

## **CORAR v. MBONIMPA**

[Rwanda SUPREME COURT – RCOMA 0185/12/CS (Mugenzi, P.J., Gatete and Munyangeri, J.) November 15, 2013]

*Insurance law – A driving license issued abroad – It remains valid if not contested by the competent organs or if no criminal action was filed for forgery – Law n° 15/2004 of 12/06/2004 relating to evidence and its production, article 46.*

*Insurance law – insurance contract – Determination of the value of the damaged vehicle due to accident – It is calculated on insurance contract basis.*

*Insurance law – Loss of a chance – Damages regarding the revenues that the vehicle would have generated are calculated basing on market price by subtracting eventual expenses – Law of 30/07/1888 relating to contracts or obligations, article 258.*

*Contracts or obligation law – Moral damages – They are not granted when the applicant failed to provide the prejudice different from that computed as financial damages – Law of 30/07/1888 relating to contracts or obligations, article 258.*

**Facts:** Basing on the insurance contract concluded, Mbonimpa filed a case against CORAR to the Commercial High Court stating that it refused to compensate him the value of insured vehicle which had an accident on 4 September 2010 and got seriously damaged that it cannot be repaired to be used again. For that reason, she requested for damages equivalent to the value of the damaged vehicle, those relating to financial loss and those resulting from the death of her husband who was driving the vehicle and other different damages.

The Commercial High Court ordered CORAR to grant Mbonimpa damages equivalent to the value of the vehicle, those relating to financial loss within 17 months, moral damages, those resulting from the death of the driver during the accident and those relating to procedural and advocate's fees.

CORAR appealed to the Supreme Court stating that the Commercial High Court allocated damages to Mbonimpa while the accident of his vehicle occurred when the driver did not possess a valid driving license, which was inconsistent with insurance contract they concluded.

Mbonimpa states that the driver had a driving license issued in Democratic Republic of Congo, which was confirmed by the Police Inspector. In cross appeal, he requested also to be granted financial loss, moral damages and procedural and advocate's fees.

Regarding requested damages, CORAR states that financial loss is excessive and that Mbonimpa did not provide any evidence. As for moral damages, CORAR states that Mbonimpa did not provide any explanation as he was granted financial damages.

**Held:** 1. If the driver possessing a driving license issued abroad undergoes an accident, and none has filed a case for forgery and is not challenged by the Judicial Police during the investigation or parties did not invoke that it has a defect, it cannot be declared invalid.

2. As long as Mbonimpa does not provide the ground for non execution of the insurance contract she concluded with CORAR, and does not contradict the value of the vehicle determined by the expert basing on the contract; the value determined by the expert is one considered and be granted to her.

3. The income that Mbonimpa's vehicle would have generated if CORAR had given her the opportunity to get another one, are calculated from the date on which the Court is seized to verdict delivery of the last instance. However, as it is clear that the car may not be used for some days and generate income, expenses for maintenance and other different reasons, it implies that there is a high probability of chance to generate income at the average 80% of the income that should be have generated of 12,240,000 Rwf. Therefore, the respondent will be awarded damages equal to 9,792,000 Rwf.

4. Mbonimpa cannot be awarded moral damages as long as she did not justify their basis.

**Appeal has merit in part.  
Cross appeal has merit in part.  
Costs to both parties.**

**Statutes and statutory instruments referred to:**

Law n°15/2004 of 12/06/2004 relating to evidence and its production, article 46.

Law of 30/07/1888 relating to contracts or obligations, article 258.

**No case referred to.**

**Author cited:**

Philippe, T., Droit de la responsabilité et des contrats, 8<sup>e</sup> éd., Dalloz, 2010, p. 1419-1420.

## **Judgment**

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

[1] Mbonimpa Solange and CORAR Ltd entered into auto insurance contract of Daihatsu RAB 849P which was used for the transport of goods. On 4 September 2010 the vehicle had an accident and was seriously damage. Automotive expert concluded that it cannot be repaired and used again.

[2] Mbonimpa filed a case against CORAR to the Commercial High Court, arguing that it refused to compensate the insured vehicle. CORAR replied that it could not be held liable of the accident because the driver of the vehicle did not possess a valid driving license. The case was heard in default of CORAR Ltd. The Court decided that CORAR must grant to Mbonimpa 25,000,000 Rwf equivalent to the value of the vehicle, 3,000,000 Rwf resulting from the death of driver in the accident, 5,000,000 Rwf of financial loss of 17 months, 1,000,000 Rwf of moral damages and 500,000 Rwf of procedural and advocate's fees.

[3] CORAR A.G. Ltd appealed to the Supreme Court stating that the Commercial High Court allocated the damages to Mbonimpa while the accident of his vehicle occurred when its driver did not possess a valid driving license. He added that it was inconsistent with insurance contract they concluded and that the allocated damages exceed the assured value.

[4] The public hearing was held on 10 October 2013, CORAR represented by the counsel, Munyandirikirwa Laurent while Mbonimpa Solange was represented by the counsel Masumbuko Mussa.

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

### **A. Whether the driver had a valid driving license.**

[5] The counsel for CORAR states that the Commercial High Court disregarded that the driver of the vehicle that had an accident did not possess a valid driving license, while it is inconsistent with articles 24 and 64 of insurance contract between Mbonimpa and CORAR. He explained that the contract provides that an insured vehicle must be driven by an authorized person possessing a valid driving license under Rwandan law.

[6] He stated that the driving license was issued in Democratic Republic of Congo. He added that the document issued by the Police Inspector submitted by Mbonimpa which is in the case file indicates that the driving license is recognized in Congo while the one given to CORAR from the communication service of Congo indicates that the authenticity of that driving license is suspicious. He further emphasizes that this service is the one in charge of issuing driving license, while the Police Inspector is not competent.

[7] Basing on two different documents, he requested the Court to order another investigation to get the real information on the authenticity of that driving license. He kept on arguing that another proof that the driving license was not legally issued is that it indicates that Hakizayezu was born in Goma while the marriage certificate indicates that he was born in Cyuve- Musanze.

[8] Mbonimpa and his counsel state that the Commercial High Court clearly explained about the driving license. Furthermore, they stated that the case file indicates that the statement of the accident made by the competent organs and even on 3 June 2011 the competent authority of Democratic Republic of Congo (Police Inspector) confirmed that it recognizes the license.

[9] They explained that the fact that some of authorities in Goma challenge the authenticity of the driving license does not imply that it does not exist because the statement of accident on page 4 of the case file made by competent authorities states that the deceased possesses a driving license issued in Congo with different classes. They added that there is no other document in contradiction and they had never challenged it, but the Court may analyze if CORAR has competence to cross the borders to check the document instead of writing to the police to make a subsequent case file.

[10] The Court finds that contradicting the documents regarding the driving license delivered by Congolese authorities were not requested by Rwandan competent organs but rather by each party. Furthermore, none of them seized the Court for forgery as provided by article 46 of the Law of 12 June 2004 relating to evidence and its production. It implies that those documents should not be relied on, while the Rwandan Judicial Police that investigated the accident affirmed to have found the driving license of the driver and its details but did not challenge it. In addition to this, the parties did not provide its defect.

### **B. Concerning the requested damages**

#### **1. The value of the damaged vehicle**

[11] The counsel for CORAR A.G. Ltd states that the Commercial High Court has awarded the damages exceeding the insured value and not provided in the contract. He explained that the Court awarded 25,000,000 Rwf of the value of the vehicle while it was

insured on the value of 17,000,000 Rwf. He added that in case of accident, the contract provides that the value to be considered is the current on the day of accident.

[12] He stated that article 45 of the insurance policy provides that the compensation in case of vehicle accident is equivalent to the current value, implying that the value of the vehicle would be 17,000,000 Rwf minus depreciation of 2% per month during 9 months in activity which implies 18%, by subtracting the value of the wreck of 10% to match the value of 12,546,000 Rwf determined by Nikwigize, the expert. This would be the compensation that Mbonimpa should be granted instead of 25,000,000 Rwf as decided by the Court without any reference.

[13] Mbonimpa and his counsel states that the point has no merit because CORAR would be disregarding the effects of non-execution of the contract, while the Law n° 45/2011 of 25 November 2011 governing contracts in its article 65 and 81 provide that a contract shall not only cover the subject matter but also the effects that equity, practices or law impute to the obligations according to the nature of the contract, implying that the total breach of the contract gives right to damages based on the non performed obligations.

[14] They stated that CORAR did not execute the contract on time, and that the insured value of the vehicle is 17,000,000 Rwf which should be maintained. Concerning 25,000,000 Rwf awarded by the Court, is the consequence of non-execution of the contract on time, since after the accident Mbonimpa should have been compensated with another new car which should not be affordable on market at 17,000,000 Rwf.

[15] The Court finds that Mbonimpa did not prove the reason why he would not execute the insurance contract concluded with CORAR which provides that in case of total loss, it would pay the current value at the time of accident. Concerning other damages resulting from the non execution of the contract on time, it would be separately explained without confusing them with the value of the vehicle itself.

[16] The Court finds that as Mbonimpa failed to contradict the value of the vehicle that was 12,546,000 Rwf on the day of accident as demonstrated by Nikwigize, the expert, he would not be awarded of additional money apart from above mentioned.

## **2. The damages relating to the income that the vehicle would have generated**

[17] The counsel for CORAR states that Mbonimpa must not be awarded of those damages because the vehicle was unable to be used again, and in this situation, the financial damages are not granted because that vehicle is not supposed to generate income as it is not working. He added that the Court could rely on judgment RCAA 0001/11/CS rendered on 13 January 2012, on paragraph 12 page 4.

[18] Regarding the financial damages, Mbonimpa and his counsel state that the fact that the vehicle was reserved for commercial activities including transport of goods while it was damaged at the extent that it could not be useful, that can be considered that his insurer, CORAR left him in boiling water. Therefore, the failure to pay on time results in paying a lot of money.

[19] In cross appeal, they request that Mbonimpa be allocated the damages of 50,000 Rwf per day, for him to receive 18,700,000 Rwf requested in 17 months, plus 14,300,000 Rwf of estimated 13 months from 9 September 2012 after the verdict delivery up to October 2013 when he pleaded before the Supreme Court.

[20] The counsel for CORAR states that 50,000 Rwf per day requested by Mbonimpa alleging that it was a daily income of the vehicle is excessive and without proof. If the Court found it worthy, he added, it would be computed on prices provided by RURA concerning the daily income of the vehicles.

[21] The Court finds that the fact that the accident took place on 4 September 2010, and then after there were different correspondences between CORAR and Mbonimpa regarding the issue of compensation requested by the latter, until they failed to settle the issue and filed the case to the Court, proves that there was refusal to pay, and that was the duty of CORAR as provided by the insurance contract they concluded. Therefore, it is the fault which caused the loss to Mbonimpa and which CORAR should be held liable according to article 258 of contracts or obligations which provides that any act of man which causes damage to another obliges the one by whose fault happens to repair.

[22] The Court finds not excessive the average of 50,000 Rwf requested by Mbonimpa as the daily income of make Daihatsu which carries out the transport. However, it should be subtracted 40% of its expenditures, remaining 30,000 Rwf as the daily income that the vehicle can generate in 22 days per month, as it is considered that there are 2 days off per week due to different reasons including its maintenance.

[23] Therefore, the Court finds that, the income that Mbonimpa's vehicle should have generated if CORAR had offered opportunity to get another one, is computed from 3 May 2012, the day CORAR filed a case to the Court until 15 November 2013, the day the verdict was delivered. Thus, the total is 12,240,000 Rwf for 18 months and 12 days.

[24] However, considering that the above mentioned amount is not generated by the vehicle for us to assume that it is a loss but rather the income that the vehicle should have made if it was properly used without constraint in the mentioned period, implying that it is the chance that Mbonimpa lost<sup>1</sup> to get that money. Therefore, as it is clear that there is a high probability of chance since the car was in use, it can be estimated to 80% of the total income that should be generated. Thus the compensation to be awarded to MBONIMPA is 9,792,000 Rwf.

### **3. Moral damages requested by Mbonimpa**

[25] Except the damages of 3,000,000 Rwf allocated to Mbonimpa by the Commercial High Court resulting from the death of driver who was her husband, she requests 3,000,000 Rwf of moral damages. The counsel for CORAR states in cross appeal even 1,000,000 Rwf awarded by Commercial High Court should not exist since she had been awarded financial damages.

[26] The Court finds that with regards to damages, Mbonimpa does not provide any explanation apart from stating that CORAR engaged her in unceasing litigation. Therefore,

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<sup>1</sup> The law scholars explain that the loss of chance is different from the deprivation of interests. The damages are granted when there is a loss of chance which cannot be equal to those resulting from deprivation of interest. That is cited in the book of Philippe Le Tourneau, *Droit de la responsabilité et des contrats*, 8<sup>ème</sup> édition, Dalloz, février 2010, p 1419-1420, where he states that: "La perte de chance implique toujours l'existence d'un aléa; c'est ce qui la distingue du strict gain manqué, dont l'obtention aurait été certaine si le fait dommageable n'était pas survenu. La réparation est donc en principe nécessairement inférieure à l'avantage que la victime escomptait retirer de l'événement en question".

she cannot be awarded them because she has been awarded financial damages computed from the time CORAR refused to compensate her vehicle damaged by an accident.

#### **4. Damages of procedural and advocate fees.**

[27] Concerning 2,000,000 Rwf requested by Mbonimpa for procedural and advocate fees to the Supreme Court, the Court finds that even if she hired an advocate and spend some procedural fees, there is no proof of those damages, and then in the Court discretion, she shall get 1,000,000 Rwf to all instances.

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

[28] Decides that the appeal of CORAR has merit in part;

[29] Decides that the cross appeal of Mbonimpa has merit in part;

[30] Orders CORAR Ltd to pay Mbonimpa Solange 12,546,000 Rwf of her vehicle damaged in accident, 9,792,000 Rwf of compensation, 3,000,000 Rwf of damages on the driver's death, which was not appealed against and 1,000,000 Rwf of advocate and procedural fees, all totaling 26,338,000 Rwf

[31] Orders CORAR Ltd and Mbonimpa Solange to jointly pay 22,100 Rwf of Court fees in this instance; meaning 11,050 Rwf for each.