



REPUBLIC OF KENYA



KENYA LAW
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**Registered Trustees of AIC v Muia (Civil Appeal 10 of 2020)
[2022] KEHC 14773 (KLR) (25 October 2022) (Judgment)**

Neutral citation: [2022] KEHC 14773 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CIVIL APPEAL 10 OF 2020
GMA DULU, J
OCTOBER 25, 2022**

BETWEEN

THE REGISTERED TRUSTEES OF AIC APPELLANT

AND

VICTORIA KAMENE MUSYOKA AKA SUSAN MUIA RESPONDENT

*(Being an appeal from the Judgment of Honourable M.K Mutegi (SRM)
delivered on 6th February 2020 in Tawa SRMCC No. 217 of 2016)*

JUDGMENT

1. In this civil matter which arose from a traffic case, liability was recorded by consent of parties' counsel before the trial court, on November 28, 2019 at 90:10 in favour of the plaintiff, who is the respondent herein. The consent on liability was recorded after evidence by three witnesses on behalf of the respondent had been recorded and the appellant did not call any witness.
2. Thereafter, submissions were filed by the parties' counsel, and the learned trial magistrate then rendered judgment on quantum of damages and concluded as follows –
 - a. General damages kshs.800,000/=
 - Less 10% Kshs.720,000/=
 - b. Special damages Kshs. 6,100/=
 - Grand total kshs.726,100/=
 - c. Costs awarded to plaintiff
 - d. Interest at court rates



3. From the above assessment of quantum of damages, the appellant, who was the defendant in the trial court, has come to this court on appeal on the amount of damages awarded through counsel J. Maluki & Company, on the following grounds –

1. The learned trial magistrate erred in law and in facts in failing to appreciate the relevant principles and case law in assessing general damages for pain, suffering and loss of amenities and thereby giving an inordinately high and manifestly excessive award unsupported by law so as to amount to an erroneous award in the circumstances of the case.
 2. That the learned trial magistrate erred in law and fact in failing to appreciate and properly evaluate the evidence on record, in particular the evidence of the plaintiff's injuries and thereby erroneously awarding an inordinately high and manifestly excessive award on general damages.
 3. The learned magistrate erred in law and in fact in awarding general damages of Kshs.720,000/= for a fracture and soft tissue injuries which is inordinately excessive given the circumstances of the case.
 4. The learned magistrate erred in law and in fact in proceeding on the wrong principles vis a vis the evidence before him and laid down principles of law thus arriving at a judgment that was erroneous in the circumstances.
 5. The learned trial magistrate erred in law and fact by taking into account irrelevant consideration/factors while awarding general damages.
 6. The learned trial magistrate further erred in law and fact by failing to appreciate, consider and take into account the appellant's submissions on the quantum of damages awardable in the circumstances.
 7. The learned trial magistrate erred by making a decision on quantum that was erroneous, without proper basis and against the weight of the evidence.
4. The appeal was canvassed through filing of written submissions. In this regard, I have perused and considered the written submissions filed by counsel on both sides. I also note that in the trial court, the appellant's counsel Maluki & Co. asked for an award of Kshs.180,000/= as general damages, while the respondent's counsel J.A Makau & Company asked for general damages figure of Kshs.1,700,000/=, less 10% contribution.
5. This is an appeal on quantum of damages only, as liability was recorded by consent at 90:10 in favour of the plaintiff (respondent herein).
6. This being an appeal on quantum damages, I am guided by the legal principle enunciated in *Butt -vs- Khan* (1981) KLR 349, which was applied in *Kemfro Africa Ltd t/a Meru Express Service & Gathongo Kanini -vs- A.M Lubia and Olive Lubia* (1982 – 1988) I KAR 727 at page 730, wherein Kneller JA stated as follows -

“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 for East Africa to be that it must be satisfied that either the Judge in assessing 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”.

7. It is also trite that even where liability in negligence has been recorded by consent, a plaintiff has the burden to prove the quantum of damages to be awarded on the balance of probabilities.
8. The injuries suffered by the respondent herein were established as blunt injury right clavicle, fracture right clavicle, blunt injury lower back, and bruises on the upper limbs. This position has not been disputed.
9. With the case authorities cited before the trial court, as well as the case authorities by counsel on both sides on appeal herein, in my view, the award by the trial court of Kshs.800,000/= for general damages for pain and suffering was excessive, as it was not supported by comparative awards for similar injuries. I thus find that the magistrate misapprehended the facts of the case. In my view, an award of Kshs.500,000/= for general damages would suffice, in view of the nature of injuries suffered by the respondent.
10. I will thus set aside the award for general damages awarded and substitute it with a lesser award.
11. Consequently, I set aside the award of the trial court for general damages, and instead reduce the amount and order as follows –
 - i. General damages Kshs.500,000/=
 - Less 10% Kshs.450,000/=
 - ii. Special damages Kshs. 6,100/=
 - Grand total Kshs.456,100/=
12. The appellant will pay the respondent 50% of the costs of appeal.

DELIVERED, SIGNED & DATED THIS 25TH DAY OF OCTOBER, 2022, VIRTUALLY AT MAKUENI.

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GEORGE DULU

JUDGE

