HABAKUBAHO v SORWATRACO N'ABANDI

[Rwanda URUKIKO RW'UBUJURIRE – RCAA 00003/2020/CA (Nyirandabaruta, P.J,.) 04 Ukuboza 2020]

Amategeko agenga umurimo – Indishyi zikomoka ku mpanuka mu kazi – Iyo uwakoze impanuka asanganywe ubwishingizi nk'umukozi (assuré social) yayitewe n'undi muntu utari umukoresha we cyangwa umukozi w'umukoresha we, uwagize impanuka cyangwa abamukomokaho, bafite uburenganzira bwo gusaba uwateye impanuka indishyi z'ibyo yangirijwe hagendewe ku mategeko asanzwe, mu gihe ibyangiritse bidateganywa n'amategeko agenga umurimo.

Amategeko agenga ubwishingizi – Itandukaniro riri hagati y'impanuka y'akazi, impanuka yo mu muhanda n'impanuka yatewe n'ikindi kintu cyatewe n'uburangare bwa nyiracyo – Mu gihe impanuka idatewe n'ikinyabiziga kiri mu muhanda, amategeko asanzwe ateganya ibyo kwishyura indishyi ni yo akoreshwa cyangwa andi mategeko yihariye ajyanye no kwishyura indishyi. Impanuka ibaye igihe hakorwa imirimo yo gupakurura no gupakira itandukanywa n'impanuka zo mu muhanda n'impanuka zikomoka ku murimo, uwakoze impanuka, agaragaza gusa usabwa indishyi, ko icyateye impanuka cyari icye kandi icyo kintu kikaba cyagize uruhare ku byo ashingiraho asaba indishyi.

Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Gisumbi, Habakubaho asaba indishyizikomoka kumpanuka yatewe n'uruggi rw'imodoka rukamuvuna umugongo, akaba arega Sorwatraco ariyo yari nyira iyo modoka, mu rubanza Sorwatraco yasabye ko hagobokeshwa Bralirwa yari umukoresha wa Habakubaho ndetse na Sanlam yari umwishingizi wa Sorwatraco. Urukiko rwaciye urubanza rwemeza ko ikirego cye gifite ishingiro rutegeka ko Sanlam nk'umwishingizi wa Sorwatraco iha ndishyi zikomoka kuri iyo mpanuko Habakubaho.

Sanlam ntiyishimiye imikirize ijuririra Urukiko Rukuru ivuga ko yaciwe indishyi zitareba umwishingizi kandi na nyiri ikinyabiziga ataramenyekanishije impanuka, Urukiko Rukuru rwaciye urubanza rwemeza ko ubujurire bufite ishingiro, ko impanuka Habakubaho yatejwe n'ikinyabiziga atari impanuka yo mu muhanda, ko rero impanuka yabaye itakwishyurwa n'umwishingizi Sanlam kuko Habakubaho yakomerekejwe n'urugi rw'iyo modoka itagenda itari mu muhanda, rwasanze icyabaye ari impanuka y'akazi, uburyozwe bwayo bukaba bugomba kwirengerwa n'uwari umukoresha we mu gihe cy'impanuka, cyangwa ikigo cy'igihugu gishinzwe ubwiteganyirize bw'abakozi.

Habakubaho ntiyishimiye imikirize, ajuririra Urukiko rw'Ubujurire, avuga ko atahawe indishyi z'impanuka yagize hashingiwe ku mpamvu y'uko amasezerano Sorwatraco yagiranye na Sanlam ataziteganya, akaba asanga mu gihe adahawe indishyi na Sorwatraco yazihabwa na Sanlam Ltd, kubera ko kuba nyir'ikinyabiziga ataramenyesheje impanuka bitamugiraho ingaruka.

Sorwatraco na Sanlam bo bavuga ko Habakubaho indishyi yasabye atazihabwa kuko atakoze impanuka yo mu muhanda ku buryo yabiherwa indishyi, kandi ko nta mpamvu hari kuba imenyekanisha ry'ayo kuko yakoze impanuka y'akazi.

Incamake y'icyemezo: 1**.** Iyo uwakoze impanuka asanganywe ubwishingizi nk'umukozi (assuré social) yayitewe n'undi muntu utari umukoresha we cyangwa umukozi w'umukoresha we, uwagize impanuka cyangwa abamukomokaho, bafite uburenganzira bwo gusaba uwateye impanuka indishyi z'ibyo yangirijwe hagendewe ku mategeko asanzwe, mu gihe ibyangiritse

bidateganywa n'amategeko agenga umurimo, bityo Bralirwa nk'umukoresha wa Habakuba ikaba itagomba kuryozwa indishyi kuko impanuka yayitewe na Sorwatraco.

2. kwishyura indishyi niyo akoreshwa cyangwa andi mategeko yihariye ajyanye no kwishura indishyi. Impanuka ibaye igihe hakorwa imirimo yo gupakurura no gupakira itandukanywa n'impanuka zo mu muhanda n'impanuka zikomoka ku murimo, uwakoze impanuka, agaragaza gusa usabwa indishyi, ko icyateye impanuka cyari icye kandi icyo kintu kikaba cyagize uruhare ku byo ashingiraho asaba indishyi, bityo Sorwatraco niyo igomba kuryozwa indishyi z'akababaro Habakubaho yasabye kubera kutita bu kintu ishinzwe kurinda.

Ubujurire bwatanzwe bufite ishingiro;
Urubanza rwajuririwe rurahindutse;
Amagarama y'urubanza aherereye ku isanduku ya Leta.

Amategeko yashyimgiweho:

Itegeko n° 22/2018 ryo ku wa 19/4/2018 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano iz'ubucuruzi, iz'imirimo n'iz'ubutegetsi., ingingo ya 12 n'iya 111

Itegeko nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 2

Iteka rya Perezida no 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga

Itegeko ryo ku wa 30 Nyakanga 1888 y'igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano, ingingo za 258 na 260

Imanza zifashishijwe

RS/REV/INJUST/CIV 0015/14/CS, Ntahonkiriye et al vs Icyitegetse Léa rwaciwe kuwa 31/07/2015

RS/INJUST/RCOM 00005/2020/SC rwaciwe kuwa 27/11/2020 haburana BPR ATLAS MARA PLC VS NKUSI Evariste, igika cya 18;

RS/REV/INJUST/CIV 0023/16/CS rwaciwe kuwa 27/09/2019 haburana Rutabayiru et al vs Mukamabano Charlotte, igika cya 28

Inyandiko z'abahanga zifashishijwe:

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

Urubanza

I. IMITERERE Y'URUBANZA

[1] Tariki ya 09/03/2017, igihe imodoka RAB 856Q ya Sorwatraco Ltd yari iparitse izanye ibinyobwa bya Bralirwa, urugi rwayo rw'inyuma rwarafungutse rukubita mu mugongo Habakubaho Samson, bimutera ubumuga buhoraho. Habakubaho Samson yareze Sorwatraco Ltd mu Rukiko Rwisumbuye rwa Gicumbi, asaba indishyi zikomoka kuri iyo mpanuka, iyi nayo

igobokesha Bralirwa mu rubanza, ivuga ko ari yo yari umukoresha wa Habakubaho Samson, na Sanlam AG Ltd (yahoze ari Soras AG Ltd) nk'umwishingizi w'imodoka ivugwa ko yateye impanuka.

[2] Urukiko Rwisumbuye rwa Gicumbi rwaciye urubanza RC 00073/2018/TGI/GIC ku wa 16/5/2019, rwemeza ko ikirego cya Habakubaho Samson gifite ishingiro, rutegeka Soras AG Ltd nk'umwishingizi wa Sorwatraco Ltd kumwishyura indishyi mbangamirabukungu zingana na 86.400.000 Frw, izikomoka ku bumuga zingana na 1,080,000 Frw, amafaranga yivuje kwa muganga ntirwayamugenera kuko atayagaragarije ibimenyetso.

[3] Sanlam AG Ltd yajuririye urwo rubanza mu Rukiko Rukuru ivuga ko yaciwe indishyi zitareba umwishingizi kandi na nyiri ikinyabiziga ataramenyekanishije impanuka, Urukiko Rukuru ruca urubanza RCA 00242/2019/HC/KIG ku wa 8/5/2020, rwemeza ko ubujurire bwa Sanlam AG Ltd bufite ishingiro, ko impanuka Habakubaho Samson yatejwe n'ikinyabiziga RAB 856 Q atari impanuka yo mu muhanda, ko rero impanuka yabaye itakwishyurwa n'umwishingizi Sanlam AG Ltd kuko Habakubaho Samson yakomerekejwe n'urugi rw'iyo modoka itagenda itari mu muhanda, rumuca umugongo arimo kuyipakurura, rusanga icyabaye ari impanuka y'akazi, uburyozwe bwayo bukaba bugomba kwirengerwa n'uwari umukoresha we mu gihe cy'impanuka, cyangwa ikigo cy'igihugu gishinzwe ubwiteganyirize bw'abakozi (Rwanda Social Security Board)

[4] Habakubaho Samson ntiyishimiye icyemezo cy'Urukiko Rukuru, ajuririra Urukiko rw'Ubujurire, avuga ko atahawe indishyi z'impanuka yagize hashingiwe ku mpamvu y'uko amasezerano Sorwatraco Ltd yagiranye na Sanlam AG Ltd ataziteganya, akaba asanga mu gihe adahawe indishyi na Sorwatraco Ltd yazihabwa na SORAS AG Ltd ubu yahindutse Sanlam AG Ltd, kubera ko kuba nyir'ikinyabiziga ataramenyesheje impanuka bitamugiraho ingaruka.

[5] Uhagarariye Sorwatraco Ltd na Sanlam AG Ltd bavuga ko Habakubaho Samson indishyi yasabye atazihabwa kuko atakoze impanuka yo mu muhanda ku buryo yabiherwa indishyi, kandi ko nta mpamvu hari kuba imenyekanisha ry'ayo kuko yakoze impanuka y'akazi.

[6] Urubanza rwaburanishirijwe mu ruhame ku wa 21/10/2020, Habakubaho Samson ahagarariwe na Me Mutabaruka Jean, Sorwatraco Ltd ihagararaiwe na Me Munyandamutsa Jean Pierre naho Sanlam AG Ltd ihagarariwe na Me Mukandori Brigitte.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO

Gusuzuma niba kuba nta menyekanisha ry'impanuka ryakozwe bikuraho iyubahirizwa ry'amasezerano Sanlam AG Ltd yagiranye na Sorwatraco Ltd.

[7] Mutabaruka Jean, avuga ko kuba nta menyekanisha ry'impanuka ryakozwe, bidakuraho amasezerano Soras AG Ltd yahindutse Sanlam AG Ltd yagiranye na Sorwatraco Ltd, ko Sanlam AG Ltd yagombaga guha indishyi Habakubaho Samson nyuma igasaba Sorwatraco Ltd kuziyishyura kuko nta kigaragaza icyo umushoferi wa Sorwatraco Ltd n'umufasha we (boy chauffeur) bakoze bamaze kubona ko imodoka yabo yakoze impanuka.

[8] Me Munyandamutsa Jean Pierre, avuga ko Sorwatraco Ltd itari gukora imenyekanisha mu gihe nta mpanuka yabaye yishingiwe n'umwishingizi, ko kandi ko habayeho irengayobora (*exception)* indishyi zasabwa Sanlam AG Ltd, n'ubwo ku bw'ibanze babona itaragombaga kuza mu rubanza, ariko bakaba barayizanye mu rubanza birinda ko imanza zaba nyinshi.

[9] Me Mukandoli Brigitte avuga ko Me Mutabaruka Jean avuga ko batse indishyi kubera urugi rwagwiriye Habakubaho Samson, ariko akaba atagaragaza aho abishingira mu mategeko harebwe impanuka yabaye, kuko nta dosiye y'impanuka yakozwe ngo imenyeshwe umwishingizi, ariyo mpamvu asanga Sanlam AG Ltd nta ndishyi ikwiye gutanga.

UKO URUKIKO RUBIBONA

[10] Ingingo ya 9 y'amasezerano yabaye hagati ya Soras ubu yabaye Sanlam AG Ltd na Sorwatraco Ltd ku wa 09/07/2013, iteganya ko uwishingiwe yiyemeje kumenyesha umwishingizi impanuka zose zakorewe ku wundi muntu, nk'uko biteganywa n'ingingo ya 2 igika cya 1 y'Itegeko teka No 32/75 du 7 Kanama 1975 riteganya ubwishingizi butegetswe ku birebana n'ubwishingizi bujyanye n'iby'abandi byangijwe n'ibinyabiziga bigendesha moteri, gukora ibishoboka byose akamenyesha umwishingizi impanuka yo mu muhanda yemejwe na Polisi n'uburyo yabaye bigaragarira mu nyandikomvugo y'impanuka, yaba atabikoze agacibwa 10% ku gaciro k'ibyangijwe cyangwa ubwishingizi bugata agaciro hashingiwe mu buryo impanuka yabaye (*l'assuré s'engage pout tout accident impliquant un tiers et ce conformement a 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 a cette obligation entraine automatiquement l'application d'une pénalité égale à 10% qui sera déduite de la valeur du sunitre ou à la déchéance de garantie selon les circonstances de l'accident)*.

[11] Urukiko rurasanga nk'uko bimaze kugaragazwa haruguru, icyo amasezerano Sanlam AG Ltd yagiranye na Sorwatraco Ltd yerekana nuko umwishingizi utamenyekanishije impanuka, hari amafaranga acibwa n'umwishingizi kubera ubwo burangare, ntabwo ayo masezerano ateganya ko mu gihe impanuka igaragarijwe ibimenyetso, umwishingizi adashobora kwishyura uwangirijwe, bivuze ko gutinda kumenyeskanisha impanuka ubwabyo bidakuraho inshingano zikubiye mu masezerano y'ubwishingizi Soras AG Ltd yahindutse Sanlam AG Ltd yagiranye na Sorwatraco Ltd yafashe ubwishingizi.

Kumenya niba indishyi Habakubaho Samson asaba yazihabwa n'ushobora kuziryozwa hagati ya Sorwatraco Ltd na sanlam AG Ltd

[12] Me Mutabaruka Jean, avuga ko mu gika cya 13 cy'urubanza rwajuririwe, umucamanza yavuze ko indishyi Habakubaho Samson asaba zitakwishyurwa n'umwishingizi hakurikijwe ibiteganywa mu ngingo ya 8 y'ingingo rusange z'amasezerano y'ubwishingizi Sanlam AG Ltd yagiranye na Sorwatraco Ltd (*conditions générales*), asaba ko ibyo byakosorwa, kubera ko nk'uko biri mu igika cya mbere ku rupapuro rwa mbere rw'amasezerano Sorwatraco Ltd yagiranye na Soras AG Ltd ubu yahindutse Sanlam AG Ltd, yishingiye uburyozwe bw'imodoka za Sorwatraco Ltd n'iy'akoze impanuka irimo, kandi ko muri ayo masezerano hatavugwamo ko imodoka yaba igenda cyangwa itagenda, ko ahubwo mu gika cyayo cya 4, havugwamo ko ubwishingizi butangira guhera imodoka igenda, ipakira cyangwa ipakurura, ibyo bikaba ntaho bihurira n'ingingo ya 8 Urukiko Rukuru rwashingiyeho, kuko ivuga ibijyanye no gushya kw'imodoka, yibwe, […] uko byishyurwa, bidafite aho bihuriye n'impanuka Habakubaho Samson yagize, ko Urukiko rwari gushingira ku ngingo ya 4 n'iya 9 z'amasezerano habakubaho Samson agahabwa indishyi asaba.

[13] Me Mutabaruka Jean, akomeza avuga ko bareze Sorwatraco Ltd kubera urugi rw'imodoka yarwo rwifunguye rugakubita Habakubaho Samson, babiheraho basaba indishyi zishingiye ku ngingo ya 258 y'igitabo cya gatatu cy'amategeko mbonezamubano, yakoreshwaga igihe

impanuka yabaga, Sorwatraco Ltd ikavuga ko ifite umwishingizi inasaba kumugonokesha mu rubanza, hazamo iby'impanuka yo mu muhanda nyuma babihinduramo iy'akazi, kandi Habakubaho Samson yari nyakabyizi uterura ikaziye agahembwa, adafite aho ahuriye n'iyo modoka, ariko umushoferi n'umufasha we (*boy Chauffeur*) bayisigaho baragenda, ku bw'ubwo buteshuke bwabo bakaba bagomba kubyirengera, ko impamvu Bralirwa itatanze indishyi ari uko itari nyiri imodoka cyangwa umwishingizi wayo.

[14] Me Mukandori Brigitte, avuga ko amasezerano yabaye hagati ya Soras AG Ltd na Sorwatraco Ltd atashingirwaho hatangwa indishyi kubera ko nta mpanuka yo mu muhanda yabayeho, ahubwo Habakubaho Samson yayikoze imodoka iri muri Parking Moteri yayo ijimije, ko niba urugi rwaramugwiriye byatewe na manipulations yakoze n'ubukubuganyi bwe, kuko imodoka yari ihagaze, bene izi mpanuka zikaba zitishingirwa, ko hishingirwa impanuka z'imodoka ziri mu muhanda Moteri ikora, ariyo mpamvu asanga indishyi Habakubaho Samson yasabye nta shingiro zifite, cyane ko na Polisi itahise itabazwa ngo ikore iperereza, ahubwo iperereza ryakozwe nyuma y'imyaka ine impanuka ibaye, Habakubaho Samson amaze gutsindwa mu manza z'umurimo.

[15] Me Mukandori Brigitte akomeza avuga ko ibyo Me Mutabaruka Jean avuga ko hashingirwa ku ingingo ya 4 y'amasezerano, atari byo, kuko iyo ngingo yakoreshwa aruko imodoka yarimo kugenda idaparitse, naho uwayikubitaho iparitse byaba ari amakosa ye, ko nta kosa ryo mu muhanda ryakozwe n'imodoka bishingiye, ko ahubwo ibyabaye kuri Habakubaho Samson ari impanuka y'akazi yakagombye kwishingirwa n'umukoresha we witwa Koperative « Intwali », naho ingingo ya 9 yavuze itareba impanuka yabaye, mu gihe ingingo ya 8 igaragaza ibitishingirwa mu masezerano rusange *(exclusions*). Avuga ko ingingo zoze Me Mutabaruka Jean yagaragaje zigira agaciro iyo imodoka igenda, ariyo mpamvu na Sanlam AG Ltd itari gusabwa indishyi mu gihe itamenyeshejwe ibijyanye n'impanuka yabaye nk'uko biteganywa mu ngingo ya 19 y'Itegeko-Teka No 32/75 ryo ku wa 7/08/1975 ryerekeye ibinyabiziga bitwarwa na Moteri.

[16] Me Munyandamutsa Jean Pierre, avuga ko impanuka Habakubaho Samson yagize itishyurwa n'ubwishingizi, ko ari impanuka y'akazi kuko yahise arega Bralirwa abizi neza ko ibyamubayeho ari impanuka y'akazi, akaba asanga iyo atanyurwa n'imanza z'umurimo zaciwe yari kujya mu karengane. Naho ku mvugo ya Me Mutabaruka y'uko kuba imodoka ya Sorwatraco Ltd yaracomotse urugi rukavaho bitayibuza kwitwa impanuka yishyurwa n'umwishingizi kuko amasezerano bagiranye atavuga imodoka igenda cyangwa itagenda, avuga ko HABAKUBAHO Samson yari afitanye amasezerano na Koperative « Intwali » nayo ifitanye amasezerano na Bralirwa, yo kuyizanira abapakurura arinawo murimo Habakubaho Samson yarimo akora.

UKO URUKIKO RUBIBONA

[17] Ingingo ya 2 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko ikimenyetso cyo mu rubanza ari uburyo bukoreshwa kugira ngo ukuri kw' ibyabaye kugaragare. Naho ingingo ya 3 y'iryo tegeko igateganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana.

[18] Ingingo ya 12 y'Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko urega agomba kugaragaza ibimenyetso by'ibyo aregera, ko iyo abibuze, uwarezwe aratsinda.

[19] Ingingo ya 260 y'itegeko ryo ku wa 30 Nyakanga 1888 rishyiraho igitabo cy'urwunge rw'amategeko y'imbonezamubano, ibyerekeye imirimo nshinganwa cyangwa amasezerano, cyakoreshwaga igihe Habakubaho Samson yagiraga impanuka iteganya ko: «Umuntu ntaryozwa gusa ibyangiritse kubera ibikorwa bye bwite, ahubwo anaryozwa ibyangijwe n'ibikorwa by'abantu yishingiye cyangwa n'ibintu ashinzwe kurinda ».

[20] Amasezerano Sorwatraco Ltd yagiranye na Soras AG Ltd yahindutse Sanlam AG Ltd ku wa 09/07/2013, avuga mu gika cya mbere ku rupapuro rubanza, ko mu ngingo rusange z'amasezerano ajyanye n'ubwishingizi police modèle 2501 édition 10/84 no muri izi ngingo zihariye Soras Assurances Generales Ltd, B.P 924 Kigali, yishingiye iby'abandi byakwangizwa n'imodoka zigendesha moteri za Sorwatraco Ltd guhera ku wa 12/7/2013 kugeza ku wa 11/7/2014 (*couvre la responsabilité civile des véhicules automoteurs de Sorwatraco Ltd KIGALI à partir du 12/07/2013 jusqu'au 11/07/2014*).

[21] Ingingo ya 4 y'ayo masezerano, iteganya ko ufashe ubwishingizi yemeye ko imodoka ze zifatiwe ubwishingizi zikoreshwa mu ngendo zo gutembera bisanzwe, zikoreshwa mu bwikorezi no kugemura ibintu bitandukanye uretse ubwikorezi bw'abantu n'ibintu byatangiwe ikiguzi (*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] Ingingo ya 8 y'amasezerano yavuzwe haruguru, iteganya ko amasezerano atareba ibyangijwe bikomotse ku bicuruzwa byikorewe cyangwa ibindi bikorwa bisabwa kuri ubwo bwikorezi ariko bidakomoka ku mikoreshereze y'imodoka' (*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 vehicule)*.

[23] Dosiye igaragaza ko ku wa 25/01/2018 Polisi y'igihugu ikorera Gicumbi yakoze raporo y'iperereza ku kibazo cya Habakubaho Samson, yemeje ko Habakubaho Samson guhera mu mwaka wa 2004 kugeza mu mwaka wa 2014 yari umukozi wa Bralirwa apakurura imodoka zabaga zizanye ibinyobwa byayo ariko akaba atarakoreraga ku masezerano yanditse ahemberwa mu ntoki ari nyakabyizi kuko yabarizwaga muri Koperative Intwali, ku wa 9/3/2014 ari mu kazi na bagenzi be Gahamanyi Jean wavutse 1981 na Rukundo Jean d'Amour wavutse 1971, bemeje ko ubwo bapakururaga imodoka RAB 856 Q ya Kayombya Robert yari izanye ibinyobwa bya Bralirwa uko bisanzwe, urugi rwayo rw'inyuma rwakutse ruramanuka rwitura kuri Habakubaho Samson, maze rumuvuna umugongo nk'uko binagaragazwa n'impapuro Habakubaho Samson yivurijeho.

[24] Iperereza kandi ryagaragaje ko imodoka RAB 856 Q yakoreraga Sorwatraco Ltd (Societe Rwandaise de transport et Commerce au Rwanda) yari itwawe na Ruhumuriza wakoreraga Bralirwa Ltd nk'uko abatangabuhamya bakoreraga Bralirwa Ltd ishami rya Gicumbi babyemeza mu nyandiko mvugo zabo.

[25] Dosiye igaragaza raporo ya muganga yo ku wa 8/2/2015 yakozwe na Docteur A.E Nkusi ukorera mu bitaro by'Umwami Fayisali, yemeje ko Habakubaho Samson yagize ubumuga buhoraho (incapacité permanente) bwa 80%.

[26] Ku bijyanye n'indishyi Habakubaho Samson yari yatse zijyanye n'impanuka yagize ikamutera ubumuga bwa 80%, Urukiko Rukuru rwemeje ko nta ndishyi akwiye guhabwa kubera

ko impanuka yakoze ari impanuka y'akazi, aho kuba impanuka yo mu muhanda Sorwatraco Ltd yafatiye ubwishingizi muri Soras AG Ltd ubu yahindutse Sanlam AG Ltd.

[27] Kugira ngo hasobanuke neza niba impanuka Habakubaho Samson yakoze ari iy'akazi cyangwa impanuka yo mu muhanda yishyurwa n'umwishingizi ni ngombwa kwerekana itandukaniro hagati y'impanuka y'akazi n'impanuka yo mu muhanda.

[28] Ku bijyanye n'impanuka y'akazi, abahanga mu mategeko Raymond Guillien na Jean Vincent, bavuga ko impanuka y'akazi ari akaga kagwira umuntu gakomotse ku kazi akora hatitawe ku cyayiteje, ukorera umushahara cyangwa ukora mu buryo ubwo ari bwo bwose, yaba akorera umukoresha umwe cyangwa benshi[1].

[29] Ku bijyanye n'impanuka yo mu muhanda, Abahanga Yvonne Lambert- Faive na Laurent Leveneur bakoze isesengura rishingiye ku mategeko, basobanura ko impanuka yo mu muhanda ari impanuka ikorwa n'ikinyabiziga cyashyizwe mu rugendo, mu muhanda nyabagendwa cyangwa agahanda kihariye, kandi ko imodoka yahagaritswe mu muhanda nyabagendwa ikagira ibyo yangiza ishobora nayo kwitwa impanuka yo mu muhanda kandi nyirayo akaba yakwishyurwa n'umwishingizi[2].

[30] Ku bijyanye n'impanuka Habakubaho Samson yagize, Urukiko rurasanga n'ubwo yari ku kazi ko gupakurura ibinyobwa bya Bralirwa Ltd abivana mu modoka ya Sorwatrako Ltd, impanuka yagize itaratewe n'ibyo yapakururaga ku buryo byakwitwa impanuka y'akazi (*fait du travail*), ahubwo yaraturutse ku kibazo ikinyabiziga ubwacyo cyari gifite (*problémes d'ordre mécanique*) cy'urugi rwayo rutari rukwikiye cyangwa rufashe nk'uko bikwiye bigatuma rumugwira, ibyo bibazo bikaba bitari mu byishingiwe mu masezerano Sorwatraco Ltd yagiranye na Sanlam AG Ltd, harebwe ibikubiye mu ngingo yayo ya 8 yagaragajwe haruguru, bivuze ko Sanlam AG Ltd itaryozwa indishyi zikomoka ku mpanuka Habakubaho Samson yagize.

[31] Rurasanga kandi iyo mpanuka itaryozwa umukoresha wa Habakubaho Samson, kuko nk'uko nabyo byagaragajwe haruguru, impanuka yagize itakwitwa iy'akazi mu gihe ntaho ihuriye n'akazi yakoraga. Rurasanga ahubwo nk'uko bigaragara, impanuka yaratejwe n'ikintu cy'undi muntu (imodoka ya Sorwatraco Ltd), bityo nk'uko biteganywa mu ngingo ya 260 y'Igitabo cya gatatu cy'Urwunge rw'amategeko mbonezamubano yibukijwe haruguru, yakoreshwaga ubwo Habakubaho Samson yakoraga impanuka, Sorwatraco Ltd ikaba ari yo igomba kuryozwa izo ndinshyi.

[32] Abahanga mu mategeko bavuzwe[3] haruguru bavuga ko iyo uwakoze impanuka usanganywe ubwishingizi nk'umukozi (*assuré social*) yayitewe n'undi muntu utari umukoresha we cyangwa umukozi w'umukoresha we, uwagize impanuka cyangwa abamukomokaho, bafite

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[1] Raymond Guillien na Jean Vincent; Lexique des termes juridiques, Dalloz, Paris 1988 p 4 (Accident de travail est l'accident quelqu'en soit la cause, survenu par le fait du travail, à toute personne salariée ou travaillant à quelque titre ou à quelque lieu que ce soit pour un ou plusieurs chefs d'entreprises).

[2] Yvonne Lambert- Faive et Laurent Leveneur, Droit des assurances, 12 ed. Paris, Dalloz, 2005, pp.575 – 576 (… inclut tout usage du vehicule à l'intérieur d'une propriétéprivée ou sur une voie publique. On soulignera que le véhicule destiné à la casse et abandonné en stationnement sur une voie publique peut être la cause de l'accident de la circulation et son propriétaire doit donc être assuré…).

[3] Yvonne Lambert- Faive et Stephanie Parchy- Simon, Droit du dommage corporel, systeme d'indemnization, 8 ed. Paris, Dalloz, 2016, p.451 (si la lésion dont est atteint l'assuré social est imputable à une personne autre que l'employeur ou ses preposés, la victime ou ses ayants droit, concerve contre l'auteur de l'accident le droit de demander la réparation du préjudice causé , conformément au droit commun, dans la mesure où ce prejudice n'est pas réparé par application du present livre [qui parle de l'accident du travail et accident de circulation]).

uburenganzira bwo gusaba uwateye impanuka indishyi z'ibyo yangirijwe hagendewe ku mategeko asanzwe, mu gihe ibyangiritse bidateganywa n'amategeko agenga umurimo.

[33] Nk'uko byerekanywe mu bika bibanziriza iki, abahanga Yvonne Lambert- Faive na Stephanie Parchy- Simon bagaragaza ko mu gihe impanuka idatewe n'ikinyabiziga kiri mu muhanda, amategeko asanzwe ateganya ibyo kwishyura indishyi ari yo akoreshwa cyangwa andi mategeko yihariye ajyanye no kwishura indishyi, banagaragaza ko impanuka ibaye igihe hakorwa imirimo yo gupakurura no gupakira itandukanywa n'impanuka zo mu muhanda n'impanuka zikomoka ku murimo[4]. Berekana ko uwakoze impanuka, agaragaza gusa usabwa indishyi, ko icyateye impanuka cyari icye kandi icyo kintu kikaba cyagize uruhare ku byo ashingiraho asaba indishyi.

[34] Urukiko rurasanga rushingiye ku bisobanuro byose byatanzwe muri uru rubanza, ku bijyanye n'ugomba kwishyura indisyi zikomoka ku mpanuka mu gihe bigaragaye ko itishingiwe, Sorwatraco Ltd ari yo igomba kuryozwa indishyi z'akababaro Habakubaho Samson yasabye kubera kutita bu kintu ishinzwe kurinda, kuko bigaragara ko itabashije kumenya hakiri kare ikibazo imodoka yayo yari ifite cy'urugi rudafunze neza, kugeza ubwo rwakutse rukamugwira.

Kumenya indishyi Habakubaho Samson akwiriye guhabwa

[35] Me Mutabaruka Jean asaba ko uwo ahagarariye yahabwa indishyi z'akababaro k'ubumuga yagize hashingiwe ku Iteka rya Perezida no 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, zingana na 92,147,015 Frw, yiyongeraho, ay'ikurikiranarubanza angana na 1.500.000 Frw na 2.000.000 Frw y'igihembo cya Avoka.

[36] Me Munyandamutsa Jean Pierre avuga ko nyuma y'ibisobanuro n'ibimenyetso byose n'amategeko bagaragaje bashingiraho, asanga Habakubaho Samson nta ndishyi akwiriye muri uru rubanza kubera ko nta kibazo yatewe na Sorwatraco Ltd, ko ahubwo ari we ukwiye gutanga indishyi, ko mu rubanza rujuririrwa muri rutegetse ya kabiri umucamanza yategetse ko Sorwatraco Ltd yafatanya na Habakubaho kwishyura indishyi zingana na miliyoni (1 000 000 Frw) kandi atari byo, kubera ko Sorwatraco Ltd nta makosa yakoze muri uru rubanza ikwiriye kwakirwa indishyi. Asanga indishyi zose zisabwa muri uru rubanza zikwiye kwishyurwa na Habakubaho Samson, ko Kandi kuba Sorwatraco Ltd yiriyambaje Avoka kuva urubanza rugitangira ibisabira indishyi zingana na 3 000 000 Frw.

[37] Me Mukandori Brigitte uhagarariye Sanlam AG Ltd avuga ko Habakubaho Samoson nta ndishyi akwiye kuko ari we wishoye mu manza, ko ahubwo yacibwa indishyi zingana na 8,000,000 Frw kuri uru rwego ziyongera kuzo Sanlam AGA Ltd yagenewe mu Rukiko Rukuru kuko ari we wishoye mu manza.

UKO URUKIKO RUBIBONA

a) Ku byerekeye indishyi zikomoka ku mpanuka

[4] Yvonne Lambert- Faive et Laurent Leveneur, Droit des assurances, 12 ed. Paris, Dalloz, 2005, pp. 576, 579, 109 (Dès lors que l'accident est étranger à toute circulation, c'est le droit commun de la responsabilitécivile ou un autre régime specifique d'indemnisation qui est applicable…. Les accidents survenus lors de chargement et déchargement marquent la frontière entre les accidents de la circulation et les risque d'activité professionnelle …. La victime doit prouver que la chose était sur la garde du responsable, que le dommage a été causé par la chose, et rôle actif de la chose à l'orgine du dommage)

[38] Ingingo ya 258 y'itegeko ryo ku wa 30 Nyakanga 1888 rishyiraho Igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano, ibyerekeye imirimo nshinganwa cyangwa amasezerano cyakoreshwaga igihe Habakubaho Samson yakoraga impanuka, iteganya ko: "Igikorwa cyose cy'umuntu cyangirije undi gitegeka nyirugukora ikosa rigikomokaho kuriha ibyangiritse".

[39] Urukiko rw'Ubujurire rurasanga indishyi zingana na 92,147,015 Frw Habakubaho Samson yaka azishingira ku Iteka rya Perezida no 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga, kubera ko yumvaga ko impanuka yagize ari iteganywa n'iryo teka, ariko nk'uko byasobanuwe, impanuka yagize ikaba yaraturutse ku burangare bwa nyiri ikinyabiziga utaratahuye hakiri kare ikibazo cy'urugi imodoka ye yari ifite rukamugwaho, rukamutera ubumuga. Rurasanga rero, indishyi yagenerwa ari iziteganywa mu ngingo ya 258 ifatiwe hamwe n'iya 260 z'Itegeko ryo ku wa 30 Nyakanga 1888 y'igitabo cya gatatu cy'urwunge rw'amategeko y'imbonezamubano ryavuzwe haruguru, ryakoreshwaga igihe akora impanuka, ku bijyanye n'igikorwa cyose cyangirije umuntu kubera kutita ku bintu umuntu ashinzwe kurinda, ariko kubera ko iryo tegeko ritateganyije uburyo izo ndishyi zibarwa, zikaba zigomba kugenwa mu bushishozi bw'umucamanza, harebwe ubumuga yatewe n'iyo mpanuka n'ingaruka byamugizeho.

[40] Rurasanga nk'uko byagaragajwe muri uru rubanza, impanuka Habakubaho Samson yagize yaramusigiye ubumuga buhoraho ku kigero cya 80%, akaba agendera mu kagare, ari nta kintu ashobora kwikorera kuva yagira impanuka, bityo n'ubwo nta giciro ngenderwaho mu kugena indishyi, rusanga hakurikijwe ubumuga yagize kandi agifite kugeza ubu, ndetse azahorana, ku myaka afite, n'ikigero cy'ububabare yagize yagenerwa 10.000.000 Frw y'indishyi z'akababaro, aho kuba 92,147,015 yari yasabye ashingiye ku Iteka rya Perezida no 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga.

b) Kubijyanye n'izindi ndishyi zakwa muri uru rubanza

[41] Ingingo ya 111 y'Itegeko N◦22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "[…] ikirego cy'amafaranga y'ikurikiranarubanza kiburanishirizwa rimwe n'ikirego cy'iremezo. Gishobora kandi kwakirwa kikanaburanishwa n'iyo ikirego cy'iremezo cyaba kitakiriwe".

[42] Urukiko rurasanga kuba Sorwatraco Ltd ari yo yateje impanuka bikaba ngombwa ko Habakubaho Samson ashaka umuburanira kandi agakurikirana urubanza rwe kugeza kuri uru rwego, agomba kwishyurwa ibyo yatakaje ku rubanza, 2.000.000 Frw yaka y'igihembo cya Avoka akaba yayahabwa kuko atari ikirenga harebwe ko yaburanye guhera mu Rukiko Rwisumbuye kugeza mu Rukiko rw'Ubujurire, agahabwa na 1.000.000 Frw y'ikurikiranarubanza kuri izo nzego zose.

[43] Rusanga 1.000.000 Frw Habakubaho Samson yari yategetswe guha Sanlam AG Ltd afatanyije na Sorwatraco Ltd atagomba kuyatanga, kuko bigaragara ko ibyo yaregeye bifite ishingiro, naho ayo Sorwatraco Ltd yagombaga guha Sanlam AG Ltd akaba atakurwaho kuko ariyo yagobokesheje Sanlam AG Ltd mu rubanza kandi nayo yemera ko nta mpanuka yo mu muhanda yabaye.

III. ICYEMEZO CY'URUKIKO

[44] Rwemeje ko ubujurire bwatanzwe na Habakubaho Samson bufite ishingiro kuri bimwe;

[45] Rwemeje ko urubanza n° RCA 00242/2019/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 8/5/2020 ruhindutse

[46] Rutegetse Sorwatraco Ltd kwishyura Habakubaho Samson 10.000.000 Frw y'indishyi z'akababaro, ikamuha 2.000.000 Frw y'igihembo cya Avoka na 1.000.000 Frw y'ikurikiranarubanza ;

[47] Rutegetse kandi Sorwatraco Ltd kwishyura Sanlam AG Ltd 500.000 Frw yategetswe mu rubanza rujuririrwa ;

[48] Rutegetse ko amafaranga y'amagarama y'urubanza aherera ku isanduku ya Leta kuko Habakubaho Samson afite icyemezo cy'utishoboye.