



**Rent Works East Africa Limited v SSM (Minor Suing through SMH as Next Friend)
(Civil Appeal E004 of 2021) [2022] KEHC 9969 (KLR) (30 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 9969 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MARSABIT
CIVIL APPEAL E004 OF 2021**

**JN NJAGI, J
JUNE 30, 2022**

BETWEEN

RENT WORKS EAST AFRICA LIMITED APPELLANT

AND

SSM (MINOR SUING THROUGH SMH AS NEXT FRIEND) RESPONDENT

*(Being an appeal from the judgment and decree of Hon. M. S. Kimani,
PM, in Moyale PM's Court Civil Case No.1 of 2019 delivered on 8/3/2021)*

JUDGMENT

1. The respondent who was the plaintiff at the lower court brought suit against the appellant herein after the respondent was injured in a road traffic accident involving the appellant's motor vehicle. The trial court awarded the respondent Kshs. 1,200,000/= in general damages and Kshs. 468,030/= in special damages. The appellant was dissatisfied with the amount of the award and filed the instant appeal.
2. The grounds of appeal are:
 1. That the learned trial magistrate erred in law and fact in adopting and/or applying the wrong principles in making a determination on the general damages payable to the Respondent and thereby reaching an award that was excessive.
 2. That the learned trial magistrate erred in law and fact in awarding damages which were manifestly excessive in view of the injuries sustained by the respondent.
 3. That The learned trial magistrate erred in law and fact in failing to take into relevant factors/ issues in reaching a determination on the general damages payable.
 4. That the learned trial magistrate erred in law and fact in failing to take into account the Appellant's submissions on quantum thereby awarding excessive damages in the circumstances.



Submissions

3. The appeal was canvassed by way of written submissions of the advocates for the parties wherein the firm of Onyinkwa & Co. Advocates appeared for the appellant while Leonard Ondari & Co. Advocates represented the respondent. The appellant submitted that the award of Kshs. 1,200,000/= in general damages was manifestly excessive as to amount to an erroneous estimate of loss of damage suffered by the respondent when taking into consideration that the injuries sustained were superficial.
4. The appellant submitted that the trial court did not consider that comparable injuries should be compensated by similar awards. That the cases cited by the trial court in its judgment involved multiple injuries including fractures whereas in the present case the injuries were merely superficial that healed without any complications.
5. It was submitted that an award of Kshs. 200,000/= would be adequate compensation for the injuries sustained by the respondent. The appellant relied on the decision in the case of *Jubilee Hauliers Limited & Another v Mary Waitthera Wanja* (2019) eKLR where the High Court upheld an award of Kshs. 200,000/= for degloving injuries to elbow, multiple lacerations on the right arm and soft tissue injuries on the chest, cut on the tongue and bruises on the forehead. The appellant also relied on the case of *Hashim Mohamed Said & Another v Lawrence Kibor Tuwei* (2018) eKLR where the High Court reduced an award of Kshs. 300,000/= to Kshs. 200,000/= in a case where the respondent had sustained a compound fracture of the left femur among other soft tissue injuries.
6. On the award for special damages, the appellant submitted that the amount pleaded in the plaint was Kshs. 119,935/=. That the trial court awarded Kshs. 468,030/= which was higher than the amount pleaded. That the court was in error to award a figure higher than the pleaded sum.
7. The advocates for the respondent on the other hand defended the award of Kshs. 1,200,000/= as being fair compensation for the injuries suffered by the respondent. That the injuries were serious as exemplified by medical reports of two doctors. That the respondent still has left eye ptosis and watering which the doctors opined would need the intervention of an ophthalmologist. That the trial court considered the authorities cited by the appellant and the respondent and found them not suitable and as a result cited its own authorities. That there is no reason to interfere with the award.

Analysis and Determination –

8. The principles under which an appellate court may interfere with the award of damages made by a lower court are as was stated by Kneller, JA, in the case of *Kemfro Africa Limited t/a Meru Express Service -Vs- A.M. Lubia & Another* (1987) KLR 27 that:

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either that the judge, in assessing the damages took into account an irrelevant factor, or left out of account a relevant one or that; short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.
9. According to the report of Dr. Bwire, a Consultant Oral & Maxillofacial Surgeon dated 11/6/2018, he saw the minor on 7/1/2018 and noted that she had sustained severe open degloving facial injury involving the left forehead, nasal-orbital complex, intra-orbital and left nasal region. The eyelids on that side were severely damaged but the globe was intact. That a facial CT-Scan showed no fracture except superficial injuries to the frontal ethmoidal and nasal bones. That surgical toilet, repair and



- reconstructive surgery were done. That by the time the report was written she had ptosis of left eye lid and they were waiting to get the opinion from an ophthalmologist concerning the ptosis.
10. The medical report of the minor was prepared by Dr. Ibrahim Muhammad Leo of Moyale Sub-County Hospital dated 9/12/2018. According to the report, the minor had sustained degloving injury involving the left eye, nose and lip. That surgical toileting and dressing was done and the patient was referred to Nairobi Maxillo-facial surgeon for review. When the doctor wrote his medical report he noted that the reconstructive surgery was successful save for ptosis of the left eye. That she was due for surgery to repair the ptosis.
 11. The advocates for the respondent had at the lower court proposed general damages in the sum of Kshs. 2,500,000/= and had relied on the two authorities - *F. G. (A Minor suing through the father and next friend T. M v John Mwangi Ndungu & Another*, Meru HCCC No. 83 of 2002 and *Gerald Musungu Otواني v Kulsum Alibhai & Another* (E.A.) Limited & Another, Mombasa HCCC No. 250 of 2003. The trial court considered the two authorities and held that they contained slightly more severe injuries than those sustained by the respondent herein. That the first authority involved two fractural injuries one of which resulted to shortening of the left lower limb with an element of permanent disability. That in the second case the claimant had suffered severe head injury with brain damage resulting to permanent loss of use of right eye and defective speech.
 12. The appellant had at the lower court cited the following cases -*Francis Ndung'u Wambui & 2 Others v Purity Wangui Gichobo* (2019)eKLR where the respondent had suffered a deep laceration on the medial side of the left foot and a degloving injury on the left thumb and the award was on appeal reduced from Ksh.450,000/= to 250,000/=; *Jubilee Hauliers Ltd & Another v Mary Waitthera Wanja* (*supra*) where respondent had suffered degloving injuries to the right elbow, multiple lacerations on the right arm, and soft tissue injuries on the chest; cut wound on the tongue and bruises on the forehead. An award of Kshs. 200,000/= was upheld; and *Hassan Farid & Another v Sataiya Ene Mepukori & 7 Others* (2018) eKLR where awards ranging between Ksh80,000/= and 450,000/= were made. The trial court considered the said authorities and held that the claimants in those cases had suffered far much less severe injuries than those of the respondent herein.
 13. Upon finding that the cases cited by both sides were not helpful, the trial court sought for its own authorities and cited the case *Wycliffe Lumula Mmasi v Ernest Waitthaka & Another* (2020) eKLR where L. Njuguna J made an award of Kshs. 800,000/= to a claimant who had sustained extensive degloving injury on the right foot and extensive skin loss. The court also cited the case of *Kiru Tea Factory & Another v Peterson Watbeka Wanjohi* (2008) eKLR where the High Court upheld an award of Kshs. 800,000/= for degloving injury on the right hand with extensive skin and muscle loss on the forearm, fractures of the radius, ulna and right iliac bone and generalized pains.
 14. In arriving at an award of Ksh1,200,000/=, the learned trial magistrate considered the awards in the two cases he had cited and held as follows:

I have factored the severity of the plaintiff's injuries herein and also their location. The area that was greatly affected is the plaintiff's face. Those injuries no doubt have cosmetic signification for the rest of the Plaintiff's life.
 15. I have keenly gone through the cases relied on by both parties. I find the authorities cited by the appellant not suitable for the kind of injuries suffered by the respondent herein. I do not think that the injuries can only attract a paltry Kshs. 200,000/= as submitted by the advocates for the appellant. On the other hand, the injuries sustained by the respondent in the Kiru Tea Factory case cited by the trial court involved, inter alia, three fractures and the respondent therein was left with some disability



- assessed as between 15- 45%. The injuries were therefore far more serious than those suffered by the minor in the instant case.
16. Similarly, the injuries in the case of *Wycliffe Lumula Mmasi v. Ernest Waitbaka & Another* cited by the trial magistrate were more serious than in the case under consideration.
 17. I have considered the awards in the following cases. In *Easy Coach Limited v Emily Nyangasi* (2017) eKLR the respondent had sustained facial injuries, injury to chest, injury to back, injury to right hand with cut wound and injury to right leg with cut wounds. The most serious injuries were on the right hand which healed with a 10 cm scar with keloid formation on the elbow and on the right leg which was treated through grafting and healed with healed 18cm scar right thigh, 26 cm scar right leg, 28 cm scar right leg below the knee and 12 cm scar right foot with keloid formation. The court upheld an award of Kshs. 700,000/=.
 18. In *Gusii Deluxe Limited & 2 Others v Janet Atieno* (2012) eKLR in which the respondent sustained deep cut wound frontal head exposing the skull bone, unconsciousness for about 8 hours with brain concussion, bang to the right - upper and lower jaw loosening the right-lower incisors teeth, injury to the right shoulder with bruises over it, deep cut wound in right upper limbs just below right elbow, injury to the right big toe with bruises over it and blunt injury to the anterior part of the chest. The injuries had left the respondent with ugly keloid scars on the head and face. The Court of Appeal upheld an award of Kshs. 500,000/=.
 19. In *Telkom Orange Kenya Limited v I S O minor suing through his next friend and mother J N* (2018) eKLR the respondent had sustained head injury occasioning a depressed skull, fracture of the skull, loss of consciousness, scars of the left tempo-parietal area and bruises on the left leg. The child complained of chronic headaches and had occasional blurring of vision. His doctor concluded that the child sustained serious head injuries which put him at risk of developing seizures as a long-term complication together with disfiguration resulting from the scalp and leg scars. The High Court on appeal found an award of Kshs. 950,000/= to be excessive and reduced it to Kshs. 500,000/=.
 20. The trial Magistrate in this case had the advantage of seeing the respondent and observed that she had been left with ugly scars on the face. Her doctor's report indicated that she had also been left with left eye ptosis that required repair. In my view, the injuries sustained by the minor were serious. I however find the award of Kshs. 1,200,000/= to have been excessive. I consider a sum of Ksh.700,000/= to be adequate compensation for the injuries sustained.
 21. The appellant argued that the pleaded sum for special damages was Kshs. 119,935/=. However, there is no substance in this argument as the respondent filed an amended plaint on 4/11/2019 that indicated the claimed amount of special damages as Kshs.472,050/=. The trial court considered the claim and found a sum of Ksh.468,030/= to have been proved through production of receipts. I accordingly find that the amount awarded in special damages was proved.
 22. The upshot is that the award of Kshs.1,200,000/= in general damages is substituted with an award of Kshs. 700,000/=. The award of Kshs.468,030/= in special damages is upheld. Each party to bear its own costs to the appeal. Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF JUNE 2022.

J. N. NJAGI

JUDGE

In the presence of:

Mr. Songole for Appellant



Miss Muthomi HB for Mr. Ondari for Respondent

Court Assistant - Peter

30 days Right of Appeal.

