



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

CIVIL APPEAL NO. 30 OF 2017

SM [Minor suing through her mother and next friend JKAM....-APPELLANT

=VRS=

JOEL OBARE AMENYA.....RESPONDENT

{Being an Appeal from the Judgement and Decree of Hon. J. Mwaniki – PM dated and delivered on the 26th day of September 2017 in the original Keroka Principal Magistrate’s Court Civil Case No. 135 of 2015}

JUDGEMENT

As can be discerned from the grounds of appeal the issue in contention between the parties is the quantum of general damages awarded to the appellant. Counsel for the appellant submitted that the award of Kshs. 500,000/= was inordinately low for the injuries sustained by the appellant. It was his submission that those injuries were severe and were proved by Dr. Ogando Zoga as: -

- Deep cut wound on the scalp fracture.
- Extensive cut wound on the occipital area.
- Head injury leading to loss of consciousness for an hour.
- Loss of incisor teeth.
- Fracture of right neck of the humerus.
- Laceration of the right knee.

Counsel submitted that the trial magistrate did not consider their submission that an award of Kshs. 3,000,000/= would have been reasonable and further that the trial magistrate did not consider cases pertaining to similar injuries. He cited those cases as: -

- **Alphonse Muli Nzuku Vs. Brian Charles Ochuodho [2014] eKLR** where Kshs. 800,000/= was awarded for injuries described as severe just as in this case.
- **Gabriel Mwashuma Vs. Mohammed Sajjad & Milly Glass Works Limited [2015] eKLR** where Kshs. 3,000,000/= was awarded again for injuries described as severe.
- **Antony Mwundu Maina Vs. Samuel Gitau Njenga [2006] eKLR** where Kshs. 1,517,670/= was awarded.

Counsel urged this court to increase the damages in this case to Kshs. 3,000,000/= noting that the above cases are more than 7 years old.

Counsel for the respondent did not file submissions.

As I am not confined to the submissions I have reconsidered the evidence in the lower court so as to arrive at my own conclusion – see **Selle Vs. Associated Motor Boat Company Ltd [1968] EA 123**. I am also alive to the settled principle that *“an appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate based on some wrong legal principle or on a misapprehension of the evidence”* – see **Paul Kipsang Koeh & Another Vs. Titus Osule Osore [2013] eKLR**. The plaintiff in this case was a child. The injuries she sustained were confirmed in a Kisii Level 5 Hospital discharge summary, a P3 Form and medical report of Dr. Zoga who opined that she had suffered about 35% permanent disability as a result of the accident. At the time of compiling the report Dr. Zoga noted that the plaintiff had some memory loss and her right upper limb was weak. She had extensive disfiguring scars on the occipital and frontal areas and walked with a limp. The doctor had a dim opinion on the effect of those injuries on the plaintiff. One of the cardinal principles in the assessment of general damages is that similar injuries should attract similar awards so as to maintain a level of consistency.

I have perused the authorities cited by Counsel for the appellant. The plaintiffs in those cases sustained injuries that were much more severe than those of the plaintiff in this case who in any case is a minor and therefore likely to recover fully. Whereas I agree with Counsel that the

award of Kshs. 500,000/= is inordinately low, I find that the sum of Kshs. 3,000,000/= proposed by Counsel for the appellant is way on the higher side. I am satisfied that an increase of the award to Kshs. 800,000/= (eight hundred thousand shillings only) will adequately compensate the plaintiff for pain and suffering. The award will be subject to the agreed contribution of 25% and the appellant shall get the costs of this appeal. It is so ordered.

Signed, dated and delivered in Nyamira this 29th day of March 2019.

E. N. MAINA

JUDGE