



DCS (a minor suing thro' a friend JCS) v Ayoob Noor Mohamed & Company Limited & 2 others (Civil Appeal 189 of 2018) [2022] KEHC 16562 (KLR) (19 December 2022) (Judgment)

Neutral citation: [2022] KEHC 16562 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL 189 OF 2018
TM MATHEKA, J
DECEMBER 19, 2022**

BETWEEN

DCS (A MINOR SUING THRO' A FRIEND JCS) APPELLANT

AND

AYOOB NOOR MOHAMED & COMPANY LIMITED 1ST DEFENDANT

AMOO HOLDINGS INTERNATIONAL LIMITED 2ND DEFENDANT

EVANS LOJORE 3RD DEFENDANT

(Being an appeal against the Judgment in Molo Chief Magistrates Civil Case Number 97 of 2018 by E S Soita, Resident Magistrate on 19th November 2018)

JUDGMENT

1. By a plaint dated March 19, 2018 JCS filed suit as the mother and next friend of DCS, a minor.
2. This was in Chief Magistrate's Civil Case (CMCC) Number 97 of 2018 where he defendants were Ayoob Noor Mohamed & Co Limited, Amoo Holdings International Limited & Evans Lojore.
3. She sought general and special damages against the defendants jointly and/or severally for injuries sustained in a road traffic accident which occurred on December 12, 2017, along Nakuru – Eldoret Road. According to the plaint, the plaintiff was travelling in motor vehicle registration number [particulars withheld] when the defendant's motor vehicle registration number [particulars withheld], was driven negligently and knocked the motor vehicle registration number [particulars withheld].
4. The plaintiff sustained injuries;
 1. Undisplaced condyla fracture of the left humerus.
 2. Blunt injuries to the neck leading to soft tissue injuries.



3. Soft tissue injuries to the left wrist joint and right ankle joint.
5. There was no response to the claim by the defendants despite service and matter proceed by way of formal proof.
6. *Vide* a judgment delivered on November 19, 2018, the learned trial magistrate awarded the plaintiff in CMCC 97 of 2018, the following;
 - General damages - 500,000/=
 - Special damages - 12,850/=
 - 512,850/=
 - Plus costs and interest.
7. Dissatisfied with the judgment the plaintiff filed this appeal through the memorandum of appeal dated December 10, 2018, on one ground alone;
 - "That the learned trial magistrate erred in law and fact in awarding general damages that were inordinately low in total disregard of the severe injuries sustained by the appellant."
8. I noted that in the subordinate court the plaintiff's counsel had submitted for the sum of Kshs 1,600,000/= as general damages.
9. The plaintiff was four (4) years old at the time.
10. Counsel relied on *Mwaura Muiruri & Suera Flowers Limited & another* [2014] eKLR where the plaintiff was awarded Kshs 1,450,000/= for fracture of humerus.
11. In support of the appeal the plaintiff reiterated the submissions and added *Dennis Nyamweno Openda vs Anwarali & Brothers Limited & another* [2015] eKLR quoted in *Judy Ngochi vs Kamakia Ele Selelo Ledama* [2019] eKLR where the award of Kshs 1,800,000/= was made for similar injuries.
12. The appellant urged the court to disturb the trial magistrate's court decision. The case of *Tridev Contruccion vs Charles Wekesa Kasembeli* Civil Appeal 121 of 2002, *Kemfro Africa Limited t/a Meru Express Service Gathogo Kanini vs A M Lubia & Olive Lubia* {1982 – 1988} KAR 727 at page 730.
13. It is now settled that this being a first appeal the court is expected to review all the evidence and arrive at its own conclusions keeping in mind that it did not see or hear the witnesses.
14. I have considered the evidence before the subordinate court. I have also considered the submissions and authorities cited by the appellant.
15. In *Mwaura Muiruri* the plaintiff sustained the following injuries;
 - a. Multiple lacerations on the face
 - b. Soft tissue injuries on the chest cage (mainly left subaxillary area).
 - c. Communuted fractures of the right humerus upper and lower thirds of the tibia
 - d. Compound double fractures of the right leg upper and lower 1/3rd tibia fibula.
16. In *Dennis Nyamweno* the plaintiff suffered;
 - a. Fractured left clavicle



- b. Fractured right humerus
 - c. Unstable multiple fractures of the pelvic bones (open book pelvic fracture)
 - d. Lacerated scalp wounds
 - e. Right radial nerve injury hearing to a right wrist drop and muscle wasting
 - f. Blunt chest wall injury and urethral structures complicating pelvic fracture and
 - g. Prolonged catheterization and was awarded Kshs 1,800,000/= in the year 2015.
17. There is no doubt that the said injuries are much more serious than the injuries sustained by the appellant herein.
18. In my considered view it is clear that the learned trial magistrate considered the evidence, took into consideration the injuries sustained by the appellant and exercised her discretion correctly.
19. The general damages as awarded are sufficient and I find no reason to interfere with the findings.
20. The appeal is dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED VIA EMAIL THIS 19TH DAY OF DECEMBER, 2022.

MUMBUA T. MATHEKA,

JUDGE.

C/A Edna

Gekong'a & Co. Advocates

