



REPUBLIC OF KENYA



KENYA LAW
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Mauti v NKO ((Minor Suing Through her Next Friend and Father SOO)) (Civil Appeal 105 of 2021) [2023] KEHC 17990 (KLR) (26 May 2023) (Judgment)

Neutral citation: [2023] KEHC 17990 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CIVIL APPEAL 105 OF 2021
REA OUGO, J
MAY 26, 2023**

BETWEEN

EZRA ONDUSO MAUTI APPELLANT

AND

NKO RESPONDENT

(MINOR SUING THROUGH HER NEXT FRIEND AND FATHER SOO)

*(Appeal from the judgment and Decree of Hon. Gloria Barasa (RM)
dated 10th day of August 2021, in Ogembo PMCC No 143 of 2019)*

JUDGMENT

1. The respondent through her next friend her father filed a suit against the appellant before the subordinate court seeking damages following a road traffic accident which occurred on the April 21, 2019 involving motor vehicle registration number KCM 997D and the respondent a pedestrian. The minor lost 2 teeth and also sustained multiple soft tissue injuries namely loosening of the lower right incisors teeth, deep cut wound on the right frontal area, deep cut wound on the chin, multiple bruises on the face, contusion on both eyes leading to haematoma, lacerations on the right iliac lumbar area, bruises on the right chest, contusion on the right elbow and bruises on the right ankle-laterally. The parties settled the issue of liability in favour of the respondent in the ratio of 70:30. The trial magistrate in consideration of the pleadings, evidence and submissions before her awarded the appellant Kshs 450,000/- for general damages and Kshs 23,300/- as special damages subject to the agreed liability. The appellant is dissatisfied with the finding of the trial magistrate on damages and has preferred this appeal on the following grounds:
 1. That the award of general damages awarded to the respondent was manifestly and inordinately excessive in the circumstance.



2. That the learned trial magistrate acted in error when the same failed to properly evaluate the evidence on record thus reaching erroneous decision.
 3. That the learned trial magistrate erred when the same misapprehended the principle applicable in assessment of damages in personal injuries claims thus occasioning miscarriage of justice.
 4. That the learned trial magistrate erred in law and fact when the same relied on extraneous issues as a basis of his determination on liability.
2. The appellant is seeking to have the court revisit the assessment of damages and make an award commensurate to the injuries sustained.
 3. The appeal was canvassed by way of written submissions. The only issue for the court's consideration is the award of damages. In dealing with an appeal on quantum I stand guided by the decision of the Court of Appeal in *Bashir Ahmed Butt V Uwais Ahmed Khan* [1982-88] KAR 5 where the court held that;

“An appellate Court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low”
 4. The appellant in his submissions proposes that an award of Kshs 100,000 – 150,000/- would suffice as compensation for general damages. They relied on the case of *Maimuna Kilyungya v Notrex Transporters Ltd* (2019) eKLR where the court awarded Kshs 125,000/-, in 2020, for the following injuries sustained by the respondent: blunt neck and shoulder injury; and bruises on the left ear. In *FM (Minor suing through mother and next friend) v JNM & Another* [2020] eKLR the court awarded the plaintiff who suffered soft tissue injuries Kshs 100,000/-.
 5. The respondent on the other hand supported the award by the trial magistrate. He relied on the case of *Joseph Mutua Nthia v Fredrick Moses M Katuva* [2019] eKLR. In the said case the respondent was awarded Kshs 400,000/- after he sustained the following injuries: injury to the left face, loose teeth, loss of 2 teeth, blunt chest injury and blunt back injury. The respondent also cited the case of *Francis Ochieng & another b Alice Kajimba* [2015] eKLR where the respondent therein sustained head injuries with aggravated injuries and was awarded Kshs 350,000/-.
 6. The injury sustained by the respondent is not in dispute. The respondent in his plaint enumerated the injuries as follows: loss of 2 upper incisors teeth; loosening of lower right incisors teeth; deep cut wound on the right frontal area and chin; multiple bruises on the face; contusion on both eyes leading to haematoma; laceration on the right iliac lumbar area; bruises in the right chest; contusion on the right elbow and bruises on the right ankle – laterally.
 7. The injuries cited by the appellant indeed capture plaintiffs who sustained soft tissue injuries; however, their injuries are less severe as they did not suffer loss of teeth. In *Justine Nyamweya Ocboki & another v Prudence Anna Mwambu* [2020] eKLR the plaintiff sustained the following injuries: loss of upper front incisor tooth; deep cut on the chin; cut on the lip; loosening of the upper teeth; blunt object; injury to the right forearm; and loss of consciousness. The plaintiff therein was awarded Kshs 300,000/-. In the *Joseph Mutua Nthia v Fredrick Moses M Katuva (supra)* the injuries are more comparable to those sustained by the respondent herein and the court awarded Kshs 400,000/-.
 8. I note that the respondent in this matter was a minor about 8 years old then. She was examined by the 2 doctors on the April 29, 2019 and September 4, 2019. The accident happened on the April 21, 2019.



Doctor Zoga who examined her on the April 29, 2019 noted the injuries she sustained as enumerated in the plaint. His conclusion was that the 2 incisor teeth were extracted and were missing, she had raw scars. That the minor sustained multiple soft tissue injuries which were are on in the process of healing and they were expected to heal well although with permanent scarring. That she lost 3 teeth and that she will need crown and bridging since they were permanent teeth and that the loss of permanent teeth is a permanent disability as they cannot grown. Doctor Kumenda's report is rather brief. He used the summary from Lenmek hospital and noted that after the accident examination revealed that the respondent minor had bruises to the face, jaws and shoulders. She was stitched on the face and dressed. On examining her he found that the minor had an empty socket on the upper jaw at the left upper incisor toot point. The other teeth were good and firm and in the same line. His conclusion was that the minor suffered injuries to the face and jaws and had healed well without permanent disability.

9. Having compared injuries sustained by appellant, I am of the view that damages of Kshs 100,000/- to Kshs 150,000/- as proposed by the appellant are inordinately low. The case relied by the respondent are of plaintiff's who are noting that this is a minor and that she has recovered from the soft issue injuries I find that the award of 450,000/- is on the higher side, in my view a sum of Kshs 350,000/- is adequate. I therefore set aside the award of Kshs 450,000/- and substitute it with a sum of Kshs 350,000/- for general damages. The award on Kshs 23,300/- for special damages was not challenged. The respondent bears 30% liability. The appellant is awarded half the cost. Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 26TH DAY OF MAY 2023

R.E. OUGO

JUDGE

In the presence of:

Miss Opondo For the Appellant

Miss Kusa For the Respondent

Aphline C/A

