



Court reviews special damages in malicious injection case

Special damages relate to the past pecuniary loss calculated at the date of trial. These are damages or losses that can be quantified such as out of pocket expenses or earnings lost during the period of the injury.

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A police nurse was charged and prosecuted for administering, under suspicious circumstances, an injection on April 17, 2019, to a two year old child. The nurse was alone with the child and out of the mother's view when the injection was administered on the left arm of the child.

The nurse quickly threw away the needle and syringe, arousing a lot of suspicion. The nurse was found guilty of the offence of common assault and paid a fine of Shs2m as well as compensation to the mother of the child of another Shs2m.

The mother of the child, however, sued the nurse and the Attorney General in the Civil Division of the High Court for battery and medical negligence and sought special and general damages and compensation for unlawful injury and

body pain. She asked for special damages of Shs2.5m as expenses incurred on treatment and welfare of the child at various health facilities as well as punitive damages of Uganda Shillings fifty million and interest on court awards and costs of the suit.

The Attorney General and the nurse denied the claims of the mother of the child and argued that the mother of the child was not entitled to any damages since the nurse had already paid her compensation of Uganda Shillings two million as directed by the Chief Magistrate, at the conclusion of the criminal case.

Special damages refer to past expenses and loss of earnings and are given for losses that are not presumed but are specifically proved. These are damages or losses that can be quantified such as out of pocket expenses or earnings lost during the period of the injury and the hearing of the action and are capable of

being calculated more or less precisely. Special damages relate to the past pecuniary loss calculated at the date of trial. It is distinguished from general damages which relates to all other items of damage whether pecuniary or non-pecuniary. It is settled law that special damages must be asked for and strictly proved although they need not be supported by documentary evidence in all cases as cogent evidence can do.

Special damages must be specifically asked for at the beginning of a case and this helps to avoid surprise claims at the trial. During the trial it must be proved by evidence that the loss was incurred and that it was the direct result of the wrong occasioned. Matters per-

taining to hospitalisation, treatment and medical management, the need for further medical care, the disabilities, and pecuniary losses all fall under special damages.

In the instant case, the mother of the child asked for Shs2.5m. The mother, during the trial, testified that the child was examined at a clinic on 20th May, 2019 but did not state that she spent some money in the clinic nor did she produce any receipts. On June 24, 2019, the child was taken to hospital and examined but there was no indication that some money was paid.

The blood of the child was taken and examined and a report was prepared. The report was faint and ineligible and

No proof???

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Admission in question. Court observed that there was no documentary proof of medical admission at the said facility. To court there should always be documentary proof of medical admission in form of medical records, unless something happened to the record. In this case no explanation was proffered. There was also no proof of the purchase of drugs. This claim was, accordingly, disallowed.

the cost of the laboratory examination was not indicated. Court had no evidence to award these costs.

An ultra-sound scan of the abdomen was also carried out around the same time and the results presented in court and the mother of the child explained to court that she paid Shs50,000 only. Court believed her and allowed the claim. Court also considered two other claims of Shs3,000 and Shs2,500 spent in the same facility on June 24, 2019 and allowed these claims as they were supported by documentary evidence. Court considered another claim of Shs10,000 dated May 10, 2019 that was paid for a blood test at a laboratory, for which there was a receipt. To court the claim was proven and allowed.

The mother of the child also presented to court a document dated June 3, of an unknown year when she paid Shs5,000 as part of her claims for special damages. The purpose of this payment was not explained to court and for this reason court rejected this particular claim.

Court also rejected another claim of a medical consultation of Shs2,000 that was incurred on October 20, 2021, two years after the incidence complained of. To court it was not clear how this consultation was related to the incidence before court.

The mother of the child testified that her child was admitted to the Regional Referral Hospital and during the admission she told court that she spent Shs200,000 on drugs that she purchased from an outside facility. Court observed that there was no documentary proof of medical admission at the said facility.

To court there should always be documentary proof of medical admission in form of medical records, unless something happened to the record. In this case no explanation was proffered. There was also no proof of the purchase of drugs. This claim was, accordingly, disallowed.

The mother made a further claim of Shs140,000 spent on motor cycle transport and food for the child and a further Shs500,000 as cost of public transport that she incurred in traveling a distance of a hundred kilometers from her village to the various health units. To court the Shs140,000 was believable and awarded as the child had to move with her mother for medical tests and other treatment.

Although there were no receipts, court did not expect that receipts for transport expenses, especially by the common motor cycles, which was the mother's main means of transport for short distances, would be issued.

It was apparent that the mother of the child did not continue to stay in the Police Barracks where the incident occurred. Court reasoned that the mother of the child had to commute to follow up on the child's medical care and treatment. In the circumstances court considered the awarded of Shs300,000 as reasonable in the circumstances.

The mother of the child also put in a claim of Shs1.5m used to facilitate her and other witnesses during the criminal trial at the Chief Magistrate's Court. According to court, this expense was not proved and therefore extraneous. In any case, judgment was given on September 13, 2019, implying that the criminal case was not protracted. Court, therefore ended up awarding special damages amounting to Shs586,000 in this case.

To be concluded