



Court awards damages in malicious injection case

Money cannot provide true restitution and often times, cannot undo what has happened. And there is no adequate yardstick for translating losses such as pain and suffering into monetary terms.

BY SYLVESTER ONZIVUA

On April 17, 2019, a nurse working in a clinic run by the Medical Services of the Uganda Police Force stealthily administered an injection on the left arm of a 2 year old child when the mother of the child was not looking and the nurse threw away the needle and syringe in a suspicious manner. It was suspected that the nurse had injected the child with a syringe contaminated with the Human Immune Deficiency Virus (HIV) and consequently the child was put on Post Exposure Prophylaxis (PEP), drugs to prevent her from contracting the virus.

The nurse was prosecuted and found guilty of the offence of common assault and the nurse was ordered to pay a compensation of Uganda Shillings two million to the mother of the child, which was done.

The mother of the child, however, further pursued the matter in the Civil Division of the High Court and requested court to award her special damages of Shs2.5m only as expenses incurred on treatment and welfare of the child at various health facilities.

Court, however, ended up awarding her special damages amounting to Shs586,000 in this case as she failed to prove to court the Shs2,500,000 that she requested as special damages. She

also requested for Shs100m in general damages and Shs50 million as punitive damages.

General damages are those losses which are not capable of price quantification in monetary terms. These are amounts of money payable by reason of some breach of duty or obligation, whether that duty or obligation is imposed by contract, by the general law or legislation. They are presumed to be the natural or probable consequence of the wrong complained of. The complainant is only required to state that he or she has suffered such damage.

General damages, at law, are presumed to flow from the wrong complained of and, unlike special damages, need not be specifically requested for. They are awarded at the discretion of court and are compensatory in nature and are intended to make good, to the aggrieved party, as far as money can do, the losses he or she has suffered as the natural result of the wrong done to him or her. In considering general damages court may take into consideration factors such as the malice or arrogance of the accused guilty party and the injury suffered by the complainant and this may include the amount of stress.

It is now a principle of law that evidence must be adduced to prove inconvenience, mental suffering and anguish in order for courts to award

general damages for these types of sufferings.

And regarding the amount of general damages awarded, it is at the discretion of the court and is based on the circumstances of each case. The law also says that the amount of general damages awarded is that sum that will put the person who has been injured, or who has suffered, in the same position as he or she would have been if he or she had not sustained the wrong for which he or she is now getting his compensation or reparation for.

General damages are thus awarded on the notion that there is no medium exchange of happiness. The award must, however, be fair and reasonable, fairness being gauged by earlier court decisions. Money cannot provide true restitution and, often times, cannot undo what has happened. And there is no objective or adequate yardstick for translating losses such as pain and suffering into monetary terms.

In this instant case the mother of the child testified that the child suffered bad health resulting from the injury inflicted and the associated side effects of being put on PEP for HIV. This

treatment, according to the mother of the child, caused her loss of hair on the scalp, diarrhea, loss of appetite, swelling of the abdomen, and retarded growth. Whereas the child may have suffered the side effects of the drugs she was put on, court noted that the alleged effect of retarded growth was not proved. The medical expert, who testified in the case, ruled out this side effect.

Court also observed the child during trial and noted that she looked well-nourished and apparently growing normally. The medical expert told court that the side effects of being put on PEP usually lasts for a month. The doctor had examined the child six months after the child had been put on PEP and found that her hair growth had normalized and the body rashes had disappeared and the child had regained appetite and the abdominal pains were no more. The doctor told court he was not aware of any permanent effects of PEP.

To court, the injury of pricking the child on the left arm was localized and so were the side-effects of the PEP treatment. Court was, therefore, of the opinion that the injuries the child suffered were temporary and were classified as harm

and not grievous harm or dangerous harm or maim.

To court although the action of the nurse was clearly wrong and vile, the injury the child suffered was not so grave as to attract the kind of general damages to the tune of Shs100 million.

The Civil Court is further guided by the principle that where a complainant is a victim of a crime that has given rise to a civil action and where the victim received compensation in the criminal case, the Civil Court should take into consideration the amount of compensation paid as a result of the criminal process.

Court considered the pain and the inconveniences suffered by the child and her mother and the fact that the mother of the child almost reached a settlement with nurse, but for the father of the child who refused, and further considering the Shs2 million that the mother received after the criminal trial. Court, for these reasons, ended up awarding an amount of Shs5 million as general damages.

The mother of the child had also asked for punitive damages of Shs50 million. Court declined to award these punitive damages as these were not pressed.

Court reasoned that the Chief Magistrate's had, at the conclusion of the criminal case, already punished the nurse for the wrong occasioned. To court, therefore, it would not be proper to award punitive damages which are chiefly awarded for a criminal wrong.

The nurse had presented an argument of being punished twice for the same wrong which, in law, is considered double jeopardy.

Apparently the nurse sought to argue that having been tried and convicted of the offence and having paid compensation in the criminal court, the matter should not have been pursued further in the civil case.

To court such a contention cannot be sustained as civil proceedings may sometimes emanate from the same facts that constitute a criminal offence.

It is also the law that the fact that a person was prosecuted for a crime does not prevent that person from bearing civil liability on account of the same facts. Tortuous acts are also sometimes crimes and both criminal and civil actions can be taken against the wrong doer.

Discretion of court

Compensation. Regarding the amount of general damages awarded, it is at the discretion of the court and is based on the circumstances of each case. The law also says that the amount of general damages awarded is that sum that will put the person who has been injured, or who has suffered, in the same position as he or she would have been if he or she had not sustained the wrong for which he or she is now getting his compensation or reparation for.