



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CIVIL APPEAL NO. 102 OF 2020

GEOFFREY NJIRU.....APPELLANT

VS

MARY WAMBUI NJOROGE.....1ST RESPONDENT

JACOB KARIUKI MURAGU.....2ND RESPONDENT

JOHN NJOROGE.....3RD RESPONDENT

(Appeal from the judgment and decree of the Senior Principal

Magistrate's Court at Kikuyu, Z.W. Gichana, SRM. dated 7th

February, 2018 in Kikuyu SPM Civil Case No. 141 of 2014)

JUDGMENT

1. The trial court entered judgment for the 1st respondent for Kshs.1,899,160/- in special damages against the appellant herein. That award was broken down as follows:-

- a) General damages - Kshs.1,200,000
- b) Future Medical Expenses - Kshs.500,000
- c) Special damages - Kshs.199,166

Total - Kshs.1,899,160

2. Judgment was entered on liability in favour of the 1st respondent at 100% after determination in the test case Kikuyu Civil Case No. 187 of 2013.

3. This appeal is against the determination on quantum by the trial court.

4. This Court in consideration of this appeal is guided by the holding in the case **SELLE & ANOTHER VS. ASSOCIATED MOTOR BOAT CO. LTD & OTHERS (1968) EA 123**, thus:-

“An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...”

5. The 1st respondent relied on the evidence of Dr. N.H. Bhanji. The doctor by his report noted the 1st respondent suffered the following injuries:-

- (a) Head injury (cerebral concussion).

(b) Fracture of the right thigh bone (femur).

(c) Cut wound over the left forehead.

(d) Soft tissue injury over the right forearm.

6. On the doctor examining the 1st respondent, he found that the said respondent had:-

(a) Inability to stand for a long time due to pain at the site of intra – medullary nail.

(b) Inability to walk for more than 1 km due to pain at the fracture site.

(c) Foreign bodies protruding from the scar on the forehead.

(d) Soft tissue injury over the medial aspect of the right forearm.

7. The doctor was of the opinion that the 1st respondent sustained severe injuries to the head and the thigh bone and soft tissue injury. He stated that the injuries were severe enough to have rendered her unconscious for one hour following the accident.

8. The appellant submitted that the trial court's award was inordinately high. I have considered the cases ALEX WANJALA VS. PWANI PRODUCTS LIMITED & ANOTHER (2019) eKLR AND JITAN NAGRA VS. ABIDNEGO NYANDUSI OIGO (2018) eKLR and I am of the view the injuries of those cases relied upon by the appellant are not comparable to the present case: See the case STANLEY MAORE VS. GEOFFREY MWENDA (2004) eKLR.

9. It needs to be noted that an award of damages is an exercise of discretion and the principles applicable when the exercise of that discretion is considered by an appellate court was discussed in the case HUSSEIN DAIRY LIMITED & ANOTHER VS. ASHA MOTED ATHMAN & 3 OTHERS (2021) eKLR thus:-

“11. On this, I am guided by the principles that were set out in the case of KEMFRO AFRIA LTD T/A MERU EXPRESS SERVICE GATHOGO KANINI –VS- AM LUBIA AND OLIVE LUBIA (1982-88) 1 KAR 727 and aptly restated by the Court of Appeal in the case of ARROW CAR LTD –VS- ELIJAH SHAMALLA BIMOMO & 2 OTHERS (2004) eKLR that:-

‘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 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. ...’

10. I have considered the 1st respondent's doctor's report, which was un-contradicted by the appellant and I have also considered the holding in LEONARD NJENGA NG'ANG'A & ANOTHER VS. LAWRENCE MAINGI NDETI (201) eKLR where the court awarded Kshs.1,500,000/= in general damages for injuries that were fairly comparable to the present case. I have also considered the case FRANCIS NDUNGU WAMBUI & 2 OTHERS VS. V.K. (a minor suing through next friend and mother MCWK) and (2019) eKLR where the court made an award of Kshs.1,000,000/=.

11. Having considered the above cases, I find that the trial court's award in general damages was not inordinately high. It was comparable to other decisions of comparable injuries.

CONCLUSION

12. This appeal for the reasons set out above fails and is dismissed with costs.

JUDGMENT, SIGNED DATED AND DELIVERED AT KIAMBU THIS 25TH DAY OF NOVEMBER, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant: Maurice/Kinyua

For Appellant: Ms. Chirchir holding brief for Thairu

For 1st Respondent:

For 2nd Respondent: Mr. Mwangi

For 3rd Respondent:

COURT

Judgment delivered virtually.

MARY KASANGO

JUDGE