



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL APPEAL NO.201 OF 2012

PAN AFRICA CHEMICALS LTD.....APPELLANT

-VERSUS-

BENSON KIMANI NGANGA.....RESPONDENT

Being an Appeal from the Judgment/Decree of Hon. H. Nyaga, Senior

Resident Magistrate, Molo delivered on 18th October, 2012 in Molo CMCC No.73 of 2010

JUDGMENT

INTRODUCTION

1. This appeal arise from a suit filed by the respondent in the lower court claiming general and special damages for the injuries he sustained while travelling in motor vehicle registration number KBD 799W owned by the 1st defendant and driven by the 2nd defendant which collided with the 3rd and 4th defendant vehicle registration number KBD 242Q/ZC 9066 ERF TRAILER on 13th November 2009.

2. Parties recorded consent on liability at 20:80 in favour of the plaintiff. The trial magistrate assessed damages at kshs.400,000 general damages and special damages of kshs.3,000.

3. The 3rd defendant/appellant being aggrieved by determination of the court on quantum filed this appeal on the following grounds:-

i. That the learned trial magistrate erred in law and in fact in failing to write a judgment in accordance with the law.

ii. That the learned trial magistrate erred in law and in fact in failing to consider the Appellant's submissions.

iii. That the learned trial magistrate erred in law and in fact in failing to apply the principles applicable in award of damages and ended up awarding damages that are excessive and not commensurate with the respondent's injuries and not in accordance with the decided authorities.

APPELLANT'S SUBMISSIONS

4. Appellant submitted that the trial magistrate failed to take into consideration the plaintiff's submissions and awarded kshs.400,000, which was excessive given the nature of injuries sustained.

5. Appellant submitted that comparable income should attract comparable award and inflation should be taken into consideration. Appellant urged court to find that the award is inordinately high and represented an entirely wrong estimate.

6. Appellant cited the case of **Devki Steel Mill Ltd Vs Jared Osodo [2014] eKLR** and **Eldoret HCCA No.64 of 2007** and **Eldoret Steel Mills Ltd Vs Jeremiah Njuguna Karanja** where awards of kshs.80,000 and kshs.100,000 were granted respectively and submitted that for respondents injuries, an award for damages should not have been more than kshs.200,000. And urged court to award kshs.200,000.

RESPONDENT'S SUBMISSIONS

7. The respondent submitted that the appeal lacks merit in its entirety and no ground have been advanced to warrant disturbing the award. Appellant cited the case of **Butt Vs Khan [1977]** where principles for review of award of damages by an appellate court are set out as follows:-

“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. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which is either inordinately high or low.”

8. The respondent urged this court to reevaluate evidence adduced in the lower court and arrive at an independent decision.

ANALYSIS AND DETERMINATION

9. This being the first appellate court, I am required to reevaluate evidence adduced in the lower court and arrive at an independent determination. As I do this, I am minded of the fact that, unlike the trial court I never got opportunity to hear evidence first hand and observe demeanor of witnesses. For this I give due allowance.

10. I have perused **Doctor Malika's** medical report and note that from history respondent sustained the following injuries:-

¾ Burns over the forehead and ears, left side of the chest, left side of the abdomen, both arms and both legs.

11. At the time of examination, the respondent had pains over the scars. Notable examination from the doctor is that both arms are almost fully covered by scars for superficial and deep burns, there is however normal muscle power on both arms, healed scars on both thighs and lower legs though both are mobile and normal.

12. The doctor concluded that the respondent had many scars on most parts of his body and that none has caused any functional and physical disability in the limbs, scalp, chest and abdomen; that they are however quite unsightly and a cosmetic defect.

13. The respondent adduced evidence in court. The trial court got opportunity to see the nature of scars he sustained from the burns on the visible areas. He testified that it took 6 months for the wounds to heal; as per doctors report, he sustained both superficial and deep burns. Having considered injuries sustained by plaintiff, the result effects and compared with injuries sustained in authorities cited I find award of kshs.400,000 reasonable.

14. From the foregoing, I find that the appellant has failed to demonstrate that the trial magistrate misapprehended evidence adduced and arrived at an erroneous estimate. I decline to interfere with the award herein.

15. FINAL ORDERS

1. Appeal is hereby dismissed.

2. Costs of the appeal to the respondent.

Judgment dated, signed and delivered at Nakuru this 25th day of July 2019.

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RACHEL NGETICH

JUDGE

IN THE PRESENCE OF:-

Jeniffer Court Assistant

N/A Counsel for Appellant

N/A Counsel for Respondent