

REPUBLIC OF UGANDA
IN THE INSURANCE APPEALS TRIBUNAL AT KAMPALA APPEAL NO.
1 OF 2022

BETWEEN

UAP OLD MUTUAL INSURANCE UGANDA LIMITED APPLICANT

-VS-

AFRICAN QUEEN LIMITED.....RESPONDENT

JUDGMENT

A. INTRODUCTION AND BACKGROUND

1. This Appeal was filed by the Applicant on 10th May 2022 challenging the decision of the Insurance Regulatory Authority (IRA) contained in its letter dated February 18, 2022, under reference No: IRAB/COMP.11/01/22. This Appeal relates to a decision by IRA compelling the Applicant to;
 - a. Compute the temporary total disablement and temporary partial disablement payouts that the respondent is entitled to.
 - b. Issue to the respondent a fresh discharge voucher including permanent incapacity and the benefits in (a) above, for signature in settlement of the claim.
 - c. Avail IRA with proof of payment of this matter within two (2) weeks from the date of receipt of the decision.
2. The Applicant, believing there to be an error of law and fact committed by IRA in the interpretation of the policy on 18th February 2022 and applied to IRA to review its decision. And on April 21, 2022, IRA confirmed its earlier decision and directed the Applicant to comply with its earlier decision.
3. The brief facts of this appeal as set out in the appeal and the response to the appeal are as follows:
 - a) On 2nd January 2019, Ms. Sophy Nantongo, an employee of the respondent was met with an accident when she was knocked down by a speeding motorcycle along Entebbe Road. She was taken to Entebbe Grade B hospital where she received first aid and later transferred to Victoria International Hospital where she underwent two surgeries on her right ankle joint. Ms. Nantongo also underwent a second operation at International Hospital Kampala on 24th August 2019.
 - b) Based on the assessment report issued by Dr. Orothow Nobert of Platinum Medical Center dated 8th September 2021, the respondent's employee suffered 22.5% current permanent incapacity and Dr. Geoffrey Madewo of Ultima Trauma & Orthopaedic Limited gave an assessment of injuries at 20% as per the report dated 12th October 2021.
 - c) Based on the above reports, the respondent notified the applicant of the incident and continually provided an update on the progress of the employee's treatment to the Applicant which included two surgeries in Uganda and one in Thailand.

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Compensation Act. But the circumstances of the employee's accident did not arise during the course of her employment. The Applicants relied on the case of **Nsubuga Tony vs Spencon services company limited** where the presiding judge agreed with the assessment of the labour officer because the injuries that had been suffered by the party to the case were arising out of or during her employment schedules.

17. Learned Counsel submitted that The Workers Compensation Act also has a clear description of what amounts to course of employment, that is in Section 3(1) of the Workers Compensation Act on employers' liability.
18. Learned Counsel further submitted that the Applicant was within its right to repudiate its liability to the Insured noting that at the time of lodging the claim, the Insured was already in breach of his part of the policy. Counsel relied on *J.W Cater*, in *Carter's Breach of Contract*. (J.W. Carter, 2005).
19. On the second issue for determination, Learned Counsel submitted that the valuation report indicated that it was notified in 2019. The policy has been running since 2013. It was titled GPA at that time. The accident occurred in 2019. The renewal from 2018/19 applies to her injuries, a copy of which has been availed to the tribunal. Because the accident happened in 2019, the renewal of 2018/19 applies although their portfolio has been existing since 2013 and has been renewed consecutively. In determining the quantum, the Applicant looked at the interpretation of temporary total, partial and permanent disablement terms under the policy. In determining the computation, the Applicant juxtaposed with the amounts in the claim support documents because the Applicant's claims department carried out an investigation by Excalibur.
20. Following the investigation's report and from the accident notification in 2021, it is indicated that the accident occurred, and the employee resumed work on 1st March 2021 after 26 months. At the time of the accident, the claimant was earning approximately 16 million that is as of October 2018. So the computation of the claim was based on that salary and pay slip. The latest medical report from Ultima estimated the employee's permanent disability at 20%. So Excalibur's report concluded that the claimant was entitled to approximately 199 million being computed as a percentage of her earnings for 5 years. There was also another medical report from Platinum medical center dated 8th September 2021 which estimated the employee's permanent incapacity at 22.5%. So given the two reports, the computations are feasible with what UAP guided.
21. Learned Counsel relied on the GPA Policy. In interpreting the policy on permanent incapacity, UAP looked at the relevant clauses in the GPA policy. The medical reports just state permanent disability. UAP was of the view that the employee's injury falls under permanent partial disablement as explained below.
 - a) *Subclause 5 under the definition section of the policy defines the term permanent. It also says events two and three on page 6 provide for Permanent Partial Disablement (PPD) and Permanent Total Disablement (PTD). When you look at events 2 and 3, PTD is inapplicable. The Schedule of compensation on page 8, states the limits for PTD to be equal to the capital sum assured that it 5 years earnings of the claimant's salary. It provides for payment where the injury totally and irrevocably prevents the injured person from engaging in an occupation, trade, or business for which there is no hope of improvement. The employee resumed work after 26 months. Schedule 8 does not apply to her injury.*

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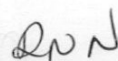
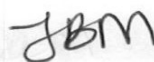
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business, trade or profession TTD which confines the insured person immediately and continuously to home or hospital and prevents the insured person from attending to usual duties. In this case, the time the insured's employee was confined immediately and continuously after the accident was 399 days between 2nd January 2019 to 5th February 2020 as per the claim support documentation shared by the insured.

28. TPD in clause 5 is defined to mean a bodily injury that prevents the insured person from fully engaging in or attending to the trade, business, or profession hearing described or if the insured person has no business, trade, or profession TPD which partially confines the insured person immediately and continuously to home or hospital and prevents the insured person from attending to usual duties if any. The time the insured indicated in the claim form as TPD was 390 days between 5th February 2020 to 1st March 2020 when the respondent's employee returned to work.
29. Counsel submitted if one is later ascertained to have a permanent incapacity (PI) the TTD and TPD are deducted from the final benefit. He further submitted that under clause (4) TTD and TPD are also affected by the provisos on page 7 of the policy which read that "Provided always that;
 - On proviso b 'Weekly benefits shall become payable upon determination of the total amount due. Where any payments are made for weekly benefits, the amount paid shall be deducted from any lumpsum subsequently payable.
30. Applying the above formula, Counsel computed the total lumpsum payable by adding TTD computed at 218,786,725.41 cents and TPD computed at 106,925,842.24 cents, and PI which is 149,693,180.55 to get a total lumpsum of 475,408,748.2. According to the counsel's interpretation of Clause 5 proviso b, TTD and TPD are deductible from the final lumpsum payable and the net of TPD and TTD is what is payable to the respondent in addition to the medical costs provided in Annexure 3 to the policy. Applying the reasoning, Counsel for the Applicant concluded that the final amount payable is UGX 152,696,180.55.
31. The Applicant, therefore, prayed for orders that the decision by IRA be set aside and in the alternative, the Tribunal holds that the policy is a combined policy with both Workers Compensation and GPA and prayed that computation to done and presented to the Tribunal be accepted as the correct computation for settlement of the Respondent's claim.

D. THE RESPONDENT'S CASE AND SUBMISSIONS

32. Counsel for the Respondent Mr. Mawampa also led oral submissions. Counsel contended that the issue for determination was whether TTD and TPD can be added to the compensation. Counsel agreed with the facts as set out by the Applicant and invited the tribunal to interpret the policy and the law applicable.
33. Counsel stated that the respondent's CEO and the employee got into the accident on 2nd Jan 2019, which was a Wednesday. She was taken to Entebbe Grade B Hospital, and later to Victoria hospital in Entebbe. She underwent 2-3 operations on her leg and was able to be stabilized. The operations were not successful and in April, she went for further review at IHK and discovered errors that were done. Screws were placed poorly, and she underwent another operation at IHK. This put her down for another long period.



from any lumpsum subsequently payable in respect of the same accident. The lumpsum payment is the permanent incapacity.

44. The Applicant submitted that had it paid the weekly, it would've deducted the figure from the lumpsum. In this case, the insurer's computation does not have any deductions for any weekly because they had not paid them out. The Applicant, therefore, contended that in practice, both benefits had been computed for payment.
45. In reply to the additional submissions as directed by the Tribunal, counsel for the respondent submitted that the Applicant had, in its submissions admitted that the respondent was entitled to compensation under Permanent Partial Disability, medical expenses, and Temporary Total Disability.
46. Counsel further clarified that the respondent's case is for a claim for Permanent Partial Disability (PPD) and Temporary Total Disablement (TTD) and requested the tribunal to disregard the submissions on Total Partial Disability after clearly submitting that the Respondent/insured was fully unable to attend to her work/trade for 26 months. At no time did she report to work until March 2021.
47. What was left in contention is whether the Applicant/Insurer's interpretation of Proviso B under events covered that provides for the deduction of weekly benefits paid from the lumpsum payable under the event to Temporary Total Disability is right.
48. Therefore, the respondent's submissions were focused on showing the Tribunal that the interpretation of 'Proviso B' by the Applicant is wrong and that "Proviso B" under events covered only applies where the Applicant/Insured had advanced any monies to the Respondent/insured before getting the final medical assessment as to the extent of the injuries suffered by the Employee.
49. Counsel submitted that from the onset, Both Temporary Total Disablement (TTD) and Temporary Partial Disability (TPD) are clearly and specifically provided for as Benefits in the Policy schedule and must be given effect.
50. Any interpretation to the contrary would be an ambiguity and would be rejected in line with the universally applied rule in Insurance law; *The Contra proferentem Rule*; that ambiguities in an insurance policy will be strictly interpreted against the insurer. Application of this rule.
51. Counsel referred the tribunal to the English case of **In Re Etherington & Lancashire & Yorkshire Accident (1909) 1 KB 591 at 596** cited with approval in **Kabenge V Niko Insurance (Uganda) Limited HCCS No.319 of 2012**, it was held that Where the wording of an insurance policy tends to defeat the intention of the policy or to make it practically illusory, it will be rejected;
52. The intention of the Policy as can be deduced from the Schedule was to provide for both benefits. The interpretation given by the Applicants in their submissions that both benefits would not accrue to the Respondent is contradictory and I invite this tribunal to interpret the GPA Policy strictly against the maker. Both TTD and TPD were intended to be covered under the policy and were provided for in the Policy schedule.
53. Temporary Total Disablement (TTD)

'Where any payment is made for weekly benefits, the amount so paid shall be deducted from any lumpsum subsequently payable in respect.....'

It is the submission of the Respondent that the tribunal considers the definition of 'payment' and the Collines Dictionary defines payment as 'a sum of money paid' or 'something that is paid'.

This, therefore, means that if 'a sum of money had been paid/made for weekly benefits before the determination of the lumpsum amount payable under the same incident,...then that amount paid by the insurer to the Insured would have to be deducted from the subsequent Lumpsum/overall amount payable.

The essence of this clause is to prevent the Insured from benefitting twice in such a way that if the Insurer had paid any advance weekly benefits to the Insured before ascertaining whether the Insured is entitled to PPD or PTD, the Insurer should deduct such advance payment made for weekly benefits from the lumpsum amount payable after ascertaining the nature of injuries suffered and assessing the amount payable.

In the matter before this Tribunal, Counsel submitted that the Respondent has never made a claim for TTD or TPD from the Applicant and in return, the Applicant has never disbursed any 'payment' regarding weekly benefits. This would therefore mean that the Insurer having never disbursed any monies to the Insured, cannot deduct any weekly benefits.

63. Therefore, Proviso B in its totality means if interpreted as a whole that, an Insurer shall only be eligible to pay the insured weekly benefits upon determination of the total amount due to the Insured, however, In cases where the insured may pay for weekly benefits before the determination of the overall amount due, then the insurer shall deduct any sums so advanced from the lumpsum amount payable to the Insured.
64. If the Proviso allowed a deduction of the weekly benefits on all lumpsum amounts to be paid, then the clause would have read in the second sentence "where any payment is to be made for weekly benefits, the amount so payable shall be deducted from any lumpsum subsequently payable...." This would mean the clause referred to current and future payments of TTD to be deductible from the final payment.
65. However, the draftsman of the clause was awake and clear to use the words 'any payment is made' and the words 'amount so paid' which all relate to a past payment or a payment that has already been done prior to the 'any Lump sum subsequently payable' (which is a future payment). Therefore it wouldn't make sense for the Insurer to deduct something they haven't paid.
66. The interpretation above is the only logical interpretation of Proviso B because of the following reasons;
 - (i) As indicated in the Ruling by the Insurance Regulatory Authority, it is standard practice that the Insurer has always paid the Insured benefits arising under PPD or PTD events together with TTD or TPD events.
 - (ii) If the Tribunal was to consider the interpretation of Proviso B by the Insurer/Applicant as stated in Paragraph (viii) and (xi) of their written submissions, that Proviso B allows the insured to deduct TTD and TPD weekly benefits from the Lumpsum payment subsequently payable, it



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- ii) Whether the Respondent is entitled to claim for both TPD and TTD respectively under the GPA policy?
- iii) What remedies are available to the parties?

F. DECISION

ISSUE ONE

69. At the hearing, it was a fact agreed by both parties in their respective submissions that the injury suffered by the Respondent's employee was due to a jogging exercise which was outside normal working hours and is therefore not covered by the Workers Compensation Act (WCA) but instead covered by the Group Personal Accident Policy (GPA). The Tribunal agrees with the conclusion of both Counsel on this issue and the same is accordingly resolved.

ISSUE TWO

70. The second issue is about the claims under the policy. It appears that there are a number of claims made under the policy between the respondent and the applicant, namely; the medical benefit, PI, TTD, and TPD.

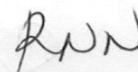

71. The dispute between parties is in respect of two benefits namely, total temporary disablement and temporary partial disablement and the dispute is twofold;

- i) The first part of the dispute is whether the respondent is entitled to claim for TTD and TPD under the policy
- ii) If so, whether the applicant is entitled to deduct payment for TTD and TPD in the final computation of the claim?

72. The Tribunal reviewed the Group Personal Accident Policy document as a basis which is the contract between the parties. It is indeed the policy that governs *the rights of the parties, as it contains the distinctive features of the contract of insurance. These are the parties, the subject matter of insurance, the period of the insurance, the date of commencement of the policy, the details of the peril which was insured against, and also a list of exemptions specifying the circumstances in which the insurers would not be liable.*

73. The policy under events covered on pages 6 and 7 provides that;

- 1) Permanent Partial Disablement (PPD) means;
 - i) *Injury specified in the Permanent Disability Scale prevents the insured person from fully engaging in or attending to the trade, business, or profession herein described.*
 - ii) *Injury not specified in the Permanent Disability Scale in respect of which the Company will adopt a percentage which is constituent with Provisions of the permanent disability scale.*
- 2) Temporary Total Disablement (TTD) *"means bodily injury that prevents the insured person from engaging in or attending to the trade, business or profession herein described, or if the insured person has no trade, business or profession total disablement which necessarily confines the insured immediately and continuously to home or hospital and prevents the Insured Person from attending to usual duties (if any)*



lodgment of a claim for these two benefits finally at the end when the final benefit payable is computed. We have not been presented with any evidence to suggest that the Applicant advised the insured to lodge a claim for weekly payments under these two benefits. It was left to the respondent who isn't a subject matter expert in insurance to determine in its wisdom when a claim for these two benefits has to be made.

81. A prudent insurer would be expected to guide the insured upon notification of the incident on how the claim should be made. We note that this prudent practice was not followed by the Applicant leaving it to the respondent to determine when to make the claim.
82. On the issue where any payment is made for weekly benefits, the amount so paid shall be deducted from any lumpsum subsequently payable in respect of the same accident. It is clear that this proviso is only for instances where a payment has been effect, only then can a deduction be made. We have not seen any evidence through submissions that any payment for weekly benefits was made to the Respondent. As stated above, the Respondent only claimed at the end.

We do not agree that the clause is intended to exclude payment of the two benefits TTD and TPD from the final lumpsum payable even where no weekly benefits were ever made by the insurer. The respondent believed that it was easier to treat its employee and only make one final claim to the insurer having fully attended to its employee. It would be therefore unjust for the insurance to deny an unguided insured of benefits accruing to it under the policy.

83. We agree with counsel for the Respondent that the clause intended only to have payments made by the Applicant (if any) on a weekly basis prior to the determination of the claim, to be deducted from the final claim amount.
84. We thus find that both TPD and TTD are properly included in the final lumpsum payable and hold that they should be paid to the Respondent.
85. The second part of the argument is the computation of TTD and TPD payable. We have examined both computations presented to the tribunal by both Counsel, and we find the correct computations to be those presented by Counsel for the Applicant to the extent that they do not exclude TPD and TTD from the final sum payable. The computations presented by the Respondent take into account days that were not included in the final claim documents lodged by the respondent thereby arriving at the erroneous sum of UGX 585,155,780 instead of the correct sum of 475,408,748.2 cents.

Issue 3. What remedies are available to the parties?

In conclusion of the matter discussed hereinabove, the Tribunal finds and holds that the Applicant is liable to pay the Insured's claim for both TTD and TPD as per the computation presented above.

G. CONCLUSION AND FINAL ORDERS

86. In conclusion, the Tribunal makes the following orders:
 - (a) A declaration that the respondent is entitled to claim for both TTD and TPD under the GPA.
 - (b) That the Applicant pays to the Respondent a sum of UGX 475,408,748.2 being the total lumpsum payable within one month from the date of this ruling.

