



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

HIGH COURT CIVIL APPEAL NO.26 OF 2016

SBI INTERNATIONAL.....1ST APPELLANT

REUBEN KEMEU NGENO.....2ND APPELLANT

VERSUS

MAURINE NGUNYI.....RESPONDENT

(Being an appeal from the Judgment of Hon. Limo (PM) in Kericho Principal Magistrates'

Civil Case No.240 of 2013 delivered on 16/11/2016).

J U D G M E N T

1. The Appellants filed this appeal seeking re-assessment of general damages and special damages awarded herein on 16/11/2016.
2. The plaintiff's/ respondent's case was that on the 26th of November 2014, while she was travelling along the Kisumu-Kericho Road, aboard motor vehicle Registration number KBP 664J, the said vehicle collided with motor vehicle registration KAX 181P being driven by the 1st Appellant/1st Defendant in a negligent and/ or reckless manner and as a result of the said collusion, the plaintiff/ respondent sustained blunt chest injury and fracture of the pelvis. The trial court awarded the plaintiff/ respondent Kshs. 1,000,000 general damages for her injuries.
3. The 1st Appellant/ 1st Defendant on the other hand denied any negligence on his part, and instead blamed the plaintiff/ respondent for failure to take precautionary steps to ensure her safety while on board the motor vehicle. The 1st appellant/ 1st defendant stated that the trial court was wrong in finding him 100% liable for the accident and awarding the appellant Kshs. 1, 000, 000 general damages, as the same was manifestly excessive compared to other comparable injuries.
4. The Respondent opposed the appeal and stated that the same was intended to deny the Respondent the fruit of her judgment.
5. The parties filed written submissions in the appeal which are as follows: The appellants submitted that the respondent failed to adduce any evidence to the effect that the appellant was negligent and that should this court find that the appellant was at all negligent, then a larger apportionment of the blame should be on the respondent.
6. The appellants further submitted that the award of Kshs.1,000,000 for general damages was inordinately too high as compared to other comparable injuries and was therefore fit for interference by this court. The appellant also submitted that special damages ought to be strictly proved and only those proved by receipts should be awarded.
7. The respondent on the other hand submitted that the trial court gave both parties an equal opportunity to be heard and took into account evidence from both the appellant and the respondent before making its final determination on the matter.
8. The respondent further submitted that the trial magistrate rightly apportioned the appellants' liability at 100% as they were wholly to blame for the accident and that the 2nd appellant was charged and convicted of the offence of careless driving and fined Kshs. 50,000.
9. The respondent also submitted that the trial court took into account the right principles while awarding damages and that the general damages awarded were comparable to other awards.

10. The issue for determination is whether the trial court award of Kshs.1,000,000 general damages was excessive in the circumstance and whether the respondent proved the special damages.

11. On whether the general damages of Kshs.1,000,000 was inordinately high, the trial court in its judgement stated that it had been guided by the case of Nicholas Otieno vs. Oil crop development Ltd & Another (2009) eKLR, where an award of Kshs.1,200,000 was made for pelvic fracture injury.

12. The high court has decided several cases in which the plaintiff has sustained a fracture of the pelvis. In **Joseph Njeru Luke & 3others versus Stellah Muki Kioko, (2020) eKLR**, the court awarded a sum of Kshs. 750,000 for pelvic fracture, blunt injuries on the chest amongst other injuries sustained by the plaintiff; in **Ali Malik Brothers Motors (k) Ltd & another versus Emmanuel Oduor Onyango (2018) eKLR**, an award of Kshs.700, 000 was awarded for fracture of pelvic Sprain hymen and cuts of the right knee; while in **Board of Trustees Anglican Church of Kenya diocese of Marsabit versus Naomi Galma Galgalo (2019) eKLR**, an award of Kshs.1, 400, 000 general damages was given for pelvic fracture and back injuries.

13. The medical report from Dr. Charles Andai stated that although the plaintiff/respondent is expected to completely heal within one year and a half, the injuries suffered has predisposed the joint to the development of osteoarthritis in future as a complication. I therefore find that the award of general damages was not inordinately too high in the circumstance.

14. As regards special damages, the plaintiff/respondent in her plaint listed medical report-Kshs.4000, treatment expenses, demand letter and police abstract, the respondent did not state the specific amount that she incurred for the other listed items under special damages other than the medical report.

15. Although the law requires that special damages are to be specifically proved, the court has taken judicial notice that medical reports are not for free, they are paid for and so it will use its discretion to award Kshs. 4000.

16. The court of appeal at Kisumu, in **Nyamunga & 2others versus Onsongo, civil appeal 86 of 2018, (2021) eKLR** stated as follows as regards interference of awards of damages by appellate courts: **“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.”**

17. Further in **Gitobu Imanyara & 2 others versus Attorney General, (2016) eKLR**, the court of appeal stated as follows: **“Further, it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance, they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled.”**

18. I find no reason to interfere with the finding of the Trial magistrate on liability and quantum of damages.

19. I accordingly dismiss the appeal and I uphold both the findings on liability and quantum of damages.

Delivered, dated and signed at Kericho this 19th day of November, 2021.

A. N. ONGERI

JUDGE