



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CIVIL APPEAL NO. 48 OF 2019

CHARLES MWAURA MWANGI.....APPELLANT

VERSUS

JOHN MURIUKI.....RESPONDENT

JUDGMENT

1. The respondent herein was the plaintiff in Civil Suit No. 61 of 2018 at the Chief Magistrate's court at Siakago in which he had sued the appellant herein claiming general and special damages, future medical expenses and the costs of the suit. His claim was based on a traffic road accident that occurred on the 26th day of November, 2016 when he was lawfully riding motor cycle registration No. KMCT xxxx along Embu –Kiritiri road. He averred that on the said date, the appellant who at the material time was the owner and/or driver of motor vehicle registration No. KBQ xxxx, so negligently, recklessly and/or carelessly drove the aforesaid motor vehicle that he lost control of the same and veered off the road knocking down the respondent as a consequence of which he sustained injuries.

2. The particulars of negligence, injuries and special damages are set out in paragraphs 4, 6 and 7 of the plaint.

3. The appellant filed a defence denying the respondent's claim but at the hearing, he did not call any evidence. The court delivered its judgment on the 6th day of June, 2019 and found the appellant fully liable for the accident and awarded general damages in the sum of Kshs.1,350,000/= and special damages of Kshs.3,550/= making a total of Kshs.1,477,300/= plus costs and interest from the date of the judgment to the date of payment.

4. The appellant has challenged the said judgment vide the memorandum of appeal dated the 21st day of August 2019 and filed the same date. The appeal is on the quantum of damages only and in particular, the general damages and future medical expenses as being manifestly excessive as to amount to an erroneous estimate of the loss suffered by the respondent.

5. From the onset, I wish to note that, the trial court did not make an award for future medical expenses. Though the doctor in his evidence and in the medical report dated 5th July, 2017 opined that the internally fixated nail in SITU will require surgical removal at an estimated costs of Kshs.165,000/=, no award was made for it. The plaintiff did not allude to it in his evidence and the plaint did not specify the amount claimed under this head.

6. On the general damages, the appellant contends that the award is manifestly high. In his view, an award of Kshs.500,000/= would have been ideal. Reliance was made on the cases of Kenyatta university Vs Isaac Karumba Nyuthe ([2014] eKLR, Alex Wanjala Vs Pwani Oil Products Limited & Another [2019] eKLR where an award of Kshs.600,000/= was made and that of Benuel Bosire Vs Lydia Kemunto Mokora [2019] eKLR in which the court reduced an award of Kshs.2,000,000/= to Kshs.700,000/= for similar injuries.

7. On his part the respondent supported the award made by the trial court and relied on the case of Savco Stores Limited Vs David Mwangi Kimotho [2008] eKLR in which the High Court upheld an award of Kshs.800,000/= in general damages.

8. The court has perused the medical report dated the 5th July 2019 by Dr. P.K. Mwangi. The respondent sustained the following injuries: -

- a) Fracture of the right humer
- b) Blunt soft tissue to the anterior chest
- c) Blunt soft tissue injuries to the right thigh.

9. The doctor stated that he suffered severe physical pain and emotional stress and had to be admitted in hospital during which he underwent a surgery to fix the internal interlocking nail. That he responded fairly well to treatment and has progressively been improving. That the affected bone will certainly suffer early osteoarthritis.

10. The court has considered the authorities cited, and the injuries sustained by the respondent. As was held in the case of **Denshire 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.

11. The guiding principles were summarized by the court of appeal in the case of **Jaberne 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; ad

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 well alone.

12. The injuries sustained by the respondent are similar to the ones suffered by the plaintiff in the case of **Mortex Company Limited Vs Benjamin Kiphupa Kimengeri Civil Appeal No. 205 of 2011** in which the High Court upheld an award of Kshs.800,000/=. I have also considered the award that was made by the court in the case of **Alex Wanjala Vs Pwani Oil Products Limited & Another**, in which the court awarded the plaintiff Kshs.600,000/= for injuries which were a bit more serious than the ones sustained by the respondent herein.

13. In the end, it is my considered view that the award of Kshs.1,350,000/= made by the trial court as general damages was manifestly excessive, a sum of Kshs.800,000/= would be reasonable compensation for the respondent's injuries and I hereby award the same and set aside the trial court's award.

14. As the appeal has partially succeeded, there will be no order as to costs on the appeal. However, the respondent will have the costs in the lower court.

15. 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