



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 13 OF 2016

MADHU PAPER KENYA LIMITED.....APPELLANT

-VERSUS-

RONALD NTEBERE RANGOLI.....RESPONDENT

(Being an appeal from the judgment and decree of Honourable L. Arika (Mrs.) (Senior Principal Magistrate) delivered on 16th December, 2015 in Milimani CMCC no. 6269 of 2013)

JUDGEMENT

1. Ronald Ntebere Rangoli, who is the respondent in this instance lodged a suit against the appellant vide the plaint dated 1st October, 2013 and sought for general and special damages in the sum of Kshs.3,000/ plus costs of the suit and interest on the same for negligence and/or breach of contractual/statutory duty of care.
2. The respondent pleaded in his plaint that he was at all material times an employee of the appellant working as a machine operator and that sometimes on or about the 24th day of September, 2011 while removing waste from a rewinder machine in the lawful course of his employment, the respondent sustained severe injuries when his hand slid and got caught between the rollers of the machine.
3. The respondent attributed his injuries to negligence and/or breach of the appellant's contractual and/or statutory duty of care by setting out their particulars in paragraph 5 of the plaint.
4. The appellant entered appearance on being served with summons and filed its statement of defence on 29th January, 2014 to deny the respondent's claim.
5. At the hearing of the suit, a consent on liability was recorded by the parties in the ratio of 80:20 in favour of the respondent. According to the record, the parties also entered into a consent on production of the medical reports dated 9th September, 2013 and 23rd January, 2014 in evidence and on the filing of written submissions with regard to the assessment of damages.
6. Upon considering the material placed before the court and the written submissions filed by the parties, the trial court entered judgment in favour of the respondent in the following manner:

Liability	80%:20%
a. General damages for the plaintiff	Kshs.320,000/
b. Special damages	Kshs.3,000/
Total	Kshs.323,000/

(Before contribution)

7. Being dissatisfied with the assessment of damages, the appellant lodged this appeal against the respondent vide the memorandum of appeal dated 12th January, 2016 and put forward the following grounds of appeal:

i. **THAT the learned trial magistrate erred and misdirected herself on the issue of general damages.**

ii. **THAT the amount of general damages awarded to the respondent is manifestly excessive in light of the injuries sustained and the medical report prepared by Dr. R.B. Barad dated 23rd July, 2014.**

8. This court gave directions that the appeal be canvassed by written submissions. The appellant filed its submissions dated 25th March, 2020 and argued that in assessing general damages, the trial court did not consider material facts including the nature of injuries, the treatment received, the loss of amenities and/or loss of earnings.

9. The appellant further argued that the award made by the trial court was excessive in the circumstances and urged that the same be interfered with and substituted with a reasonable award of Kshs.100,000/-. The appellant relied on the case of **Ndungu Dennis v Ann Wangari Ndirangu & another [2018] eKLR** in which the High Court sitting on appeal substituted an award of Kshs.300,000/- with that of Kshs.100,000/- in the instance of a plaintiff who had suffered soft tissue injuries to the lower right leg and back.

10. The respondent who supports the assessment made by the trial court has submitted that an award of damages is at the discretion of the court and that the trial court considered the medical evidence together with the treatment notes tendered in evidence, in making its award.

11. The respondent further argued that the award made by the trial court was not excessive and aligned with the trends in respect to similar injuries. The respondent cited inter alia, the case of **Ngala Shedi v Jackson M. N Yambu-MSA HCCC NO. 152 OF 1992** where an award of Kshs. 180,000/- was made to a plaintiff with burn injuries, and the case of **Judith Muderegani v Noah Andolo & another [2005] eKLR** where the court awarded a sum of Kshs.350,000/- to a plaintiff who had sustained burns resulting from an explosion of paraffin.

12. I have considered the rival submissions and authorities cited on appeal. This being a first appeal, I am enjoined to re-evaluate the evidence placed before the trial court, keeping in mind the legal position that the award of a trial court ought only to be interfered with under the following circumstances as articulated in the renowned case of **Kemfro Africa Ltd t/a Meru Express Services 1976 & Another [1976] v Lubia & Another (No. 2) [1985] eKLR** quoted by the respondent in his submissions:

a. **Where an irrelevant factor was taken into account.**

b. **Where a relevant factor was disregarded.**

c. **Where the amount awarded is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages.**

13. It is noted that the appeal lies purely against the award made under the head of general damages for pain, suffering and loss of amenities. I will therefore address the two (2) grounds of appeal together under the aforementioned head.

14. On the one part, the respondent proposed an award of Kshs.400,000/- before the trial court and cited the aforementioned case of **Judith Muderegani v Noah Andolo & another [2005] eKLR**. The appellant on the other hand suggested an award in the sum of Kshs.30,000/-.

15. Upon analyzing the medical evidence, submissions and authorities highlighted by the parties, the learned trial magistrate reasoned that the medical reports were similar in the nature and extent of injuries sustained by the respondent, save for the issue of scarring. Ultimately, the learned trial magistrate was of the view that an award of Kshs.300,000/- would constitute reasonable general damages for pain, suffering and loss of amenities.

16. Upon perusal of the plaint, I note that the injuries of the respondent were particularized as frictional burn wounds on the right forearm proximal end and right wrist joint dorsal aspect. These wounds were confirmed by the two (2) medical reports tendered in evidence and which I re-examined.

17. Turning to the medical evidence, Dr. P.M. Wambugu who prepared the medical report dated 9th September, 2013 indicated that the respondent received outpatient treatment and that frictional burn wounds were cleaned and dressed but that the respondent later developed keloid scars which necessitated removal and local irradiation. The doctor also indicated that the respondent has made a good recovery but experiences occasional pain on his right wrist and termed the injuries as blunt trauma and soft tissue in nature, leaving permanent scars.

18. In the second medical report dated 23rd July, 2014 Dr. R.B. Barad restated the findings arrived at by Dr. P.M. Wambugu save to add that the injuries left no permanent incapacity.

19. From my perusal of the judgment delivered by the learned trial magistrate, I note that she adequately evaluated both medical reports and the treatment notes which were adduced for her reference. There is nothing to indicate that the learned trial magistrate took into account any irrelevant factors or overlooked any relevant factors in making her award.

20. The question that then remains is whether the award made was manifestly excessive. Upon looking at the authorities highlighted by the respective parties before the trial court, I find that the same were decided many years ago and those relied upon by the respondent involve injuries of a more serious nature in comparison to those suffered herein. I further observed that the learned trial magistrate did not cite any authorities that guided her assessment of the general damages.

21. I therefore borrowed the case of **Prime Steel Mills Ltd v Amos Kipkogei Sialo [2017] eKLR** where the court upheld an award of Kshs.180,000/ made to a plaintiff who had suffered burns on right leg, right hand and face which were termed as soft tissue injuries with no permanent incapacity. I further considered the more recent case of **Elizabeth Wamboi Gichoni v Virginia Achieng Achola [2019] eKLR** involving a plaintiff with blunt injuries, cut wounds and bruises on various parts of her body, some of which left keloids with no fractures or permanent disability. In that case, the court set aside the award of KShs.300,000/ on general damages made by the trial court and substituted it with an award of KShs.150,000/.

22. Upon being guided by comparable awards made, I am convinced that the award of Kshs.320,000/ made by the learned trial magistrate was on the higher side. In my view, I think an award of Kshs.200,000/ is more reasonable.

23. Consequently, the appeal succeeds in terms of prayers (a) and (b). The trial court's award of Kshs.320,000/ made under the head of general damages for pain, suffering and loss of amenities is hereby set aside and is substituted with an award of Kshs.200,000/.

24. For the avoidance of doubt, the judgment on appeal is as follows:

a. General damages	Kshs.200,000/=
b. Special damages	<u>Kshs. 3,000/=</u>
Gross Total	Kshs.203,000/=
Less 20% contribution)	<u>Kshs. 40,600/=</u>
Net Total	<u>Kshs.162,400/=</u>

The respondent shall have interest on special damages at court rates from the date of filing suit and interest on general damages at court rates from the date of judgment until payment in full.

Parties to bear their respective costs of the appeal.

Dated, signed and delivered via Microsoft Teams at Nairobi this 30th day of July, 2020.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent