

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 81 OF 2018

MANPOWER NETWORKS LIMITED.....APPELLANT

VERSUS

EZEKIEL MWALUKUKU.....RESPONDENT

J U D G M E N T

1. The two parties here were engaged in a litigation as defendant and plaintiff respectively. The Appellant was sued by the respondent on the pleaded facts that on the 2/4/2015, while the respondent was engaged in the Appellants employment and while going about his duties as a labourer a stack of sacks collapsed and buried him underneath as a consequence of which the respondent suffered bodily injuries, loss and damage.

2. The injuries pleaded to have been suffered included hairline fracture of the shaft of the left fibula, clip fracture of the left iliac bone, blunt injury to the lower back and reduced back disc space as well as blunt injury to the chest and foot. On account of such injuries the respondent prayed for special damages in the sum of Kshs.2,000 as well as general for pains and suffering together with costs of the suit and interests.

3. The respondent suit was resident by the appellant by the amended defence in which all the allegations pleaded in the plaintiff were denied including injuries suffered it being pleaded without prejudice and in the alternative that the accident was wholly and substantially contributed to by the respondent. It was then prayed that the respondents suit be dismissed with costs. It was additionally pleaded that the appellant not only paid the plaintiff's hospital bills in the sum of Kshs.86,580 but also Kshs.42,030/= in cash to him.

4. After conclusion of tender of evidence where the respondents side called two witnesses just as the Appellant also did, the court entered judgment for the respondent and apportioned liability at 70%:30% in favour of the respondent and assessed general damages in the sum of Kshs.800,000/=.

5. This appeal only challenges the assessment of damages and does not touch on apportionment of liability. Being limited to assessment of damages only, the principles upon which this court as an appellant court, would interfere with the trial courts assessment of damages are that assessment is an exercise in judicial discretion; is known to be a difficult task and the court should thus be slow to disturb an award unless it be demonstrated that the same was inordinately too high or too low as to amount to an outright error in estimating the intended compensation. It is not enough that another judge would have awarded a different figure. There must be shown that an irrelevant matter went into the assessment or that a relevant matter was excluded from the decision.

6. This court is guided by the principle of law that comparable injuries should attract comparable damages. At trial the respondent's injuries pleaded and particulars given and evidence led by a doctor on their residual effects said to be a residual 7% permanent disability due to chronic pain and multiple weak bone union that can easily fracture over trivial trauma. In cross examination PW 1, DR Ndegwa said that the injury left the respondent with a straightened back rather than curved one and that with reduced disc space there was risk of injury which need more care.

7. Having considered the evidence led on the injuries and their residual effects and the cases cited to him, as said before, the court made an award of general damages and assessed same at Kshs.800,000/=.

8. While the appellant contends that the award was excessive, I have had the benefit of reading the judgment appeal against and the submission offered to the court and authorities relied on and I find that there is no justification to interfere with the award of damages. In fact I do find that the appeal lacks merits and the same is hereby dismissed with costs.

Dated and Delivered at Mombasa this 24th day of January 2020.

P.J.O. OTIENO

JUDGE