High Court ruled that no compensation should be awarded because the accident was an occupational hazard, instead of a road accident for which Sorwatraco Ltd got insured for by Soras AG Ltd which has now become Sanlam AG Ltd.

[27] In order to better understand whether Habakubaho Samson's accident was an occupational hazard or a road accident covered by the insurer, it is important to point out the difference between an occupational hazard and a road accident.

[28] With regard to occupational hazards, legal experts Raymond Guillien and Jean Vincent, state that an occupational hazard is an accident, regardless of the cause, to any person employed or working in any capacity or at any place whatsoever for one or more employers.

[29] With regard to road accident, legal experts Yvonne Lambert- Faive and Laurent Leveneur in their legal analysis explained that a road accident includes any use of the vehicle within a private property or on a public road. It should be noted that a vehicle intended for scrap and abandoned on a public road may be the cause of a traffic accident and its owner must therefore be insured.

[30] With regard to Habakubaho Samson's accident, the Court finds that although he was at work offloading Bralirwa Ltd's drinks from Sorwatraco Ltd's vehicle, the accident was not caused by what he was unloading to qualify it as an occupational hazard (fait du travail), rather it arose from a problem that the vehicle itself had (mechanical problems) of its door that was not firmly fix fixed on the hinges causing it to hit him, and such a hazard was not which is not among the risks insured under the contract Sorwatraco Ltd signed with Sanlam AG Ltd, in consideration of what is provided under article 8 mentioned herein above, which means that Sanlam AG Ltd cannot be held liable for damages resulting from the accident suffered by Habakubaho Samson.

[31] The court also finds that the Habakubaho Samson's employer cannot not be held liable for such accident on ground that as elucidated hereinabove the accident in question does not qualify to be an occupational hazard as it had nothing to do with the work he was doing. it is however in the finding of the court that the accident was occasioned by someone else's vehicle (Sorwatraco

Ltd's vehicle), accordingly, pursuant to the provisions of Article 260 of Civil Code Book III mentioned above, which was applicable at the time Habakubaho Samson had the accident, Sorwatracco Ltd is found liable for such damages.

[32] The aforementioned legal experts state that When a victim of an occupational hazard is insured under (social security) as an employee and the hazard is occasioned by another person other than his employer or his employer's employee, the hazard victim or his or her descendants, have the right to claim damages from the party responsible for the accident under ordinary law in case the damages are not provided for under labor laws, accordingly Bralirwa as Habakuba's employer should not be held liable for damages on ground that the accident was caused by Sorwatracco.

[33] As indicated in the preceding paragraphs, experts Yvonne Lambert- Faive and Stephanie Parchy- Simon demonstrated that in the event where the accident is not related to traffic, common law of civil liability or another specific compensation scheme shall be applicable, they also point out that accidents occurring during loading and unloading are differentiated between traffic accidents and occupational risks. They indicate that the party responsible for the damages ; that he/she is the owner of the property that occasioned the accident and that such property contributed to his/her ground in claim for damages

[34] Based on all the the foregoing elucidations in the present case, regarding the party to be held liable for awarding the compensation related to accident in in the event where its not insured, the court finds Sorwatracco Ltd is the liable party to pay Habakubaho Samson the moral damages he claimed on ground of negligence in this matter, as it appears that it failed to find out early on the problem it's the rear door of his vehicle hawhich was not properly locked, until it broke and hit him.

- **To determine the compensation that should be awarded to Habakubaho Samson**

[35] Learned Counsel Mutabaruka Jean requests that his client be compensated for the incapacity he sustained in accordance to the Presidential order No 31/01 of 25/08/2003 on compensation for personal injury due accidents caused by motor vehicles, amounting to 92,147,015 Frw, and 1,500,000 Frw for procedural fee and 2,000,000 Frw for Counsel fee.

[36] Learned Counsel Munyandamutsa Jean Pierre states that following all the motivations evidences and thelegal provisions upon which they base themselves, he finds that Habakubaho Samson is not entitled to compensation in this case on ground that he sustained no damage from Sorwatracco Ltd, on the contrary it should be the other way round, seeing that in the case under appealpar 2 of the court ruling the judge erroneously ordered that Sorwatracco Ltd and Habakubaho to collectively pay compensation amounting to one million francs (1,000,000 Frw, given that Sorwatracco Ltd made no mistake in this case to warrant compensation. He finds that all the damages claimed in this case should be paid by Habakubaho Samson, and given that Sorwatracco Ltd hired a Counsel since the beginning of the case, he accordingly requests for damages amounting to 3,000,000 Frw in this regard.

[37] Learned Counsel Mukandori Brigitte, a representative of Sanlam AG Ltd, contends that Habakubaho Samoson should not be entitled to compensation because he flivolously lodged this



case instead he would be fined 8,000,000 Frw at this level of hearing in addition to damages awarded to Sanlam AGA Ltd by the High Court because he wantonly lodged the claim.

## **DETERMINATION OF THE COURT**

- **With regard to compensation related to accident**

[38] Article 258 of the Law of 30 July 1888 establishing Civil Code Book III relating to duties and responsibilities or contracts, into force at the time of the accident of Habakubaho Samson provides that: “Any act of man which causes damage to another, obliges the one through whose fault it was done to repair it”.

[39] The Court of Appeal finds that the damages amounting to 92,147,015 Frw Habakubaho Samson is claiming are based on the Presidential order no 31/01 of 25/08/2003 on compensation for personal injury due accidents caused by motor vehicles, as he was of the stance that the accident he had was provided by such order, but as motivated, the accident was due to the negligence of the owner of the vehicle who did not detect the issue in time the vehi rear door issue and as a result crushed his back and incapacitated him. The court finds therefore that the damages to be awarded are provided for under Article 258 combined with article 260 of the aforementioned Law of 30 July 1888 establishing Civil Code Book III, which was in force at the time of the accident, in relation to any action that damages a person because of negligence on the part of the person in charge, but because the law does not provide for the the modality of calculating such compensation, they be determined in the discretion of the judge, in consideration of the disability caused by the accident and its consequences.

[40] The court finds that, as it is indicated in this case, Habakubaho Samson's accident dealt him with a permanent disability of 80%, seeing thathe uses a wheel chair to move and he is unable to carry out any activity since his accident, accordingly, though there is no standard for determining the compensation, it is in the finding of the court that considering the permanent disability he has sustained hitherto, , considering his age and thegravity of his pain, he should be awarded 10,000,000 Frw in compensation for moral damages, instead of 92,147,015 he requested in a ccordance to the Presidential order No 31/01 of 25/08/2003 on compensation for personal injury due accidents caused by motor vehicles.

- **With regard to other damages requested in this case**

[41] Article 111 of the Law No-22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure provides that: “[...] the claim for legal costs is adjudicated at the same time with the principal claim. It can also be admitted and adjudicated even if the principal claim has not been admitted”.

[42] The court finds that the fact that Sorwatraco Ltd is the party that caused the accident and as a result Habakubaho Samson hired lawyer and pursue his case up to this stage, he should be compensated for the losses incurred in the case to wit: he should be granted 2,000,000 Frw as counsel fee as requested as they are not exorbitant considering that the proceedings started from the Intermediate Court up to the Court of Appeal, and is also to be awarded 1,000,000 Frw for procedural fee for all these levels.

[43] The court finds that Habakubaho Samson and Sorwatraco Ltd should not pay 1,000,000 Frw they were ordered to award Sanlam AG Ltd, as it appears that his allegations were well-founded, whereas the amount that Sorwatraco Ltd had to pay Sanlam AG Ltd is sustained because it was the one that requested for the intervention of Sanlam AG Ltd in the case yet it concurs that there no traffic accident occurred.

### **III. DECISION OF THE COURT**

[44] Declares that the appeal lodged by Habakubaho Samson has merit in part ;

[45] Holdsthat the judgement N° RCA 00242/2019/HC/KIG rendered by the High Court on 8/5/2020 is reversed ;

[46] Orders Sorwatraco Ltd to pay Habakubaho Samson 10,000,000 frw for moral damages, 2,000,000 Frw for Counsel fee and 1,000,000 Frw for procedural fee ;

[47] Orders also Sorwatraco Ltd to pay Sanlam AG Ltd 500,000 Frw in which was granted in the judgment under appeal ;

[48] Orders that the court fees be transferred to public funds for Habakubaho Samson has a certificate proving that he is an indigent person (a needy person).