



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

(CORAM: CHERERE-J)

CIVIL APPEAL NO. 29 OF 2020

BETWEEN

JOHN KIGUTA KIUGU.....APPLICANT

AND

CK (suing as grandmother and next friend to SM).....RESPONDENT

(Being an Appeal from the Judgment and Decree in MERU CMCC No. 136 of 2018 by Hon. L.N.Juma (SRM) on 05th March, 2020)

RULING

1. On 30th July, 2017, SM (*minor*) was lawfully walking along Meru-Nanyuki Road when he was knocked down by motor vehicle **KAR 123 TOYOTA WAGON (*accident motor vehicle*)** that was negligently driven by **JOHN KIGUTA KIUGU (*Appellant*)** as a result of which the minor suffered bodily injuries.
2. **CK (*Respondent*)** in her capacity as grandmother and next friend to the minor filed suit against Respondents seeking damages.
3. The Defendant/Appellant in his statement of Defence denied the claim and blamed the minor for causing the accident.
4. At the conclusion of the trial, the learned trial magistrate found the Appellant liable at 100% and proceeded to award damages as follows:
 - 1) General damages Kshs. 600,000/-
 - 2) Special damages Kshs. 42,000/-

The Appeal

5. The Appellant dissatisfied with the lower court's decision preferred this appeal asserting that the award on general damages is excessive.

Analysis and Determination

6. I have considered the evidence at the trial and the submission on behalf of the parties.
7. The Court of Appeal in **Stanley Maore v Geoffrey Mwenda NYR CA Civil Appeal No. 147 of 2002 [2004] eKLR** stated that:

Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases.

8. With regard to the assessment of damages, the principle stated by ***Kneller JA*** in **Kemfro Africa Limited t/a Meru Express Services (1976) & Anor. vs Lubia & Anor, No. 2 [1987] KLR 30** at page 35 is instructive:

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were held by the former court of appeal of Eastern Africa to be that it must be satisfied that either that the judge, in assessing the damages, took into account an irrelevant factor, or left out of account a relevant one, or that, short of

this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.”

9. The minor's medical report prepared by Dr.Koome Guantai on 12.01.2018 reveals that he suffered a cut on temporal region, brain contusion and loss of consciousness for 12 hours and soft tissue injuries to anterior chest.

10. I note that in the submissions, the Respondent prayed for Kshs. 1,500,000 relying on **Edward Mzamili Katana V CMC Motors Group Ltd & Another [2006] eKLR** where the victim was awarded Kshs. 2,000,000/- for the following injuries.

1. Head injury leading to concussion.
2. Cut wound and bruises of the scalp.
3. Fracture of the left scapula.
4. Compound fracture dislocation of the left elbow.
5. Chest injury with multiple fractures of left 5th, 6th and 7th ribs.
6. Fracture of the left femur upper 1/3 shaft.

11. Respondent similarly relied on **Bonface Mugendi Njiru V Ochieng T/A Tohel Agencies & Another [2011] eKLR** where the victim was awarded Kshs. 2,000,000/- for the following injuries:

1. Blunt head injury with loss of consciousness for over 24 hours.
2. Loss of four upper incisor teeth.
3. Fracture of the shaft of right femur.
4. Compound fracture of the right tibia with loss of soft tissues including tendons

12. Appellant offered Kshs. 200,000/- and placed reliance on **Francis Ochieng & another v Alice Kajimba [2015] eKLR** where the court on appeal reduced the award for general damages to Kshs. 200,000/- for head injuries, sub-conjunctival haemorrhage and periorbital scymosis on both eyes. He also cited **Cyrus Gachanja Muya & 4 Others V Abbas Mohammed & Another [1999] eKLR** where a victim who suffered a cut on the head and the lower jaw with a risk of developing post traumatic epilepsy was awarded Kshs 190,000/-.

13. The general consensus in awarding damages is that it is discretionary but must be reasonable and comparable with similar cases.

14. The injuries suffered in the cases cited by the Respondent are more severe than the ones suffered by the victim in this case whereas the ones cited by the Appellant are comparable, they are over 6 years old. Having considered the cited cases and inflationary trends, I find that an award of **Kshs. 350,000/-** would be reasonable in the circumstances.

15. In conclusion, I find that the appeal has merit and is allowed in the following terms:

1) The sum of Kshs. 600,000/- is set aside and substituted with the sum of Kshs. 350,000/-

2) Appellant is awarded costs of the Appeal

DATED AT MERU THIS 23RD DAY OF SEPTEMBER 2021

WAMAE. T. W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For the Applicant - Mr. Macharia for Patricks Law Associates

For the Respondent - Mr. Ngunjiri for Ngunjiri Michael & Co Advocates