



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

HIGH COURT CIVIL APPEAL NO.11 OF 2020

EASY COACH LIMITED.....APPELLANT

VERSUS

ESTHER KANANU INOTI.....RESPONDENT

(Being an appeal from the Judgment of Hon. S.M. Mokuu (CM)

in Kericho CMCC. No.259 of 2019 delivered on 3/3/2020)

J U D G M E N T

1. The Respondent sued the Appellant claiming general damages and special damages for injuries the Respondent sustained when she was injured in a Road Traffic Accident that occurred on 3/9/2018 along Nakuru-Kericho Road when she was travelling in Motor Vehicle Reg. No.KCQ 159 A after it lost control and overturned at Chepseon and she sustained the following injuries;

- (i) Fracture on the right hand.
- (ii) Cuts on the face
- (iii) Fracture of the left hand clavicle.
- (iv) Cut on the left knee.

2. The Respondent's right hand was amputated on the lower arm and re-amputated again at the level of the Mid-arm.

3. The Appellant filed a defence denying the Respondent's claim. The parties entered into a judgment on liability at the ratio of 80:20 in favour of the Respondent against the Appellant. The Court awarded damages as Follows:-

- (a) General damages = Kshs.3,500,000/=
 - (b) Cost of future medical Expense = Kshs. 120,000/=
 - (c) Special damages = Kshs. 210,150/=
- Total = Kshs.3,830,150/=

Less 20% Contribution = Kshs.3,064,120/=

4. The Appellant has now appealed to this Court on the following grounds:-

- (i) THAT the award of damages was manifestly Excessive in the circumstances of this case.
- (ii) THAT the Trial Court failed to appreciate and apply the principles applicable in the assessment of damages.
- (iii) THAT the Trial Court failed to rely on the authorities attached by the Appellant and relied on those attached by the Respondent

which were not comparable.

(iv) THAT the amount awarded as general damages was higher than submitted by the Respondent.

(v) THAT the Trial Court failed to critically and intrinsically analyze and apply the Appellant's submissions.

(vi) THAT the Trial Court failed to consider that the special damages awarded to the Respondent had been paid by N.H.I.F.

5. The parties filed written submissions in this appeal. The Appellant Submitted that the award of damages was too high for an amputation and further that going by the authorities relied on by the Appellant an award of Kshs.1,000,000/= is sufficient. The authorities relied on are:-

(a) John Bosco Muyetumo Mutunga -vs- Kimanzi Musyoka [2018] eKLR where Kshs.800,000/= was awarded for amputation of the right arm at the Elbow.

(b) EW (Suing as next friend and mother to BM) (a minor) -vs- Kenya Power and Lighting Company Limited and Another [2015] eKLR.

6. The Appellant also submitted that the Court did not use comparable authorities in awarding general damages, and further that the Court got into error in awarding Kshs.3,500,000/= which is extremely high considering the injuries the Respondent sustained.

7. The Appellant also submitted that the Trial Court did not consider and apply their submissions and further that special damages which were awarded were paid by N.H.I.F. The Appellant submitted that the Respondent was not entitled to the special damages that were paid by the Contributor.

8. The Respondent submitted that the Court was guided by comparable injuries and compensation and further that the appellate Court cannot interfere with the award unless the Trial Court took into account irrelevant factors or left out of account relevant ones.

9. The Respondent further submitted that the amount awarded is not so inordinately low or so inordinately high that it must be a wholly erroneous as to warrant an interference by the appellate Court.

10. The Respondent further submitted that the award made by the Court is fair, proper and within comparable awards for the injuries sustained.

11. The authorities relied on by the Respondent were as follows:-

(a) JOSEPH SEREMANI & JULIUS OTACHI -vs- STELLA BOSIBORI MOREKA – Civil Appeal No.100 of 2018 where an award of Kshs.2,500,000/= was awarded for multiple fractures and an amputation of the left leg.

(b) JOHN KIPKEMBOI ANOTHER -vs- MORRIS KEDOHO [2019] eKLR where Kshs.2,500,000/= for loss of earning capacity.

(c) YOBESH MAKORI -vs- ELMERICK MOBISA BOTA [2021] eKLR where Kshs.2,500,000/= was award for head injury, Deep laceration on the scalp; left clavide fracture; bruises on the upper limbs.

12. The Respondent submitted that the award for future loss of earnings was unfair and the same should be reversed because the Respondent proved that she was an employee of TSC as a primary one Teacher (P1) and the injury rendered her unproductive.

13. The issue for determination in the memorandum of appeal filed by the appellant on the 17th of March 2020 is whether the award made by the trial court was manifestly excessive.

14. On said issue as to whether the award was excessive, the high court in *Charles Oriwo Odeyo versus Appollo Justus Adabwa & Another (2017) eKLR*, stated as follows: ***The assessment of damages in personal injury case by court is guided by the following principles: -***

1) An award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained.

2) The award should be commensurable with the injuries sustained.

3) Previous awards in similar injuries sustained are mere guide but each case be treated on its own facts.

4) Previous awards to be taken into account to maintain stability of awards but factors such as inflation should be taken into account.

5) The awards should not be inordinately low or high.”

15. The trial court in its judgement stated that it had perused various comparable cases and had noted that an award for amputation of limbs usually ranged from Kshs. 1,200,000 to Kshs. 3, 500,000, and it proceeded to award the respondent Kshs. 3, 500, 000 as general damages while taking into account the rate of inflation in the country.

16. The respondent had produced a medical report from Dr. Wokabi, which stated that she had sustained the following injuries as a result of the accident:

(a) Severe crash injury on the right upper limb;

(b) Major extensive skin and muscle loss on the left elbow and forearm;

(c) Fracture of the neck of the left humerus; and

(d) Deep abrasion on the right knee. The medical report further assessed the total sum of the respondent's disability at 85%.

17. In *James Musyoka Nzeke versus Kenya Power and Lighting company (2019) eKLR*, an award of Kshs. 2,500,000 was made for amputation of left arm amongst other injuries sustained by the plaintiff;

In *Kurawa Industries Limited versus Dama Kiti & Another (2017) eKLR*, damages for amputation of left leg was assessed at Kshs. 2,000,000, while in *Akwaba Olubuliera Nicodemus Versus Dickson Shikuku (2020) eKLR* an award of Kshs. 2,000,000 was given for amputation of left leg, fracture of right clavicle leading to internal fixation of the clavicular fracture and sprained left elbow joint.

18. In this case however, the respondent's right arm was amputated, and re-amputated again as a result of the amputation stump being septic. her permanent disability was also assessed at 85%. The respondent will also have to rely on other people to do most of her chores, as a result of the injuries sustained. The award by the trial court was therefore not inordinately high.

19. The court of appeal at Kisumu in *Nyamunga & 2 others versus Onsongo, civil appeal 86 of 2018* stated as follows: ***“Assessment of damages is an exercise of judicial discretion and an appellate Court will not usually interfere with an award of damages unless it is satisfied that the Judge acted on wrong principles of law; has misapprehended the facts or has made a wholly erroneous estimate of the damages suffered. It is not for the appellate Court to consider what it would have itself awarded; it is whether the lower court acted on the wrong principles.”***

20. Further, in *Loise Wanjiku Kagunda versus Julius Gachau Mwangi, Civil appeal no. 142 of 2003*, the court stated as follows: ***“We appreciate that the assessment of damages is more like an exercise of judicial discretion and hence, an appellate court should not interfere with an award of damages unless it is satisfied that the judge acted on wrong principles of law or has misapprehended the facts or has for those or other reasons made a wholly erroneous estimate of the damages suffered. The question is not what the appellate court would award but whether the lower court acted on the wrong principles.”***

21. In view of the above authorities, I find no reason to interfere with the award made by the Trial Court. There is no evidence that the Trial court acted on wrong principles of law or that he misapprehended the facts of the case so as to arrive at an erroneous award.

22. I dismiss the appeal and uphold the award made by the Trial Court.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 19TH DAY OF NOVEMBER, 2021.

A. N. ONGERI

JUDGE