



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIVASHA

(CORAM: R. MWONGO, J.)

CIVIL APPEAL NO. 50 OF 2016

JAMES NJOROGE.....1ST APPELLANT

JAMES KAMAU NJUGUNA.....2ND APPELLANT

MOHAMMED ALLI.....3RD APPELLANT

-VS-

DORCAS NAFULA WANYONYI.....RESPONDENT

(Being an appeal from the Judgment of the Hon. S. Muchungi (RM) delivered

on the 15th July, 2016 in Naivasha CMCC No. 737 of 2013)

JUDGMENT

1. This is an appeal against the quantum awarded following a consent agreement on liability at 90:10 in favour of the Plaintiff.

2. The award was as follows:

General Damages	Kshs 200,000/=
(Less 10% liability)	<u>Kshs 20,000/=</u>
	Kshs 180,000/=
Special Damages	<u>Kshs 7,500/=</u>
Total	<u>Kshs 187,500/=</u>

The accident occurred on 7th August, 2013 along Nakuru Naivasha Highway.

3. In their brief submissions, the appellants state that the award is inordinately high compared to the injuries suffered which they say were soft tissue injuries.

4. The appellant propose an award of Kshs 90,000/= - 100,000/= based on the following authorities:

a) In **George Mugo & Another v AKM (Minor suing through next friend and mother of AMK [2018] eKLR.**

b) In the recent case of **George Kinyanju t/a Climax Coaches & Anor. v. Hussein Mahad Kuyale [2016] eKLR**

c) In **Ndungu Dennis v Ann Wangari Ndirangu & Another [2018] eKLR**, in which Ngugi J reduced general damages for soft

tissue injuries from Kshs 300,000/= to Kshs 100,000/=.

5. The respondent submits, citing **Charles Oriwo Odeyo v Appollo Justus Andabwa & Another [2017] eKLR** that the trial court should consider the factors to be taken into account in awarding damages which were stated in the **Odeyo** case as follows:

“On the issue of damages, it is settled that the award of damages is within the discretion of the trial court and the Appellate court would only interfere on the particular grounds. These grounds were and are (a) that the court acted on wrong principles or that the award is so excessive or so low that no reasonable tribunal would have awarded or (b) that the court has taken into consideration matters which it ought not to have or left out matters it ought to have considered and in the result arrived at wrong decision. (See *Butler Vs Butler (1984) KLR 225.*”

6. The only issue for my consideration is whether the trial court got the principles for award of damages so wrong and made an award so manifestly and erroneously high or low that this court is obliged to interfere with the trial court’s discretion.

7. The sole witness in the proceedings was the plaintiff/respondent. She produced the medical report of Dr. Omuyoma as P. Exhibit 5A and the Discharge Summary for Naivasha District Hospital as P. Exhibit 2. In her testimony she said:

“I sustained injuries on the shoulders, neck, jaws, head, chest and right leg-thigh. I was treated at Naivasha District Hospital. I was admitted for 4 days.

This evidence was uncontroverted in cross-examination.

8. I have perused the exhibited Medical Report and Discharge Summary. The injuries are clearly indicated as pleaded, namely:

- “1. Blunt injury to the head.
2. Blunt injury to the neck.
3. Soft tissue injuries to the chest.
4. Soft tissue injuries of both shoulders.
5. Severe soft tissue injuries of right thigh.”

9. In its judgment, the trial court considered the plaintiff’s authority availed, namely **Devki Steel Mills Limited v James Makau Kisuli [2012] eKLR** where Shs 250,000/= was awarded for soft tissue injuries.

10. The court also considered the defence authorities: HCCA No. 175 of 2008 where the plaintiff was awarded Kshs 50,000/= on appeal for a deep cut on the left wrist joint which healed leaving a scar; soft tissue injuries on same joint; and blunt injury to the anterior chest wall; Finally reliance was placed on **Samuel Mburu Ngaari & 4 Others v Wangiki Wangare & Anor [2014] eKLR** where abrasions and bleeding were awarded at Kshs 50,000/=.

11. The trial court noted that there was consensus on the injuries sustained, and made its award based on the comparisons.

12. The authorities cited on appeal were not furnished to the lower court. That notwithstanding, the injuries suffered by the plaintiff in this case appear to have been more serious because the plaintiff was admitted for two days. The injuries ranged from the head and neck down to the right thigh.

13. In **George Mugo’s** case the interference by the court was instigated by the fact that the trial court had factored in a fracture which was not in fact suffered. In **George Kinyanjui’s** case, the award of Kshs 122,000/= was made as far back in 2012.

14. In the **Ndungu** case, the High Court in awarding of Kshs 100,000/= for the soft tissue injuries, also noted that the injuries did not lead to long term pain or exertion.

15. In the present case, Dr. Omuyoma’s medical report indicates that the plaintiff still complained of chest pains; and on examination he found that movements at both shoulder joints are restricted because of pain.

16. All in all, the appellant did not satisfy me that the trial court took into account irrelevant factors or left out relevant ones whilst assessing damages. Nor is it shown that the award made is inordinately high given the injuries indicated in the medical report and discharge summary produced.

17. Accordingly, I uphold the award and dismiss the appeal with costs.

Administrative directions

18. Due to the current inhibitions on movement nationally, and in keeping with social distancing requirements decreed by the state due to the Corona-virus pandemic, this Judgment has been rendered through Teams tele-conference with the consent of the parties noted hereunder, who were also able to participate in the conference. Accordingly, a signed copy of this judgment shall be scanned and availed to the parties and relevant authorities as evidence of the delivery thereof, with the High Court seal duly affixed thereon by the Executive Officer, Naivasha.

19. A printout of the parties' written consent to the delivery of this judgment shall be retained as part of the record of the Court.

20. Orders accordingly.

DATED AND DELIVERED IN NAIVASHA BY TELECONFERENCE THIS 23RD DAY OF SEPTEMBER, 2021.

R. MWONGO

JUDGE

Attendance list at video/teleconference:

1. Thairu for the Appellants
2. Ms Kiberenge for the Respondent
3. Court Assistant - Quinter Ogutu