

## **SONARWA GENERAL INSURANCE COMPANY Ltd(SONARWA) v. NYIRAGANZA**

[Rwanda SUPREME COURT – RS/INJUST/RC 00047/2017/SC (Rugege P.J, Kayitesi R. and Mutashya, J) 23 September 2018]

*Insurance law – Insurance contract – If a victim writes to the insurance company requesting it to appoint a doctor who has to join the medical commission which decides on his transfer for medical treatment abroad but does not get a response, this does not prevent him to travel because he has to save his/her life, it's the reason why the insurance company has to refund all expenses used for medical treatment abroad – Presidential Order N°31/01 of 25/08/2003 on compensation for personal injury due to accident caused by motor vehicles, article 13.*

*Insurance Law – Insurance contract – The document which serves as receipt of money (form) prepared by the insurance company and signed by the client who was not involved in its preparation, is an evidence that he/she has been paid and the amount he received, but it cannot be considered as an evidence of transaction for even other demands not settled by the insurance company.*

**Facts:** A vehicle insured by SONARWA hit another vehicle in which seven people including Nyiraganza who was left with disability of 60%, after Nyiraganza tried in vain to conclude a transaction with SONARWA, she filed a claim before the Intermediate Court of Nyarugenge requesting various damages which include damages for financial loss, damages for pain endured, aesthetic damages, career damages and different fees spent for medical treatment. This court decided that Sonarwa must pay to Nyiraganza damages originating from the accident she had and awarded her damages for financial loss, damages for pain endured, career damages and different fees spent for medical treatment in and outside the country.

Nyiraganza appealed to High Court stating that damages for financial loss she was awarded were computed basing on 2,500Frw per day while she demonstrated that she is a businesswoman earning 10,000Frw per day and also, was not awarded aesthetic damages though she claimed for them.

SONARWA also appealed against that judgment arguing that it demonstrated that working days in a month are 25, but the Court calculated damages basing on 30 days, and that also, the Court awarded medical treatment and transport fee spent by Nyiraganza abroad while she travelled on her own initiative without the role of SONARWA.

The High Court rendered the judgment and ordered SONARWA to pay Nyiraganza damages resulting from the accident, transport fee, procedural and counsel fee, it also held that the appealed judgment is reversed with regards to expenses for medical treatment abroad which cannot be refunded because she went there without medical commission's permission.

Nyiraganza wrote to Ombudsman's office requesting to examine the injustice she suffered from the judgment rendered by the High Court regarding the decision that she cannot be refunded the money she spent for medical treatment in India. After examining her request, the Ombudsman found indeed that the ruling of that case is vitiated by injustice and wrote to the President of Supreme Court requesting for the review of this case due to injustice.

After examination of the inspectorate general of Court's report on that case, the president of Supreme Court decided the review of this case on the grounds of injustice.

At the beginning of the hearing, Sonarwa raised an objection of inadmissibility of the claim of injustice lodged by Nyiraganza because she has no interests of following up the case while there is a transaction between her and Sonarwa.

Nyiraganza states that there was no transaction between them because the money she received which Sonarwa bases on to state that there was a transaction, is from the execution of the judgment rendered by the High Court. Thus, she states that the objection lacks merit. After examination, the Court overruled that the objection.

The case resumed whereby Nyiraganza states that the medical report from her doctor indicates that she has to go abroad for medical treatment because treatment she requires is not available in Rwanda, also that she did everything in her ability to put in place the medical commission which had to decide on her transfer abroad for medical treatment because she wrote to SONARWA requesting it to appoint its doctor so that together with hers they may designate the third, but SONARWA did not reply.

SONARWA in its defence stated that Nyiraganza has no interests to sue, thus, there is no reason it should defend itself on the money she used for medical treatment in India, it also, states that Nyiraganza has concluded a contract with SONARWA that she won't have any other claim against it, thus she has to bear the consequences of what they agreed, it states also that, transport fees, visa and fees for sick care taker in India are not provided by the Presidential Order on compensation for personal injury due accident caused by motor vehicles.

**Held:** 1. The document which serves as receipt of money (form) prepared by the insurance company and signed by the client after the payment who is not involved in its preparation, is an evidence that he has been paid and the amount he received, but it cannot be considered as an evidence of transaction for even other demands not settled by the insurance company.

2. Invoices or being a taxpayer is not a proof of a profession of business.

3. If a victim writes to the insurance company requesting it to appoint a doctor who has to join the medical commission which decides on his transfer medical treatment abroad but does not get a response, this cannot prevent him to travel because he has to save his life, reason why the insurance company has to refund all expenses used for medical treatment abroad. Thus, that company cannot base on its silence and refuse to pay damages. Otherwise whenever an insurance company does not want to pay will keep silence and don't appoint the doctor who has to join others on medical commission which has to decide on the transfer of the patient to go abroad for medical treatment.

4. The judgment rendered as final decision is the one subjected for review due to injustice. Thus, a party to the case cannot raise a claim for the first time in case review due to injustice.

**The objection of lack of jurisdiction is overruled.  
The claim of injustice has merit in parts.**

**Statutes and statutory instruments referred to:**

Organic Law N°03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, article 81.

Law N°15/2004 of 12/06/2004 relating to evidence and its production, article 3.

Decree - Law of 30/07/1888 relating to Contracts or conventional obligations, article 258.

Presidential Order N°31/01 of 25/08/2003 on compensation for personal injury due to accident caused by motor vehicles, article 13.

**No cases referred to.**

## **Judgment**

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

[1] This case originates from a road accident which occurred on 13/01/2010 when a vehicle Mitsubishi Fuso UAL 879 H insured by Sonarwa hit a vehicle RAB 220 G whereby 7 persons were injured including Nyiraganza Ramu who was seriously injured because she got disability of 60%.

[2] Nyiraganza Ramu filed a claim to the Intermediate Court of Nyarugenge requesting for various damages which include pecuniary damages, damages for pain endured, aesthetic damage, medical fee she used, damages related to experience for work, all equal to 45,468,032Frw.

[3] The counsel for SONARWA argued that, the damages claimed from SONARWA are excessive, concerning pecuniary damages, he finds that, there is no evidence indicating that Nyiraganza Ramu was a business woman, whose damages should be computed at Guaranteed minimum inter-professional wage then calculate those damages for 25 days, as regards to medical expenses she incurred abroad, SONARWA argues that it cannot be refunded because she travelled without a permission, finally the procedural and the counsel fee can be awarded in Court's discretion.

[4] In the judgment RC0548/13/TGI/Nyge rendered on 31/10/2013, the intermediate Court of Nyarugenge held that Sonarwa should pay to Nyiraganza Ramu damages resulting from the accident she had, then it awarded her pecuniary damages equal to 3,709,923Frw, damages for pain equal to 900,000Frw, damages related to the experience of work equal to 450,000Frw and various medical expenses amounting to 10,129,924Frw (comprising of unpaid 90,877Frw, 9,638,047Frw used for medication in India and 401,000Frw used for transport), 100,000Frw for procedural fee and 300,000Frw of counsel fee awarded in Court's discretion.

[5] Nyiraganza Ramu represented by Counsel Ruzindana appealed to High Court, stating that pecuniary damages she was awarded, were based on 2,500Frw per day while she proved that she was running a business of trading shoes which generated 10,000Frw per day, she was not awarded aesthetic damages while she claimed for them and also that, she was awarded insufficient procedural and counsel fee.

[6] Sonarwa also appealed for that case on the grounds that the Court disregarded its arguments of defense, indicating that working days are 25, but the Court computed basing on 30 days without subtracting holydays, which caused Nyiraganza Ramu to get excessive damages. It appealed also on the ground that the Court awarded medical fee she used abroad while she travelled herself without Sonarwa's consent.

[7] The High Court rendered the judgment RCA649/13/HC/KIG-RCA651/13/HC/KIG on 20/6/2014, and held that the appeal of Nyiraganza Ramu and that of SONARWA have merit in part, it ordered SONARWA to pay Nyiraganza Ramu damages resulting from the accident, transport, procedural and counsel fee equal to 6,851,800Frw comprising of aesthetic damages (which were not awarded by the previous Court), it held that the judgment RC0548/13/TGI/NYGE is reversed only with regards to damages she should not have been awarded of 9,638,047Frw used for medication abroad because she travelled on her initiative without the permission of the committee which has this duty.

[8] Nyiraganza Ramu wrote to Ombudsman on 03/10/2014, requesting to examine the injustice she suffered which is contained in the judgment RCA649/13/HC/KIG- 651/13/HC/KIG, regarding the decision that she should not be refunded the money she used as medical expenses abroad in India. After the review of her request, the Ombudsman found that, the adjudication of the case is vitiated with injustice of the decision that SONARWA shall not refunding Nyiraganza the medical expenses she used abroad, the Ombudsman wrote to the President of Supreme Court, requesting for the review of the impugned case on the ground he indicated. After examination of report of the inspectorate general of Courts regarding that case, the President of Supreme Court decided to review that case on the grounds of injustice.

[9] The case was heard on 27/07/2018, whereby Nyiraganza Ramu was represented by Counsel Ruzindana Ignace, while SONARWA was represented by Counsel Munderere Léopold. At the beginning of the hearing, the representative of SONARWA raised an objection of inadmissibility of the claim of injustice filed by Nyiraganza Ramu because she has no interests to pursue the lawsuit while there is a transaction between her and SONARWA.

## **II. ANALYSIS OF LEGAL ISSUES**

**Whether there was a transaction between Sonarwa and Nyiraganza Ramu, so that her claim should not be reviewed due to injustice.**

[10] Counsel Munderere Lepold representing SONARWA states that, Nyiraganza Ramu has no interest to pursue this lawsuit, because there was a transaction between her and SONARWA as provided by article 591 of civil code book three, whereby Nyiraganza Ramu was paid 274,958Frw for medical treatment and on 24/09/2014 was paid 6,851,800Frw, thus, as long as she accepted that payment, there should be no other claim as she signed for it.

[11] Counsel Ruzindana Ignace representing Nyiraganza Ramu states that there was no transaction, because before filing a claim to Court, Nyiraganza Ramu approached SONARWA claiming for damages provided by the presidential order but SONARWA refused. With regards to the money received by Nyiraganza on which SONARWA bases on to evoke the transaction, originates from the execution of the judgment RCA0649/13/HC/KIG, and after she received the

money Nyiraganza Ramu signed a form drafted in french language by SONARWA, proving that she received that money.

## VIEW OF THE COURT

[12] Article 81 of the Organic Law 03/2012/OL Of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court which was into force at time of filing the claim provides that a final decision shall be reviewed due to injustice [...] When there are provisions and irrefutable evidence that the judge ignored in rendering the judgment [...].

[13] The case file indicates that there is a document titled *quittance partielle de reglement d'indemnites, dommage corporels* N°2/2012 Nyiraganza Ramu where she received 274,958Frw and another one titled *quittance definitive de reglement d'Indemnites dommages corporels* N°793/2014 which indicates that Nyiraganza Ramu was paid 6,851,800Frw.

[14] The court finds that all that amount paid to Nyiraganza Ramu by SONARWA is related to damages she was awarded by the High Court in the judgment RCA0649, 0651/13/HC/KIG rendered on 20/06/2014, this implies that SONARWA did not give her that money in terms of transaction, instead it was paid for the execution of the Court's decision.

[15] The Court therefore finds, that, though Nyiraganza Ramu received damages she won in a case which became binding, nothing prevents her to file a claim for review of injustice if she found that she was prejudiced by the refusal of the Court to award other damages.

[16] With regards to the statement of SONARWA that Nyiraganza Ramu discharged it from any further claim when she signed for that document while receiving that money, the Court finds it groundless, because the document signed by Nyiraganza Ramu is a standard form drafted by SONARWA without the involvement of the client, more often the clients sign it without reading its content. For the clients to fill and sign it after the receipt of their payment, the Court finds that, it is an evidence that they have been paid and the amount they received, but it cannot be considered as an evidence of transaction for other demands not settled by Sonarwa. In this case, Nyiraganza Ramu was not awarded all damages she requested to Court.

[17] The Court finds then that the form she signed is a proof of money she received but it does not waive her rights to pursue for other damages she felt entitled to, thus, it cannot be based on to reject her

### **Whether the damages requested by Nyiraganza Ramu should be awarded.**

#### **a. Regarding medical expenses incurred by Nyiraganza Ramu in India.**

[18] Counsel Ruzindana Ignace representing Nyiraganza Ramu states that the medical report from her Doctor dated 18/11/2011 indicates that Nyiraganza Ramu has to go abroad for medical treatment because treatment she requires is not available in Rwanda and Nyiraganza Ramu did everything in her ability to put in place the medical commission which had to decide on her transfer abroad for medical treatment, because she wrote to SONARWA on 29/02/2012 requesting it to appoint its doctor so that together with hers they may designate the third, but SONARWA did not reply, as Nyiraganza Ramu had no other option, her husband Serugira

Thomas took a loan of 1,416,000Frw in Kist Savings and Credit Cooperative Society where he was working and in Bank of Kigali which gave him a loan of 5,000,000Frw.

[19] Counsel Ruzindana Ignace states that the intermediate Court found that ground with merit, but the High Court stated that if SONARWA did not reply, it was not enough for her to decide to travel abroad for medical treatment, he found that it is injustice because SONARWA cannot base on its own turpitude to defend itself.

[20] Counsel Munderere Leopold continues stating that as long as Nyiraganza has no interest to sue, there is no reason that SONARWA should defend itself on that money she spent for medical treatment in India, he states that, as she agreed to compromise with SONARWA amicably that she won't claim anything further from it, thus, she has to accept legal consequences related to the transaction she did, he further states that, transport fee, the visa and the expenses for the sick care taker spent in India are not provided by the presidential order N°31/01 of 25/8/2003 on compensation for personal injury due to accident caused by motor vehicles.

## **VIEW OF THE COURT**

[21] The case file indicates that, there is a medical report dated 18/11/2011 recommending that Nyiraganza Ramu has to go to India for medical treatment because the treatment she requires is not available in Rwanda.

[22] Regarding medical treatment abroad, article 13 of Presidential Order N°31/01 of 25/08/2003 on compensation for personal injury due to accident caused by motor vehicles, provides that: [...] In case of medical treatment outside Rwanda, transfer shall be decided beforehand by medical commission made up with the victim's doctor, the insurer's doctor and a third one requested by both.

[23] The case file indicates that on 27/02/2012 Nyiraganza Ramu wrote to SONARWA requesting it to appoint its doctor to meet with hers and decide on the third one whom together they decide on her transfer for medical treatment abroad, but that letter was never answered.

[24] The case file also indicates that on 09/03/2012 Serugira Thomas (the husband of Nyiraganza Ramu) concluded a loan contract with Bank of Kigali Ltd of 5,000,000Frw for medical treatment of his wife, there is another loan equal to 1,416,000Frw that Serugira Thomas requested on 30/04/2012 from Kist Savings and Credit Cooperative Society, also for the same purpose. In addition, there are invoices that Nyiraganza Ramu produced to Court proving the total amount she spent while abroad for medical treatment.

[25] The Court finds that, as long as medical treatment is concerned, SONARWA has the obligation to pay for expenses that Nyiraganza Ramu incurred from the treatment abroad based on the provisions of article 13 paragraph 2 of the Presidential Order on compensation for personal injury due accident caused by motor vehicles.

[26] Nyiraganza Ramu's letter, the Court finds that this would not prevent her to travel for medical treatment when she felt that her health is deteriorating, because she had to save her life,

though the Presidential Order did not provide for the situation where, either the insurance company does not reply or the time limit for response. It is clear that Sonarwa is at fault for not replying to the letter it received and accept or reject the request of Nyiraganza Ramu, reason why it cannot base on its silence and refuse to pay the money spent for medical treatment, while it is its duty. Otherwise, whenever the insurance company does not want to pay for medical treatment abroad, it will just keep silent and refuse to appoint the doctor to join the medical commission which decides on the transfer of the patient abroad.

[27] The Court finds that SONARWA must also pay for the money that Nyiraganza Ramu spent for sick care taker who accompanied her because she could not travel alone while she was seriously sick. Thus, she must be refunded whole amount of money she spent during her medical treatment in India, amounting to 10,129,924Frw as indicated in paragraph 4 of the judgment RC0548/13/TGI/Nyge rendered on 31/10/2013 by the intermediate Court of Nyarugenge.

#### **b. Regarding damages for financial loss.**

[28] Counsel Ruzindana Ignace states that there are evidence proving that Nyiraganza Ramu had an accident on her way back from trading and she has been paying tax, thus, her financial loss damages could not be computed basing on guaranteed minimum inter-professional wage of 2,500Frw which is based on to compute damages for informal jobs, but they should have been computed basing on 10,000Frw per day, and would have been awarded 14,839,694Frw instead of 3,709,000Frw, therefore he requests to award that money to his client.

[29] Counsel Munderere Leopold states that the two pieces of paper produced by Nyiraganza Ramu as evidence of paying tax, can not be based on to decide that she is a businesswoman.

### **VIEW OF THE COURT**

[30] The case file indicates that in proving that Nyiraganza Ramu was a businesswoman, she produced two pieces of paper titled "invoice of contribution for two months, where on each one was written 4,000Frw.

[31] The Court finds that these pieces of paper cannot be considered as evidence of paid tax while they indicate that it is a contribution, even though they were meant for tax, it is not the evidence for a person to be qualified as conducting business, Nyiraganza Ramu who appealed has to loose due to lack of evidence to prove that her profession of trading, basing on article 3 of the Law N<sup>o</sup>15/2004 of 12/06/2004 relating to evidence and its production which provides that each party has the burden of proving the facts it alleges otherwise its opponent wins.

#### **c. Regarding the money spent by Nyiraganza Ramu after medical treatment in India.**

[32] Counsel Ruzindana Ignace states that till now Nyiraganza Ramu is sick, that there is 363,000Frw which she paid to Kibogora Hospital, he requests to refund that money.

[33] Counsel Munderere Leopold representing SONARWA states that, regarding the money that Nyiraganza Ramu spent after returning from India has no link with injustice.

## VIEW OF THE COURT

[34] The Court finds that article 13 of the Presidential Order N°31/01 of 25/08/2003 on compensation for personal injury due accident caused by motor vehicles, provides that the injured person from the motor vehicle accident is refunded the money used for medical treatment, however Nyiraganza Ramu can not claim for it in this case while she did not claim for it in cases RC0548/13/TGI/NYGE and RCA649/13/HC/KIG-RCA 651/13/HC/KIG, because article 81 of the Law N°03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court which was in use when Nyiraganza Ramu filed a Court case, provides that the judgment rendered as final decision is the one subjected for review due to injustice.

### **3. Regarding other damages requested by parties.**

[35] Counsel Ruzindana Ignace argues that SONARWA be ordered to pay 7,000,000Frw for refusing to pay which lead to lawsuits and the Court should order it to refund the interests of 17,25% because this situation lead Nyiraganza Ramu and her husband Serugira Thomas to request for a loan in bank of Kigali and in Kist Savings and Credit Cooperative Society for her to get medical treatment, and that loan was producing an interest of 17,25%, because they were psychologically disturbed by looking for all means to get treatment, as the insurer disregarded his obligations and the Law, therefore those interests must be bone by SONARWA.

[36] He states that SONARWA refused to pay amicably to his client the money she used for medical treatment abroad and disregarded the Law because it did not put in place the medical commission which had to decide on her transfer abroad for medical treatment, thus, it should pay 1,000,000Frw for procedural fee and 2,000,000Frw of counsel fee.

[37] Counsel Munderere Leopold states that the damages requested by Nyiraganza Ramu should not be awarded because, she breached the contract and brought back Sonarwa in Courts, instead she should be the one to pay damages, therefore basing on article 106 of the Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, he requests that Nyiraganza should pay to SONARWA damages for vexatious lawsuits (action temeraire et vexatoire), and 1,000,000Frw for counsel fee.

## VIEW OF THE COURT

[38] With regards to damages claimed from SONARWA due to its refusal to pay what it knew that Nyiraganza was entitled to, also that it willingly refused to do the necessary for her to go abroad for medical treatment as it was recommended by doctors, the Court finds that SONARWA disregarded its obligations by refusing to refund Nyiraganza Ramu the expenses she incurred for medical treatment in India, it disregarded the fact that the doctor indicated that her illness requires the means which are not available in Rwandan Hospitals, this lead her to resort to Courts, to te extent that she applied for case review due to injustice, thus, SONARWA has to pay damages for this, based on article 258 civil code book three which provides that “any act of a man which causes damage to another obliges the person by whose fault it happened to repair it”. The Court finds however that the requested damages of 7,000,000Frw are excessive, it awards in its discretion 3,000,000Frw, but regarding the interests of 17,25% on the loan given by Bank of



kigali, Counsel Ruzindana Ignace failed to produce evidence of the interests charged by the bank or indicates how he computed them.

[39] Regarding 1,000,000Frw of procedural fee and 2,000,000Frw of counsel fee, the Court finds that, Nyiraganza Ramu deserves them because she wins the case, it awards in its discretion 300,000Frw of procedural fee and 1,000,000Frw of counsel fee, all amounting to 1,300,000Frw.

[40] Regarding damages for vexatious lawsuits and counsel fee requested by SONARWA, the Court finds that none of them can be awarded because it loses the case.

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

[41] Decides to admit and examine the claim of injustice of Nyiraganza Ramu and finds it with merit in part;

[42] Decides to reject the claim relating to fees spent by Nyiraganza Ramu after her medical treatment in India;

[43] Decides that damages for financial loss claimed by Nyiraganza Ramu can not be awarded;

[44] Orders SONARWA General Insurance Company Ltd to refund Nyiraganza Ramu the money she spent for medical treatment in India equivalent to ten million one hundred and twenty-nine thousand and nine hundred twenty-four (10,129,924Frw);

[45] Orders SONARWA General Insurance Company Ltd to pay Nyiraganza Ramu damages equal to 3,000,000Frw and 1.300.000Frw for procedural and counsel fees, all amounting to four million and three hundred thousand (4,300,000Frw).