



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**CIVIL APPEAL NO. 96 OF 2020**

**BEATRICE WANGUI WAITITU.....APPELLANT**

**VS.**

**DGK (suing as father and next friend of GMG (MINOR)).....RESPONDENT**

*(Appeal from the judgment of the Senior Principal Magistrates Court at Kikuyu G. Onsarigo, SRM dated 21<sup>st</sup> November, 2019 in the Civil Suit No. 194 of 2016)*

**JUDGMENT**

1. Before the Senior Principal Magistrate Kikuyu **DGK**, the respondent in this appeal, sued **BEATRICE WANGUI WAITITU**, the appellant for injuries suffered by his son following a road accident. Before that court, liability was recorded by consent at 30% to 70% in favour of the respondent. The appellant did not offer evidence and after receiving the respondent's evidence, that court by its judgment of 21<sup>st</sup> November, 2019 awarded the respondent Kshs.400,000/= in general damages. It is that award that aggrieved the appellant and hence this appeal.

2. The principles on which the appellate court will disturb an award of damages by a trial court are established. The same can be disturbed where the award is either inordinately too low or too high or where the trial court took not account irrelevant factors or failed to consider relevant factors. It is important to bear in mind that comparable injuries deserve comparable awards.

3. The respondent's son suffered the following injuries:-

- Loss of upper right central incisor.
- Chip fracture upper right lateral incisor
- Facial and forehead bruises.
- Wounds, bruises on the face, lips and chin.
- Blunt trauma left knee.

4. I have considered the cases cited in this appeal. In the case ISAAC **MURIUNGI MBATARU VS. SILAS KALUMANI (2017 eKLR)** the injuries suffered were:-

- Soft tissue injuries on the right side of the face – there were swelling, lacerations and bruises.
- Loss of 2 incisors (upper teeth).
- Tenderness and swelling of the lower back.

5. The above decision before Meru High Court was of 23<sup>rd</sup> January, 2017. The High Court awarded Kshs.200,000/= in general damages.

6. In the case **ROBERT CHESERK VS. JACKLINE JEPKOECH JIMMY (2019) eKLR** the court awarded Kshs.2000,00/= in general damages for soft tissue injuries. That case was decided in the year 2019.

7. The case **PAUL KIPSANG KOECH & ANOTHER VS. TITUS OSULE OSORE (2013) eKLR** was decided in the year 2013. The court awarded Kshs.200,000/- in general damages for minor soft tissue injuries.

8. In this appeal, the respondent's son lost upper right central incisor and chip fracture of the upper right lateral incisor and soft tissue injuries to the face, lip and chin and blunt trauma to the knee. Those injuries are more serious than those in the case of **ROBERT CHESEREK** (supra) which case was decided in the year 2019. The other two cases cited to his Court were decided in the years 2013 and 2017. I have therefore considered the assessment made by the trial court and I am satisfied that the amount of general damages awarded is not inordinately high. It is commensurate to the injuries suffered by the respondent's son. This appeal, therefore is without merit.

#### **DISPOSITION**

9. For the above reason this appeal is dismissed with costs.

**JUDGMENT, SIGNED DATED AND DELIVERED AT KIAMBU THIS 28TH DAY OF OCTOBER, 2021.**

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant: Nancy

For Appellant : Mr. Sengesa

For Respondents: N/A

**COURT**

Judgment delivered virtually.

**MARY KASANGO**

**JUDGE**