



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISII**

**CIVIL APPEAL NO. 47 OF 2019**

**VERONICAH MKANJALA MNYAPARA.....APPELLANT**

**VERSUS**

**PATRICK NYASINGA AMENYA.....RESPONDENT**

(Being an appeal from the judgment and decree of Hon. S.K. Onjoro (SRM))

dated 15<sup>th</sup> day of March 2019 in CMCC No. 538 of 2017 Kisii)

**JUDGMENT**

1. This is an appeal against the assessment of quantum by the trial court. The appellant contends that the award made by the trial court was excessive and not based on concrete evidence. The parties had agreed to settle liability in the ratio of 80:20 in favour of the respondent; upon which the trial court assessed general damages at Kshs 300,000/= and special damages at 12,570/= less 20% contribution making a grand total of Kshs 250,056/=.

2. The suit before the trial court had arisen from a road traffic accident that occurred on 20<sup>th</sup> October 2017 along Keroka - Kisii road at Bobaracho area. It involved motor cycle registration number KMDU 287S and motor vehicle registration number KBL 547J. The respondent gave the evidence on quantum. He testified that he was a pillion passenger heading to work on the company motorcycle when the vehicle abruptly joined the road they were on and knocked down the motorcycle. As a result, the helmet he was wearing cracked and he sustained a cut on top of his head. He also sustained internal injuries on his chest, his left hip joint was dislocated and his left leg and his hands got bruises.

3. The respondent produced a clinic appointment card and a patient card issued by Kisii Teaching Referral Hospital where he had been treated. He also testified that he had spent a total of Kshs. 6,070/= in treatment expenses and produced a bundle of receipts to support this. A medical report prepared by Dr. Morebu and a receipt of Kshs. 6,500/= for preparation of the report were also produced together with a P3 form and a police abstract. The respondent added that he had not healed and was unable to do heavy lifting or stand for long due to the dislocation.

4. He particularized the injuries he had sustained in his plaint as:

- a. Contusion to the head;
- b. Chest contusion;
- c. Bruises on both hands;
- d. Dislocation of the left hip joint; and
- e. Bruises on both legs.

5. The nature and extent of the injuries suffered by the respondent were not in contention. The injuries listed in his plaint tallied with the medical report prepared by Dr. Morebu and the P3 form which were both prepared on 23<sup>rd</sup> October 2017, 3 days after the accident occurred. They also corresponded with those set out in the treatment notes issued by Kisii Teaching and Referral Hospital.

6. The appellant's counsel urged that a sum of Kshs. 90,000/= would suffice as general damages in his submissions before the trial court. He

relied on the case of *Eastern Produce (K) Ltd (Savani Estate) vs Gilbert Muhunzi Makotsi Civil Appeal No. 76 of 2012 [2013] eKLR* where the court reduced an award of Kshs. 130,000/= to Kshs. 70,000/= in a decision delivered on 2<sup>nd</sup> May 2013. The claimant in that matter had sustained a prick wound on the left foot. Counsel also cited the case of *Godwin Ileri v Franklin Gitonga Civil Appeal No. 47 of 2015 [2018] eKLR* which was delivered on 30<sup>th</sup> May 2018. The plaintiff in that case had sustained two cuts on the forehead, cuts on the scalp to the occipital region, bruises on the left ankle and bruises on the right knee. The appellate court substituted an award of Kshs. 300,000/= with an award of Kshs. 90,000/=.

7. In this appeal, counsel still maintains that a sum of Kshs. 90,000/= was the appropriate award for the respondent. In addition to the case of *Eastern Produce (K) Ltd (Savani Estate) (supra)* he also cited the case of *West Kenya Sugar Co. Ltd v Stephen Nasiali Nyifu [2019] eKLR*. In the latter authority, the appellate court upheld an award of Kshs. 90,000/= where the plaintiff had sustained a cut wound on the right leg.

8. On the other hand, the respondent's advocate proposed an award of Kshs. 500,000/= in general damages before the trial court. He based his proposal on the case of *Kenya Power & Lighting Co. Limited –vs- Mary Akinyi Civil Appeal No. 72 of 2007 (unreported)* where the court had, in a judgment dated 29<sup>th</sup> May 2013, upheld an award of Kshs. 350,000/=. The respondent in that case had sustained a deep cut wound on the calf muscles of the left leg, laceration on the right knee, right shoulder and contusion on the chest. She had also suffered a 20% permanent disability.

9. In his submissions before this court, counsel submits that the award of Kshs. 300,000/= was commensurate to the injuries sustained by the respondent. He relied on the case of *Veronich Mkanjala Mnyapara v Charles Kinanga Babu [2020] eKLR* where the court upheld an award of Kshs. 300,000/= for a plaintiff who had sustained a deep cut wound on the forehead, chest contusion, bruises on the face, bruises on both hands, dislocation of the left wrist joint, bruises on both ankle joints and dislocation of the left ankle joint. He also referred this court to the case of *Kenya Power & Lighting Co. Limited (supra)* which he had relied on before the trial court.

10. In disposing of this appeal, I am mindful of the well settled principle that an appellate court will not easily disturb the discretion of the trial court in assessing quantum unless it is shown that the award was based on a wrong principle or is so manifestly excessive or inadequate that a wrong principle may be inferred. (See *Kemfro Africa Limited t/a “Meru Express Services (1976)” & another v Lubia & another (No 2) Civil Appeal No 21 of 1984 [1985] eKLR*)

11. The Court of Appeal in *Simon Taveta v Mercy Mutitu Njeru Civil Appeal No. 26 of 2013 [2014] eKLR* also restated the principle that damages should be determined by the nature and extent of injuries sustained and comparable awards made in the past.

12. Having analyzed and contrasted the authorities cited by the parties before the trial court vis-à-vis the injuries sustained by the respondent, I came to the conclusion that the award of Kshs. 300,000/= was a reasonable and appropriate in the circumstances for reasons I shall give shortly.

13. The injuries in the authorities referred to by the appellant were minor soft tissue injuries which were less severe than those the respondent sustained. The respondent not only suffered multiple soft tissue injuries as a result of the accident but also got a dislocation of the left hip joint. At the hearing of the suit close to a year later, the respondent still complained that he was not able to stand for long or do heavy lifting because of the dislocation.

14. The cases referred to by the respondent were more relevant as the claimants in those matters had multiple soft tissue injuries. In the case of *Kenya Power & Lighting Co. Limited (supra)* the court upheld an award of Kshs. 350,000/= for multiple soft tissue injuries in the case where the plaintiff also had permanent disability of 20%. That decision appears to have influenced the trial court's assessment of quantum. The respondent had multiple soft tissue injuries but did not have a disability. The award made by the trial court was sufficient and commensurate to the respondent's injuries.

15. Next I turn to the appeal on special damages. The appellant has urged this court to award the amount that was proved by the respondent by production of relevant receipts. The principle guiding the award of special damages, as aptly put by the appellant, is that special damages need not only be specifically pleaded but must also be strictly proved. The respondent claimed a total of Kshs. 13,270/= for special damages in his pleadings. He told the trial court that he had spent a total of Kshs. 6,070/= for treatment and Kshs. 6,500/= for preparation of the medical report and produced receipts to support his testimony. Clearly, the appeal on special damages is unfounded as the trial court awarded the respondent a total sum of Kshs. 12,570/= which is what the respondent had proved.

16. In the end, I find this appeal to be lacking in merit and dismiss it with costs to the respondent.

**Dated, signed and delivered at Kisii this 26<sup>th</sup> day of March, 2021.**

**R.E. OUGO**

**JUDGE**

**R.E. OUGO**

**JUDGE**

**In the Presence of;**

Mr. Wesonga For the Appellant

Mr. Omotto For the interested Parties

Ms. Rael Court Assistant