



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CIVIL APPEAL NO. 67 OF 2018

FAST TRACK

GREAT RIFT EXPRESS

SHUTTLE SERVICES LTD.....APPELLANT

VERSUS

MOSES KIPCHUMBA KIPKEMOI.....RESPONDENT

(An appeal from the decree and judgement delivered by C. Obulutsa (CM) on 18th May 2018 in Eldoret CMCC No 448 OF 2018)

JUDGMENT

1. The respondent (**MOSES KIPCHUMBA KIPKEMOI**) was involved in a road traffic accident on 2/12/2016 while travelling along Eldoret - Nakuru road as a passenger in motor vehicle registration number **KCJ 593V** which belonged to **GREAT RIFT EXPRESS SHUTTLE SERVICES LTD** (the appellant), and which collided with motor vehicle registration No. **KZH 941**. As a consequence, he sustained injuries he sustained serious injuries and filed suit against the appellant claiming damages. After full hearing, the trial court held that the appellant was 100% liable and awarded the respondent general damages for pain and suffering in the sum of **Kshs 2,000,000/-** and special damages in the sum of **Kshs 30,000/-** against the appellant.

2. The appellant was aggrieved by the decision and filed this appeal stating that the trial court failed to consider its submissions, and made a decision which was against the weight of the evidence using wrong principles. The appellant also laments that the damages awarded were inordinately high in the circumstances of the case, taking into account the nature of the injuries.

3. The appeal was canvassed by way of written submissions. The principles upon which an appellate court can interfere with an award of damages are now well settled. In ***Kemfro Africa Ltd t/a Meru Express Service –vs- A.M Lubia and Olive Lubia [1982 -88], KAR 727*** at page 730, Kneller J.A said:

“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 that the judge, in assessing the damages, took into account an irrelevant factor, or left out 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 damages. See Illango –vs- Manyoka [1961] EA.705,709, Lukenya Ranching and Farming Cooperative Society Ltd –vs- Kavoloto [1970] EA, 44, 418, 419. This court follows the same principles”.

These principles have stood the test of time, and the appeal is only on quantum of damages, where the appellant argues that Dr Sokobe’s medical report contradicts the respondent’s oral testimony to the effect that the respondent’s vision had improved. Further, that the trial court left out relevant factors when making the determination.

4. At the hearing the respondent who worked as an Administration Police Officer (AP) testified as PW4 and told the trial court that the injury had affected his performance at work, and he experienced low vision. In his oral evidence, **Dr Sokobe** told the trial court that the respondent had improved vision and suffered 0% disability. My understanding is that the respondent’s capacity to see, and perform tasks involving physical application is compromised at 20%...which would mean that although there was improvement in the vision, it was still not optimum. According to the medical report by Dr. J.C. Sokobe, the respondent sustained the following injuries:

a) Bruises on the face.

b) Corneal perforation right eye.

c) Foreign body in the left eye (pieces of glasses)

d) Cut wound on the left upper eye lid.

e) Cut wound on the left forearm.

f) Open left femur fracture with bone loss.

5. The doctor found that the respondent complained of partial vision impairment in eyes, persistent left knee pain and deformed left thigh with shortening. The doctor confirmed the injuries sustained and found the complications being:

i. Partial visual impairment.

ii. Development of early left knee osteoarthritis.

iii. Deformed left thigh.

He assessed permanent disability at 20% (Twenty percent). The doctor observed that the respondent underwent open reduction internal fixation and bone grafting. These are the injuries which the court in its considered in arriving at an award of Kshs 2,000,000/- and it is not clear to me what contradiction there is in the positions stated.

6. The treatment notes, P3 from, medical report, and the respondent and the medical personnel's testimonies show that the injuries sustained by the respondent were so severe and have had life lasting effects on the respondent, as to result in an assessment of 20% permanent disability. In any event, the appellant did not avail a separate medical examination report conducted on the respondent, suggesting that there was exaggeration of injuries, or a departure from what was contained in the Sokobe report.

7. **Doctor Sokobe's** testimony and report together with the respondent's testimony all agreed as to the extent of the injuries sustained by the respondent. The trial court also nsidered the previous decisions cited which dealt with comparable injuries and residual effects, as well as the rate of inflation. In my view, the trial court therefore took into account all relevant factors in arriving at the award of damages, and did not take into account any irrelevant factors. I find that the damages awarded are not inordinately high as to amount to an erroneous estimate of the damages. The award of Kshs. 2,000,000/= for the injuries sustained by the respondent is reasonable in the circumstances, and there are no reasons to warrant this court interfering with trial court's award on quantum of damages. The appeal lacks merit and is dismissed with costs to the respondent.

Delivered and dated this 22ND day of MAY 2020 at Eldoret

H.A. OMONDI

JUDGE