



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 532 OF 2012

MARTIN MATOLO NZOMO.....APPELLANT

- V E R S U S -

DEVKI STEEL MILLS LIMITED.....RESPONDENT

(Being an appeal from the ruling and decree of the Chief Magistrate's Court

at Thika, by Hon. D. N. Mulekyo, SPM delivered on 25th September 2012

in

(Civil Suit no. 774 of 2011)

JUDGEMENT

1) Martin Matolo Nzomo, appellant herein, filed a compensatory suit against Devki Steel Mills Ltd, the respondent herein, for the injuries he sustained in the course of employment at the respondent's premises. The respondent filed a defence to deny the appellant's claim. Hon. D. Mulekyo, learned Senior Principal Magistrate, heard the suit and eventually entered judgment in favour of the appellant. The appellant was awarded a sum of ksh.700,000/= as general damages less 15% contribution plus costs and interest.

2) The appellant was aggrieved by the decision on the award of quantum hence he preferred this appeal and put forward the following grounds:

a) THAT the honourable learned Senior Principal Magistrate erred in law when she made an award of kshs.700,000.00/= in general damages which award was inordinately low in the circumstances of this case.

b) THAT the learned Senior principal Magistrate erred in law when she failed to make an award on lost earnings and lost capacity to earn in future, when the appellant had suffered 40% incapacity.

c) THAT the learned Senior Principal Magistrate erred when she failed to award general damages for future medical expenses when future medical costs are ordinarily general damages awarded based on medical evidence advanced.

3) When this appeal came up for hearing, this court issued orders directing the appeal to be disposed of by written submissions. I have re-evaluated the case that was before the trial court and further considered the rival submissions. The appellant has argued that the award of ksh.700,000/= is inordinately low in the circumstances of this case.

4) The appellant further argued that he should have awarded

damages for loss of earning capacity. He argued that he presented credible evidence and cited authorities which should have earned him an award of more than what was given.

5) The appellant further pointed out that the trial magistrate had failed to take into consideration the inflationary trends and the authorities in respect of similar injuries.

6) The respondent opposed the appeal on quantum arguing that the trial magistrate considered the medical evidence, the authorities and the

relevant principles and came to a reasonable award on general damages. The respondent further argued that the claim for loss of future earning capacity was properly dismissed for lack of evidence.

7) Having considered the rival written submissions and having re- evaluated the case that was before the trial court, it is not in dispute that the appellant presented evidence showing that he sustained the following injuries:

- *Cut wound on the lower lip on the right side.*
- *Cut wound on the scalp.*
- *Lost nine teeth on the right upper jaw including the upper left incisor*
- *Fractures on the left 3rd and 4th fingers along the proximal pharynges.*
- *Fracture of the right radial ulna with displacement.*

8) The learned Senior Principal Magistrate awarded the appellant a sum of kshs.700,000/= for general damages stating that the award is adequate compensation for the injuries sustained.

9) The record shows that the respondent had cited the case **Nakuru H.C.C.C. No. 501 of 1997 John Mwangi Njoroge =vs= Harrison Waweru Karanja & Another (unreported)** where this court made an award of kshs.700,000/= for near similar injuries.

10) The respondent urged the court to award ksh.450,000/=

11) The appellant on the other hand urged the trial court to award him a sum of ksh.1,500,000/=. The appellant relied on two cases **Nakuru H.C.C.C no. 232 of 2004 Joseph Kirubi Ng'ang'a =vs= Kenneth Oketch** where this court awarded ksh.1,100,000/=. **Nairobi H.C.C.C. no. 37 of 1992 Leonard Kinuthia =vs= William Siona & Another** where this court awarded a sum of kshs.700,000/=.

12) It would appear the learned Senior Principal Magistrate did not consider the aforesaid authorities. However taking into account the material placed before the trial court and having considered the case law cited, I am convinced that the award given by the trial court is not inordinately low. The same, in my view, is within comparable awards. Consequently, I find no merit in the appeal against general damages.

13) I have already set out the arguments of the parties on loss of future earning capacity. That claim was dismissed on the basis that no evidence was tendered to support it. With respect, I agree with the submission of the respondent that the appellant failed to tender evidence to establish the claim. Therefore the learned Senior Principal Magistrate properly dismissed the claim.

14) In the end, this appeal is found to be without merit. It is dismissed with costs to the respondent.

Dated, Signed and Delivered in open court this 31st day of May, 2019.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent