



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIVASHA**

**(CORAM: R. MWONGO, J.)**

**CIVIL APPEAL NO. 36 OF 2017**

**LAKE NAIVASHA GROWERS.....APPELLANT**

**VERSUS**

**MUIGAI THUKA.....RESPONDENT**

*(Being an Appeal from the Judgment and Decree of the Honourable E. Kimilu (PM) delivered on the 15<sup>th</sup> August, 2017 in Naivasha CMCC No 690 of 2014)*

**JUDGMENT**

**Background**

1. The Plaintiff/Respondent suffered injuries following an accident he was involved in on 21<sup>st</sup> May, 2014, when he was cycling along Maai Mahiu Road. The vehicle that hit him was a Toyota Platz Registration number KBJ 208V.

2. The injuries suffered by the Plaintiff were:

a) Severe soft tissue injuries of the left thigh.

b) Soft tissue injuries of the left leg.

In the medical report of 16<sup>th</sup> September, 2014 (**P. Exhibit 7a**) of Dr. Kiamba made four months after the accident, he opined that the Plaintiff sustained severe soft tissue injuries of the left thigh and left leg from which he had recovered. Any pain suffered would subside. He classified the degree of injury as “harm” and awarded temporary disability of three months.

3. The report of Dr. Wokabi dated 18<sup>th</sup> February 2015, nine months after the accident, also opines that the injuries suffered by the Plaintiff were soft tissue injuries. The x-rays he reviewed did not reveal any abnormalities, and the injuries were quite normal. He did not comment on disability.

4. During the hearing, the parties recorded a consent judgment on liability in the ration of 85%:15% in favour of the Plaintiff. The trial court entered judgment as follows:

General damages 250,000.00 less 15% (Kshs 37,500.00)

Special damages 8,380.00

**220,880.00**

Costs and interests were awarded to the Plaintiff.

5. The Appellant appeals against the quantum on the following basis which constitutes the Appellant’s issues for determination:

1. Whether the award is inordinately high.

2. Whether party should bear the costs.

6. As this is an appeal only against the quantum of the award, this court's role is to re-evaluate the evidence relative to the injuries suffered and assess whether the award was appropriate measured against awards by courts for similar injuries. The court should avoid disturbing the award unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the trial court proceeded on wrong principles or misapprehended the evidence in arriving at an inordinately high or low award. (See **Butt v. Khan (1977)1 KAR**).

7. The Appellant submits that the injuries suffered by the Respondent were soft tissue injuries. As such an award of Kshs 60,000/= should have been sufficient. The Appellant argues that the trial court did not take into account similar comparable awards for soft tissue injuries.

8. A number of authorities were annexed to the Appellant's submissions but the Appellant made specific reference to the following two:

**Eldoret Steel Mills Ltd v Charles Owino [2012] eKLR** and **Robert Ngari Gateri v Mango Transporters [2015] eKLR**, in both of which an award of Kshs 60,000/= general damages was made for similar injuries.

9. In the **Eldoret case**, the accident occurred in January 2001, the lower court gave its award of Shs 84,000/= in July 2002, and the High Court Judgment affirming the award on appeal was delivered in July 2012. It seems to me that the High Court's affirmation was to the effect that as of 2002 the trial court had not taken into account any irrelevant factors. This must be the perspective from and in which the **Eldoret case** is viewed.

10. In **Robert Ngari's** case, the High Court judgment on appeal was rendered in December 2005. The award was Kshs 60,000/= in general damages for soft tissue injuries of the left leg, upper arm right hand, chest and neck.

11. Both cases cited by the Appellant are quite dated. In the present case the accident occurred in May, 2014 and the Lower Court's judgment was rendered in August 2017. Thus, comparable authorities would be those rendered for similar injuries around 2016 to 2017. On that basis the Appellant's authorities are not helpful.

12. In the Lower Court the Respondent relied on **Francis Ochieng & Another v Alice Kajimba [2015] eKLR** where the Plaintiff was awarded Kshs 350,000/= for multiple soft tissue injuries. He also relied on **H. Young Construction Company Ltd v Richard Kyule Ndolo [2014]** and **Devki Steel Mills Ltd v James Makau Kisilu [2012] eKLR**, in both of which an award of Kshs 250,000/= general damages was made for soft tissue injuries.

13. In the appeal, the Respondent further cited **Francis Ochieng & Another v Alice Kajimba [2015] eKLR** in respect of multiple soft tissue injuries sustained in January 2012, where trial court's judgment was rendered in February 2014. There, the High Court reduced the award from Kshs 500,000/= to Kshs 350,000/= for multiple soft tissue injuries.

#### **Disposition**

14. Having perused all the authorities, I find that those submitted by the Appellant are inappropriate as they relate to the period around 2002 and 2005. The more comparable authorities are those submitted by the Respondent.

15. The Trial Magistrate determined that an award of Kshs 250,000/= "*strikes a chord of fairness and would be sufficient, and that an award of Kshs 60,000/= is on the lower side.*" She awarded the Kshs 250,000/=

16. I agree with the Trial Magistrate's award. She did not consider any matters that did not warrant consideration, nor fail to consider any matters that ought to have been considered. There is therefore no reason to disturb the award.

17. Accordingly, the appeal fails and is hereby dismissed with costs.

#### **Administrative directions**

18. Due to the current inhibitions on movement nationally, and in keeping with social distancing requirements decreed by the state due to the Corona-virus pandemic, this Judgment has been rendered through Zoom tele-conference with the consent of the parties noted hereunder, who were also able to participate in the conference. Accordingly, a signed copy of this judgment shall be scanned and availed to the parties and relevant authorities as evidence of the delivery thereof, with the High Court seal duly affixed thereon by the Executive Officer, Naivasha.

19. A printout of the parties' written consent to the delivery of this judgment shall be retained as part of the record of the Court.

20. Orders accordingly.

**Dated and Delivered in Naivasha by teleconference this 19<sup>th</sup> Day of October 2020**

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**R. MWONGO**

**JUDGE**

Attendance list at video/teleconference:

1. Ms Kung'u holding brief for Kariuki for the Appellant
2. P. K. Njuguna for the Respondent
3. Court Clerk - Quinter Ogutu