



REPUBLIC OF KENYA

IN THE HIGH COURT AT KIAMBU

CIVIL APPEAL NO. 78 OF 2017

SUKAINA ATHMAN

(Suing through next friend and father.....APPELLANT

-VERSUS-

KARIUKI JANE AND

JOSEPH KARIUKI MUKURIA.....RESPONDENTS

CONSOLIDATED WITH

CIVIL APPEAL NO. 76 OF 2017

JOSEPHAT RIHANDA ANYANG.....APPELLANT

-VERSUS-

JOSEPH KARIUKI MUKURIA.....RESPONDENT

(Being appeals from the judgment of Honourable N. Makau, RM sitting at SPMCC at Limuru No. 146 of 2013 and CMCC No. 141 of 2013

JUDGMENT

1. The above appeals arose from judgments of the Hon. N. Makau Resident Magistrate in Limuru CMCC No.146 of 2014 and 141 of 2013 respectively, delivered on various dates as stated above.

2 The appeals are against the learnt magistrates assessments of quantum of damages following injuries sustained by the Appellants who were travelling in the Respondents motor vehicle registration No. KBR 401W on the 24th September 2012.

They were dissatisfied with the awards on damages as inordinately too low. By this appeal they seek for enhancement of damages.

Liability was resolved and settled by consent of the parties at 30:70 in favour of the Appellants.

3. *Quantum of damages*

The principles upon which an appellate court may interfere with the trial court's discretion in assessment of damages are stated in the case **Kemfro Africa t/a Meru Express Services & Another –vs- Lubia & Another (1982-88) KLR 727** that an appellate court will not interfere with the court's discretion unless it is satisfied that either the trial court in assessing damages took into account an irrelevant factor, or left out a relevant factor, or that the amount awarded is so inordinately low or high or wholly erroneous estimate of the damage.

Upon such principles, I now turn to interrogate each award individually. See also **Butt –vs- Khan**.

4. HCCA No. 78 of 2017 Josephat Rihanda Anyang –vs- Kairuki Jane Another

The appellants injuries were stated in the medical report of Dr. Theophilus Wangata dated 13th March 2013 as

- **Intertrochanteric fracture of the femur**
- **Blunt injury to the head**
- **He was put on neck hard-collar for support, skeletal fraction for 7 weeks to manage fracture and crutches.**
- **The doctor stated that he had features of post traumatic osteoarthritis to hip joint, difficult to work and permanent functional incapacity assessed at 10%.**

5. The trial court awarded the Appellant Kshs.400,000/= damages for pain and suffering .

The appellant has urged enhancement but has not proposed any sums save the Kshs.1,000,000/= it proposed before the trial court – citing **HCCC NKR No.166 of 2004 Jecinta Wanjiku –vs- Samson Mwangi** where such sum was awarded. This authority has not been provided.

6. The appellant has not told the court in what aspect the trial court’s award was inordinately low as to persuade the court to interfere. Indeed no comparable authorities are cited to guide the court.

7. Pursuant to **Section 78 of the Civil Procedure Act** I shall re-assess the damages as if this court had the original jurisdiction, by considering the following decisions of comparable nature in injuries. **Simon Githiomi –vs- Peter Wachira HCCCNo.91 of 199 Nakuru** - Sum of Kshs.350,000/= was awarded as general damages for comparable injuries.

8. In **Civil Appeal No. 21 of 2015 Akamba Public Road Services –vs-Abdikadir Aden Galgalo (2016) e KLR**, the court on appeal set aside an award of Kshs.800,000/= and substituted with Kshs.350,000/= in general damages.

9. In **Ibrahim Kalemba Lewa –vs- Esteel Co. Ltd NBI HCCA No. 475/2012 (2016)KLR**, the court upheld an award of Kshs.300,000/= for trochariteric fracture of left femur.

In **Kenyatta University –vs- Isaac Karumba Nyuthe NRB HCCA NO 193 of 2012(2014) e KLR**, a sum of Kshs.350,0000/= was awarded for fracture of the right femur, soft tissue injuries and 20% permanent incapacitation.

10. The above decisions are comparable to the injuries sustained by the Appellant and so are the general damages awarded.

I find no reason to interfere with the trial courts award of Kshs.400,000/=. It is upheld as fair and reasonable.

11. **HCCA No. 76 of 2017 Sukaina Athman(suing through next friend and father Athaman Farsi Wanyoike Kimata.**

The appeal is against the award on general damages only.

The injuries sustained by the appellant are stated as fracture of the femur. **Dr. Okere’s medical report** - with surgical scars and 2 cm shortening of the leg and permanent incapacitation assessed at 20%. A sum of Kshs.500,000/= was awarded as general damages.

12. The injuries are quite close in similarity with those in the **HCCA No. 78/2017 above** – and hence the authorities I have cited thereon will serve for purpose of re-assessing the damages. I do not find the case of **Jecinta Wanjiku (Supra)** relevant as the injuries cannot be comparable as being too serious injuries where a sum of Kshs.1 Million was awarded in 2006.

13. I therefore find that the trial court’s award of Kshs.500,000/= to have been within reasonable limits and a proper estimate of the damage.

I uphold the same.

14. Accordingly, and having not been satisfied that the trial magistrate while assessing damages left out any relevant factor, nor that the awards were inordinately high. I find no merit in the appeals.

Both are dismissed with costs to the Respondents.

Dated and signed at Nakuru this 23rd Day of January 2019.

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J.N.MULWA

JUDGE

Dated, signed and Delivered at Kiambu this 21st Day of February 2019.

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C. MEOLI

JUDGE