REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

(APPELLATE SIDE)

(Coram: Odunga, J)

CIVIL APPEAL NO. 198 OF 2015

JOSEPH KIMANTHI NZAU.....APPELLANT

VERSUS

JOHNSON MACHARIA.....RESPONDENT

(Being an appeal from the judgement delivered by the Honourable G.O. Shikwe

Resident Magistrate on the 4th day of November 2015

in Kithimani SPMCS No. 93 of 2014)

=IN=

JOSEPH KIMANTHI NZAU.....PLAINTIFF

=VERSUS=

JOHNSON MACHARIA.....DEFENDANT

JUDGEMENT

1. According to the plaint filed by the Appellant herein, **Joseph Kimanthi Nzau**, who was the plaintiff in Kithimani SPMCS No. 93 of 2014, on or about 13th May, 2012 at around 11.00 am, was walking along Ndalani-Kisiiki road when the Respondent's driver negligently drove motor vehicle registration number KAD 616Q Isuzu Lorry that he caused the same to lose control, veer off the road and knock down the appellant who was lawfully walking by the roadside as a pedestrian. As a consequence, thereof the Appellant sustained serious bodily injuries. The plaintiff set out the particulars of negligence, injuries and special damages in the plaint and claimed damages and expenses of the suit as well as the costs and interests.

2. On 15th July, 2015 a consent was entered on liability in which judgement was entered at the ratio of 20:80 against the defendant and the court was urged to assess the quantum on the basis of 2 medical reports dated 11th October, 2013 and 28th January, 2015, the treatment notes and the P3 form. It was further agreed by consent that special damages would be Kshs 17,000.00 and parties were to file submissions.

3. The medical report dated 11th October, 2013 was that of **Dr Muli Simeon Kioko** of Mituki Consultants Clinic. According to him, the appellant sustained head injuries, chest injuries and lower limb injuries. Upon examining the appellant he found him sickly looking with agonising body pain and was unable to walk without support. Upon detained examination he was found to have hematoma of the scalp and severe tenderness in the same region while the x-ray showed fracture of the skull bone at the surgical suture region. He further had tenderness of severe degree in the right chest anteriorly with haematoma formation in the same region while x-ray showed fractures of the 1st and 2nd ribs and fracture of the clavicle bone. He also had tenderness of severe degree in the right hip. The appellant was seen at Matuu District Hospital and thereafter referred to Thika District Hospital for further management and review due to the fracture of the skull. He was still experiencing headaches as a result of the head injuries.

4. These findings seem to have been in tandem with the contents of the treatment document from Matuu District Hospital.

5. The other report dated 28th January, 2015 was by **Dr Wambugu PM**. According to him, the appellant sustained fracture of the right clavicle, fracture of the 1st and 2nd ribs and blunt haematoma to the head. However, the skull x-rays taken then and reviewed by himself did not reveal any fractures while the chest x-rays availed to him confirmed the fractures of the 2nd and 3rd rib fractures. According to him, the appellant was managed as an outpatient on appropriate medications and the fractures and head injuries were managed conservatively. The appellant complained of occasional pain to the right clavicle especially on exertion and occasional chest pains but there were no complains of headaches or fits. In his opinion the appellant sustained skeletal and soft tissue injuries from which he had made adequate recovery and the fractures has united. He therefore estimated his degree of permanent incapacitation at 2%.

6. These findings seem to have been reflected in the treatment chit from Thika Level 5 Hospital.

7. In her judgement the learned trial magistrate found that the appellant sustained fracture of the skull, right clavicle, left 1st and 2nd ribs and multiple soft injuries and the P3 classified the injuries as grievous harm. She proceeded to award the appellant Kshs450,000.00 in general damages.

8. In this appeal the appellant relies on the following grounds:

> **(1) THAT the Learned Magistrate erred in Law and Fact by awarding the Appellant Kshs. 450,000/= in general damages which award was inordinately low compared to the severity of the injuries sustained by the Appellant and the current court awards for similar injuries.**
>
> **(2)THAT the Learned Magistrate erred in Law and Fact by not putting sufficient weight and consideration to the plaintiff's evidence, submissions, medical documents and authority in support thereof.**

9. In the submissions filed on behalf of the appellant it was contended that the Appellant herein sustained haematoma formation on the scalp, severe pain and tenderness on the scalp, fracture of the skull, fracture of 2nd molar lower both sides, severe pain and tenderness on the right side of chest anteriorly, haematoma formation on the chest right side, fracture of 1st right rib, fracture of 2nd left rib, fracture of the right clavicle bone and severe pain and tenderness on the right hip.

10. According to the appellant, the award of Kshs. 450,000/= in general damages awarded to him was inordinately low as he sustained very serious multiple fractures. According to the appellant, it had submitted for Kshs. 2,100,000/= as general damages and provided an authority for similar injuries wherein the plaintiff was awarded Kshs. 2,000,000/= hence the difference in the two awards is enormous and not commensurate with the current court awards for similar injuries.

11. It was submitted that had the trial Magistrate given sufficient weight and consideration to the plaintiff's evidence, submissions, medical documents and the authority produced in support thereof the above, he would not have arrived at the decision he made of awarding Kshs. 450,000/= as general damages which was inordinately low in the circumstances.

12. The appellant therefore urged this Court to allow this appeal with costs to him, and the judgment on quantum of damages for Kshs. 450,000/= be set aside and substituted with an award commensurate with his injuries of Kshs. 2,100,000/= as proposed in the submissions in the lower Court plus costs and interest.

13. In support of their submissions the appellant relied on Mombasa HCCC No. 70 of 1997 - **Edward Mzamili Katana vs. CMC Motors Group Ltd & Anor,** Marsabit HCCC No. 9 of 2017 - **Hussein Ali Shariff *Alias* Hussein Ali vs. A L L (Minor suing through F T L** and HCCC No. 374 of 2009 - **BAJ vs. Roadstar Ltd & 2 Others.**

14. On their behalf the Respondent submitted that according to **Dr. Muli Simeon Kioko's** report, the appellant sustained fracture of right clavicle, fracture of left 1st and 2nd ribs, blunt trauma to the head, fracture of the skull bone and tenderness of severe degree right hip and noted that the appellant had healed. The appellant was re-examined by **Dr. P.M. Wambugu** who confirmed that the appellant had sustained fracture of right clavicle, fracture of left 1st and 2nd ribs and blunt trauma of the head. The doctor stated in his report that the X rays taken then did not reveal any fracture to the skull and concluded the Appellant suffered Blunt trauma to the head.

15. In response to the authorities relied upon by the Appellant the Respondents submitted that in Mombasa HCCC No. 70 of 1997 - **Edward Mzamili Katana vs. CMC Motors Group Ltd & Anor,** the Plaintiff suffered head injury leading to concussion, cut wound and bruises of the scalp, fracture of the left scapula, compound fracture dislocation of the left elbow, chest injury with multiple fractures of left 5th, 6th and 7th ribs and fracture of left femur upper 1/3 shaft necessitating the Plaiting and bone grafting of the shaft with shortening of the leg. He suffered a lot of pain and underwent a total of four operations and ended up with the shortening of his left leg. The court awarded him a sum of Kshs. 2,000.000/=. In Marsabit HCCC No. 9 of 2017 - **Hussein Ali Shariff *Alias* Hussein Ali vs. A L L (Minor suing through F T L,** the Plaintiff sustained closed left humerus mid – shaft fracture, right clavicle medial end fracture, left calcaneal fracture, right superior and left inferior pelvic rami fracture, fracture left toe and chip fracture left upper central incisor. He complained of pain in the left humerus especially during cold weather and occasional low back pains on sitting for long and occasional ankle pain, scars on the incision wounds and chronic pain with a limping gait in the left foot especially during the long distances. The left ankle joint was not swollen or deformed and had pain free movement. The plaintiff was predisposed to post traumatic osteoarthritis. Permanent incapacity was assessed by **Dr. Wambugu** at 6%. The court revised the award of General damages to Kshs. 2,000.000/=. In Nairobi HCCC No. 374 of 2009 - **BAJ vs. Roadstar Ltd & 2 Others**, the Plaintiff sustained Lr Orbital Floor and Margin Fractures with pneumo-orbit, comminuted LT maxillary fractures of the anterior and posterior lateral wall\LT zygomatic arch fracture\LT mandible angular fracture and RT parasymphyseal mandibular fracture. He had at least four admissions, surgical toilet and skin grafting. Facial fractures were managed by way of open reduction and internal fixation using the metal implants. The doctor's opinion was that the Plaintiff made adequate recovery but has residual but subtle facial asymmetry and scars on both lower limbs which are of significant cosmetic concern. The court considered that the Plaintiff was a young lady and the facial asymmetry and cars on the legs are of cosmetic concern and made an award of Kshs.1, 500,000/=.

16. The Respondent submitted that the Plaintiffs in all the above three authorities suffered more grievous bodily injuries compared to the Plaintiff in the instant case. The injuries were multiple and much more serious. All the Plaintiffs were hospitalized and underwent several operations in the course of the treatment. The Plaintiffs also had residual permanent negative effects of the injuries post treatment as a result of which their lives were completely changed following the injuries suffered. In the circumstances, it was submitted that if the court was to rely on the said authorities in assessing the damages in the present case then the court would arrive on a wrong finding as the nature, severity and the magnitude of the injuries cannot compare with the present case.

17. In support of the Respondent's submissions the Respondent relied on **Miriam Njeri Murimi vs. Kenya Broadcasting Corporation (2009) eKLR,** in which the Plaintiff suffered Head injury, fractured ribs L16 and R1-12, fracture dislocation of the shoulder joint and fractured dislocation of the hip joint. The Degree of permanent incapacity was assessed to be 12%. General damages for pain, suffering and loss of amenities was assessed at Kshs. 450,000/=. He also relied on **David Kiplangat Sang vs. Richard Kipkoech Langat and Another [2006] eKLR**, in which the Plaintiff suffered severe head injuries with loss consciousness for four days, blunt chest with fracture of two ribs, fracture of the tibia fibula, and left acetabulum with hip dislocation, a fracture of the left medial malleolus. The Plaintiff had a limping gait and used a walking stick. The Degree of permanent incapacity was assessed to be 30%. General damages for pain, suffering and loss of amenities assessed at Kshs. 550,000/=. Also cited was **George Kiptoo Williams vs. William Sang and Another [2004] eKLR,** in which the Plaintiff suffered cut wound on the occipital region with lacerations on the left temporal region of the head, fracture of the skull on the occipital region, subluxation of the cervical vertebrae C1, C3 and C4, fracture of 2nd, 3rd, 4th, 5th, 6th, 7th and 8th ribs of the left side of the chest, fracture of the body if the left scapula and cut wound on the left hand and left arm. The Degree of permanent incapacity was assessed to be 30% and general damages for pain, suffering and loss of amenities was assessed at Kshs. 560,000/=.

18. The Respondent also cited what in his view were more recent authorities. He relied on Eldoret HCCA No.29 of 2012 - **George Kinyanjui T/A Climax Coaches and Equity Bank Limited vs. Hassan Musa Agoi** in which the Plaintiff had two loose teeth, blunt trauma to the neck and chest, fracture of the left clavicle, fractures of the 4th and 5th left ribs, blunt trauma to the spinal column and right scapula area and dislocation of the left shoulder joint. The doctor who re-examined the Plaintiff confirmed the injuries but found no dental injury however. The court on appeal found an award of Kshs.800, 000/= was manifestly high and proceeded to award the Plaintiff Kshs.450, 000/=. Also cited was Meru HCCA No.43 of 2014 - **Morris Miriti vs. Nahashon Muriuki and Kiegoi Tea Factory** in which the Plaintiff sustained tender chest posterior and anterior, multiple bruises on the posterior chest and post traumatic fracture of the 3rd and 4th ribs with bilateral haemophreino thorax. The court confirmed the award of Kshs.300, 000/= after taking into account the principles whereof the appellate court could interfere with an award of damages.

19. It was therefore submitted that the award of Kshs. 450,000/= in general damages for pain, suffering and loss of amenities by the lower court is sufficient and proper having taking into consideration the combination of injuries the Plaintiff sustained and the fact he had healed and the permanent incapacity was assessed at 2%.

20. In the Respondent's view, as a general rule, an appellate court will not interfere with quantum of damages unless it is shown that the trial court in awarding the damages took into consideration an irrelevant fact or the sum awarded is inordinately high or low that it must be wholly erroneous estimate of the damage and or founded on the wrong principles. Since the appellant has not demonstrated any of the above, the court was urged to dismiss the appeal with costs to the Respondents.

Determination

21. In this appeal, it is clear that the appellant is only challenging the quantum of damages. The general law is that money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums, which must be regarded as giving reasonable compensation. In the process there must be endeavour to secure some uniformity in the general method of approach. By common consent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts, which are awarded, are to a considerable extent be conventional. See **Tayab vs. Kinanu [1983] KLR 114; West (H) & Son Ltd vs. Shephard [1964] AC 326 AT 345.**

22. The Court of Appeal in **Catholic Diocese of Kisumu vs. Sophia Achieng Tete Civil Appeal No. 284 of 2001 [2004] 2 KLR 55** set out the circumstances under which an appellate court can interfere with an award of damages in the following terms:

> **"It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the Court below simply because it would have awarded a different figure if it had tried the case at first instance. The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles, (as by taking into account some irrelevant factor leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate."**

23. It was therefore held by the same Court in **Sheikh Mustaq Hassan vs. Nathan Mwangi Kamau Transporters & 5 Others [1986] KLR 457** that:

> **"The appellate court is only entitled to increase an award of damages by the High Court if it is so inordinately low that it represents an entirely erroneous estimate or the party asking for an increase must show that in reaching that inordinately low figure the Judge proceeded on a wrong principle or misapprehended the evidence in some material respect…A member of an appellate court when naturally and reasonably says to himself "what figure would I have made?" and reaches his own figure must recall that it should be in line with recent ones in cases with similar circumstances and that other Judges are entitled to their views or opinions so that their figures are not necessarily wrong if they are not the same as his own…"**

24. Similarly, in **Jane Chelagat Bor vs. Andrew Otieno Onduu [1988-92] 2 KAR 288; [1990-1994] EA 47**, the Court of Appeal held that:

"In effect, the court before it interferes with an award of damages, should be satisfied that the Judge acted on wrong principle of law, or has misapprehended the fact, or has for these or other reasons made a wholly erroneous estimate of the damage suffered. It is not enough that there is a balance of opinion or preference. The scale must go down heavily against the figure attacked if the appellate court is to interfere, whether on the ground of excess or insufficiency."

25. It was therefore held by the same Court in **Sheikh Mustaq Hassan vs. Nathan Mwangi Kamau Transporters & 5 Others [1986] KLR 457** that:

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26. The principles which ought to guide a court in awarding damages were set out by the Court of Appeal in **Southern Engineering Company Ltd. vs. Musingi Mutia [1985] KLR 730** where it was held that:

"It is trite law that the measurement of the quantum of damages is a matter for the discretion of the individual Judge, which of course has to be exercised judicially and with regard to the general conditions prevailing in the country generally, and prior decisions which are relevant to the case in question to principles behind the award of general damages enumerated… The difficult task of awarding money compensation in a case of this kind is essentially a matter of opinion judgement and experience. In a sphere in which no one can predicate with complete assurance that the award made by another is wrong the best that can be done is to pay regard to the range and limits of current thought. In a case such as the present it is natural and reasonable for any member of the appellate tribunal to pose for himself the question as to award he, himself would have made. Having done so, and remembering that in this sphere there are invariably differences of view and of opinion, he does not however proceed to dismiss as wrong a figure of an award merely because it does not correspond with the figure of his own assessment…It is inevitable in any system of law that there will be disparity in awards made by different courts for similar injuries since no two cases are precisely the same, either in the nature of the injury or in age, circumstances of, or other conditions relevant to the person injured. The most that can be done is to consider carefully all the circumstances of the case in question, and to consider other reasonably similar cases when assessing the award…it need hardly be emphasized that caution has to be exercised when paying heed to the figures of awards in other cases. This is particularly so where cases are merely noted but not fully reported. It is necessary to ensure that in main essentials the facts of one case bear comparison with the facts of another before comparison between the awards in the respective cases can fairly or profitably been made. If however it is shown that cases bear a reasonable measure of similarity then it may be possible to find a reflection in them of a general consensus of judicial opinion. This is not to say that damages should be standardized or that there should be any attempt to rigid classification. It is but to recognize that since in court of law compensation for physical injury can only be assessed and fixed in monetary terms the best that Courts can do is to hope to achieve some measure of uniformity by paying heed to any current trend of considered opinion."

27. In this case, what has troubled me is the decision by the parties to throw at the court two medical reports. The said medical reports were however not the same in terms of their contents. In my view parties and their counsel ought not to just throw medical reports or expert opinion reports for that matter which are divergent in material aspects without calling the makers thereof. To my mind once parties agree on liability they ought to endeavour to harmonise the various medical or expert reports on record and agree at a common ground regarding the basis upon which assessment of damages id to be undertaken. If they are unable to do so, the makers of those reports ought to be called where the reports are conflicting for cross-examination. It is however unfair to the court to just throw all manner of reports ate the court and expect the court to decide which ones to rely on and which ones to discard since as was appreciated by **Ringera, J** (as he then was) in **Trust Bank Limited vs. Ajay Shah & 2 Others Nairobi HCCC No. 875 of 2001:**

"the court is not bestowed with the gift of omniscience; it can only make a finding on the defendant's state of mind on the basis of either a confession from himself or on the basis of an inference drawn from other facts to be proved otherwise."

28. The same Judge in **Grace Kanini vs. Kenya Bus Services Nairobi HCCC No. 4708 of 1989** held that:

"Without the advantage of divine omniscience, the court cannot know which of the probabilities herein coincides with the truth and it cannot decide the matter by adopting one or the other probability without supporting evidence. It can only decide the case on a balance of probability if there is evidence to enable it say that it was more probable than not that the second defendant wholly or partly contributed to the accident."

29. This was the position of the Court of Appeal in **Auni Bakari & Another vs. Hadija Olesi Civil Appeal No. 70 of 1985** where it held that it is desirable to call a doctor to explain the discrepancy in a medical report.

30. The procedure of admitting in evidence expert opinion reports which are not substantially the same is, in my view, a short cut that ought not to be permitted in litigation. As was held by **Ringera, J** (as he then was) in **David Ndung'u Macharia vs. Samuel K Muturi & Another Nairobi HCCC No. 125 of 1989:**

"…an order that a medical report be agreed, or in the alternative that medical reports be exchanged, and that the

attendance of doctors as witnesses should be dispensed with ought never to be made as a matter of form. The Court must be satisfied by the applicant for such an order that undue delay or expense would be caused in the suit unless the attendance of doctors is dispensed with… There are cases in which the order may be useful, as for instance, where a man has broken his leg and the doctor is only required to say how long the man has suffered and that there is no permanent injury. There may be cases in which there is no permanent injury and one does not require a doctor to tell one that, if there is no disagreement about it… However, in a case where prognosis is an important matter, it is most desirable that a doctor, or doctors should be present in court to answer any questions which the Judge may wish to ask and this is because we ought not to discourage the making of that order in proper cases, but the direction ought not to be included as a matter of course. The master to the Registrar should consider whether the case is suitable for hearing with a report and if it is, the order ought to be made and the parties should observe it…The second issue is that it is only an agreed report that can properly be admitted in evidence without calling the maker. The mere exchange of medical reports does not render such report or reports admissible without calling the maker(s) unless one or both of them have been agreed. A direction that medical reports be exchanged is no more than an order in the nature of mutual discovery of medical evidence. It must be understood that orders that a medical report be agreed and the same be admitted in evidence without calling the maker are made for the purpose, not of hindering the administration of justice, but of assisting it. If a judge is confronted with two or more medical reports which are inconsistent with one another and the doctors are not called, he is immediately embarrassed between the two views and the two statements. The whole object of the type of order is to ensure that matters of medical fact, and matters of medical opinion shall if possible be agreed by the medical men and that is the object and the sole object of orders of this kind, and indeed no order could achieve anything more. The practice was certainly never intended to admit of inconsistency and differing medical points of view being put before the Judge and described as agreed medical reports. You cannot have an agreement on two inconsistent statements of fact, and the phrase "agreed medical report" means, and means only a report where the facts stated are agreed as true medical opinions expressed and accepted as correct. In the normal case in pursuance of an order of this kind, the doctors on the two sides would meet and embody their views in a document which they both may sign and that is very convenient, and would save a great deal of trouble and expense in many cases, but it is not to be understood that orders of this kind are to be made as a matter of course. It would depend very much on the nature of the case and the nature of the injuries, and whether it will save trouble and expense and in the long run by dispensing with the doctors at the hearing. On an interlocutory application some discretion must be exercised by the master who is making the order as to whether it will be a saving of expenses to make this type of order, but it must not be taken that is all that is necessary. The case may be one where the report of the first doctor is accepted by the other doctor. If on the other hand there are likely to be points of controversy, then if the agreement is to be completed they can only solve them by coming to an agreement, and if they cannot come to an agreement, there can never be an agreed report and that is the object of this procedure…In short it is for the parties' doctors (and not the parties themselves, or their advocates) to agree on a medical report and if the doctors have not agreed by either adopting one report or jointly authorising a single report there is no agreed report…In the circumstances of this case, the court is satisfied that there was no agreed report and accordingly the orders made at the hearing of the summons for directions did not relieve the plaintiff off the burden of calling the doctor to testify and as he did not come to testify, his report is held to be inadmissible in evidence and the court will not look at it for any purposes in the trial. P3 form is admissible in evidence as an entry in a public record stating a relevant fact within the contemplation of section 38 of the Evidence Act and the court will bear its contents in mind in assessing the damages."

31. Where parties intend to rely on medical reports only they ought to confirm that the same are substantially the same in terms of injuries sustained. Parties and their legal advisers ought to take the advice of the Court of Appeal in **James Njoro Kibutiri vs. Eliud Njau Kibutiri 1 KAR 60 [1983] KLR 62; [1976-1985] EA 220** that the ingenious lawyers are advised that short cuts are fine, as long as you are absolutely sure they won't land you in a ditch. In **Lehmann's (East Africa) Ltd vs. R Lehmann & Co. Ltd [1973] EA 167** it was however, held that:

"The supposed short-cuts in procedure almost always confuse and obscure the true issues and almost always result in prolonged litigation and unsatisfactory decision. However, if the parties to a civil suit agree to adopt a certain procedure and the judge, however wrongly permits such a course, then there is little that a Court of Appeal can do other than seek to make the best of an unsatisfactory position."

32. However, once the parties produce the same by consent the court has no option but to make the best out of them. In **Ali Ahmed Naji vs. Lutheran World Federation Civil Appeal No. 18 of 2003**, the Court of Appeal held that:

"The two medical reports before the learned Judge were made by Dr C O Agunda and Dr. Betty Nderitu...The appellant also produced a P3 form...which set out various fractures which the appellant had suffered as a result of the accident. We repeat that these documents were produced in evidence by the consent of the parties and the question of their authenticity was not open to the learned Judge to deal with. We make these remarks here because in her judgement, the Judge made remarks such as "No qualifications disclosed; the doctor is not a consultant". If the learned Judge had some doubts about the competence of the two doctors, it was clearly her duty to summon them so that they could explain to her the basis upon which they claimed to be doctors. For our part, it is sufficient to point out that all the medical reports produced by the consent of the parties supported the appellant's claim as to the nature of the injuries he had sustained as a result of the accident."

33. The words of **Byamugisha, J** in **Sentongo and Another vs. Uganda Railways Corp. Kampala HCCS No. 263 of 1987** however need to be taken note of. In that case the learned judge held, citing ***Sarkar on Evidence*** 12th ED pp 506.R. that:

"Medical evidence based on the evidence of other witnesses or prescriptions without observing the facts is not of much value compared with the evidence of a Doctor who personally attended the patient as this is hearsay. Medical reports have to be proved by the person giving them. The Evidence of an expert is to be received with caution because they often come with such a bias in their minds to support the party who calls them that their judgement becomes warped and they become incapable of expressing correct opinion."

34. In this case however, the learned trial magistrate made factual findings on the injuries sustained. She found that the appellant sustained

fracture of the skull, right clavicle, left 1st and 2nd ribs and multiple soft injuries. She was clearly entitled to make that finding considering as it was that there was no agreed medical report by the parties.

35. I have considered the award of damages and the relevant authorities. As was held in **Ali Ahmed Naji vs. Lutheran World Federation** (supra), similar injuries ought to receive similar awards. I have considered the authorities cited before me and the one closes to the instant case was that of **George Kiptoo Williams vs. William Sang and Another [2004] eKLR,** in which the Plaintiff suffered cut wound on the occipital region with lacerations on the left temporal region of the head, fracture of the skull on the occipital region, sublaxation of the cervical vertebrae C1, C3 and C4, fracture of 2nd, 3rd, 4th, 5th, 6th, 7th and 8th ribs of the left side of the chest, fracture of the left scapula and cut wound on the left hand and left arm. General damages for pain, suffering and loss of amenities was assessed at Kshs. 560,000/= on 17th December, 2004. Judgement was however delivered on 11th November, 2015 which was 11 years later. Considering the inflationary tendencies, I agree the award was so inordinately low as to represent an entirely erroneous estimate.

36. In the premises, I allow the appeal set aside the award on general damages and substitute therefor an award of Kshs 800,000.00. the said sum shall accrue interest from the date of the judgement in the lower court at court rate till payment in full.

37. The costs of this appeal are awarded to the appellant.

38. It is so ordered.

Read, signed and delivered in open Court at Machakos this 24th June, 2019

G V ODUNGA

JUDGE

Delivered the absence of the parties.

CA Geoffrey