



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**(CORAM: CHERERE-J)**

**CIVIL APPEAL NO. 69 OF 2020**

**BETWEEN**

**GERALD MUHUTHIA MWANGI.....APPELLANT**

**AND**

**JOHN MBURUGU.....1<sup>ST</sup> RESPONDENT**

**CHARITY KANANA.....2<sup>ND</sup> RESPONDENT**

**(Being an appeal from the Judgment and Decree in Meru CMCC**

**NO. 145 OF 2019 by Hon. L.N. Juma (SRM) on 6<sup>th</sup> August 2020)**

**JUDGMENT**

**Background**

1. Appellant was on 04<sup>th</sup> February, 2018 injured in a road accident involving 2<sup>nd</sup> Respondent's Motor Vehicle No KBA 710Z which was being driven by the 1<sup>st</sup> Respondent.
2. Judgment on liability was awarded at 90: 10% in favour of Appellant as against the Respondents jointly and severally.
3. By a judgment dated 6<sup>th</sup> August 2020, Appellant was awarded Kshs. 280,000 as general damages and Kshs. 35,890 as special damages together with costs and interest.
4. The Appellant being aggrieved with the trial court's decision filed the instant appeal by way of a memorandum of appeal dated 31<sup>st</sup> August 2020 on the ground that the Learned trial Magistrate award for general damages in the sum of Kshs. 280,000 is inordinately low amounting to an erroneous estimate of damages payable in the circumstances of this matter.

**Submissions**

5. Appellant via submissions dated 27<sup>th</sup> January 2022 argued that the general damages awarded were so inordinately low that it amounts to a wholly erroneous estimate and is not comparable to the injuries sustained by the Appellant. He prayed for Kshs. 2,000,000/- and relied on the following cases:

**i. Board of Trustees Anglican Church of Kenya Diocese of Marsabit V THW (Suing through her father and guardian ad litem HHWG) [2019] eKLR** where the court awarded Ksh.5,000,000 for **severe head injury with hip dislocation, was admitted in ICU for 3 months, and in the ward for 1 month, she was bed ridden and has impaired higher mental functions, body stiffness, contractures and chronic pain requiring use of strong analgesics**

**ii. Edward Mzamili Katana v CMC Motors Group Ltd & Another [2006] eKLR** where the court awarded a sum of Kshs. 2,000,000/ to a plaintiff who had sustained head injury leading to concussion, cut wound and bruises of the scalp, fracture of the left scapula, compound fracture dislocation of the left elbow, chest injury with multiple fractures of left 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> ribs and fracture of the left femur upper 1/3 shaft.

iii. **Hussein Ali Shariff alias Hussein Ali v A L L (minor suing through F T L) [2018] eKLR** where the court on appeal awarded 2.7 million for *Closed left humerus mid-shaft fracture, Right clavicle medial end fracture, left calcaneal fracture, Right superior and left inferior pelvic rami fracture and Left fourth toe middle phalanx injury*

6. Respondent on the other hand offered Kshs. 200,000/- and relied on the following authorities among others:

i. **Robert Kithinji Kithaka V AG [2018] eKLR** where the court awarded Kshs. 250,000/- for a fracture on the left leg involving both tibia and fibula, fracture of the left collar bone and bruises all over the body

ii. **Catherine Gatwiri v Peter Mwenda Karaai [2018] eKLR** where the court awarded Kshs. 500,000/- for cut wound on the forehead, fracture of the left scapular, fracture of the left clavicle, fracture of 3 ribs and compound fracture of the tibia and fibula.

### **Analysis and Determination**

7. I have considered this appeal in the light of evidence on record, submissions and cited authorities.

8. Quantum is a matter of judicial discretion which can only be interfered with if the court is satisfied that a decision is clearly wrong, because the court has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion. (See **Mbogo v Shah (1968) EA 93** and **Kemfro Africa Limited t/a Meru Express Services (1976) & Anor. vs Lubia & Anor, No. 2 [1987] KLR 30**).

9. The Court of Appeal in **Stanley Maore v Geoffrey Mwenda NYR CA Civil Appeal No. 147 of 2002 [2004] eKLR** settled the principles to be applied in assessing damages and stated that:

**Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases. (Emphasis added).**

10. That Appellant suffered distal right clavicle fracture with superior displacement, bruises on the right shoulder and soft tissue injuries on the back was confirmed by the P3 form, discharge summary from Cottolengo Mission Hospital and a medical report by Dr. Nicholas Koome all of which were produced as exhibits.

11. I have considered the decision by the learned trial magistrate in assessing general damages and I find that the court correctly applied the principle that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases.

12. Consequently, I find no merit in the appeal and it is hereby dismissed with costs to the Respondents.

**DELIVERED IN MERU THIS 24<sup>TH</sup> DAY OF FEBRUARY 2022**

**WAMAE. T. W. CHERERE**

**JUDGE**

**Court Assistant - Morris Kinoti**

**For the Appellant - Mr. Kariuki for Mithega & Kariuki Advocates**

**For Respondents - Ms. Chichi for Kimondo Gachoka & Co Advocates**