



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CIVIL APPEAL NO. 49 OF 2019

CHARLES MWAURA MWANGI.....APPELLANT

VERSUS

JOYCE RUGURU IRERI.....RESPONDENT

JUDGMENT

1. The respondent herein was the plaintiff in Chief Magistrate's court at Siakago in Suit No. 62B of 2018 in which he sued the appellant claiming both special and general damages arising out of a road traffic accident that occurred on the 26th day of November, 2016.
2. In her plaint dated the 28th day of June, 2018 and filed in court the same day, she pleaded that on the material day, she was lawfully traveling as a pillion passenger in motor cycle registration No. KMCT xxxx along Embu – Kiritiri road when motor vehicle registration No. KBQ xxxx owned by the appellant was so negligently, recklessly and/or carelessly driven by the appellant, his driver and/or agent that it lost control, veered of the road and knocked her down as a consequence of which she sustained body injuries and suffered loss and damage.
3. The particulars of negligence, those of injuries and special damages are set out in paragraphs 4, 5 and 6 of the plaint.
4. The appellant filed a statement of defence on the 2nd day of August, 2018 in which he denied the respondent's claim. Though he admitted having been the registered owner of motor vehicle registration No. KBQ xxxx, and the occurrence of the accident, he did not admit that the respondent was riding the said motor cycle at the material time. Further, he denied the particulars of negligence attributed to him and/or his servant and puts the respondent to strict proof.
5. The appellant contended that the accident was wholly caused and/or substantially contributed to by negligence on the part of the rider of motor cycle registration No. KMCT xxxx. The particulars of such negligence were set out in paragraph 5 of the defence. He denied that he was vicariously liable for the accident and that the doctrine of *res-ipsa loquitur* is applicable as alleged. He further denied that the respondent sustained injuries or suffered any loss or damage.
6. The particulars of injuries and those of special damages are denied. He urged the court to dismiss the respondent's claim.
7. At the hearing, the respondent called three witnesses in support of her case but the appellant closed his case without calling any witness. In its judgment delivered on the 25th day of July, 2019, the trial court entered judgment on liability at 100% for the respondent against the appellant and awarded Kshs. 1,350,550/= as special damages plus the costs of the suit.
8. The appellant filed the appeal herein against the said judgment vide the memorandum of appeal dated the 21st day of August, 2019, in which he has listed only two grounds of appeal as follows: -
 - 1) *The learned trial magistrate's award of general damages for pain and suffering and loss of amenities is so manifestly excessive as to amount to an erroneous estimate of the loss suffered by the respondent.*
 - 2) *The learned trial magistrate erred in both fact and law by ignoring the defendant's written submissions and authorities cited therein in assessing general damages.*
9. The two grounds are on quantum of damages.
10. The appeal was disposed off by way of written submissions. In his submissions the appellant contends that the trial magistrate erred by awarding general damages that were manifestly excessive as to amount to an erroneous estimate of the loss suffered by the respondent.

11. In support of his contention, he relied on the case of **Akamba Public Road Services Vs Abdikadir Adan Galgalo [2016] eKLR** and that of **Reuben Mungare Keba Vs LPN [2016] eKLR** wherein the court awarded Kshs. 500,000/= and Kshs. 800,000/= respectively as general damages for injuries similar to those suffered by the respondent herein.

12. On his part, the respondent supported the award made by the trial court as being reasonable and relied on the case of **Savco Stores Limited Vs David Mwangi Kimotho [2008] eKLR** and urged the court to dismiss the appeal.

13. The court has considered the submissions by both the appellant and the respondent filed in this appeal together with the authorities cited. As was held in the case of **Muteti Wambua Vs Kenya Power & Lighting Company Limited [2013] eKLR**, the general method of approach in assessment of damages is that comparable injuries should as far as possible be compensated by comparable awards keeping in mind the correct level of awards in similar cases.

14. The guiding principles were summarised by the court of appeal in the case of **Jabane Vs Olenja [1986] KLR 661** thus; -

a) Each case depends on its own facts;

b) Awards should not be excessive for the sake of those who have to pay insurance premiums, medical fees or taxes (the body of politics);

c) Comparable injuries should attract comparable awards.

d) Inflation should be taken into account; and

e) Unless the award is based on the application of a wrong principle or misunderstanding of relevant evidence or is so inordinately high or low as to be an entirely erroneous estimate for an appropriate award leave it alone.

15. In the case herein, the court has perused the medical report dated the 5th day of July 2017 by Dr. P. K. Mwangi. It shows that the respondent sustained compound fracture of the right tibia/fibula distal third and soft tissue injuries to the right leg following a road traffic accident. She was admitted in hospital up to 26th January, 2017 and later from 14th March, 2017 to 3rd June, 2017 over a period of 2 ½ months in total. She complains of painful right leg and inability to use the leg as before.

16. In the doctor's opinion, the respondent suffered fractured bones of the right leg and soft tissue injuries. She was treated and the response was fairly good as at the time the report was prepared. The doctor, however, opined that the affected bones will certainly suffer early osteoarthritis.

17. The court has considered the authorities cited by the appellant. I find the case of **Reuben Mungare (supra)** relevant in this appeal as the injuries are similar with the ones sustained by the respondent in this case. The appellate court reduced the sum of Kshs. 1,200,000/= that had been awarded by the trial court to Kshs. 800,000/=. The court has also taken note of the case of **Savco Stores Limited (supra)** relied on by the respondent. I note that the injuries in that case are more severe than the ones suffered by the respondent herein.

18. In the end, I find that the award made by the learned trial magistrate was excessive; the appeal is allowed partly and I award the respondent Kshs. 800,000/= and set aside the award of Kshs. 1,350,000/= awarded by the trial court.

19. The general damages as revised shall attract interest at court rate from the date of the judgment of the trial court.

20. Since the appeal has partly succeeded, each party shall bear its own cost of this appeal but the respondent is awarded the costs in the lower court.

21. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 29TH DAY OF SEPTEMBER, 2021.

L. NJUGUNA

JUDGE

.....for the Appellant

.....for the Respondent