

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 127 OF 2014

JOSEPH THOMAS WAIHARO.....APPELLANT

VERSUS

EW (A minor suing

Through her next friend)

ESTHER WAITHIRA IRONJO.....RESPONDENT

(An appeal from the Judgment of the Hon. Magistrate delivered on 13th November, 2012 at Senior Resident Magistrate's Court at Nairobi)

JUDGMENT

This appeal arose from the judgment of the lower court delivered on 13th November, 2012. The respondent was awarded a sum of Kshs. 700,000/= general damages plus Kshs. 32,630/= special damages, costs and interest. This was as a result of a road traffic accident in which the plaintiff suffered some injuries. Liability having been agreed at 80% against the appellant and 20% against the respondent, the final figure awarded was Kshs. 586,104/= plus costs and interest.

The appellant was aggrieved by the said judgment and lodged this appeal. The thrust of the appeal is that the award in general damages was inordinately high and therefore should be interfered with. It is the appellant's case that the injuries sustained by the respondent were identified generally by the trial court, and there was no sound legal reasoning given to arrive at the disputed award. In any case, the award was not commensurate with the injuries as enumerated in the two medical reports by Dr.R. P. Shah and Dr. W. Mwaura.

As the first appellate court it is my duty to evaluate the evidence afresh so as to arrive at independent conclusions. The judgment of the lower court was very brief. In making the award of general damages, the lower court considered the two medical reports, both of which identified the injuries sustained by the respondent to be a depressed fracture of the skull which left permanent disability of 8% (by Dr. Mwaura) and 5% (by Dr. Shah).

Several cases having been cited to guide the court, the court concluded as follows,

“The court has considered the medical reports and the submissions and notes the cases were delivered many years ago. Taking into account inflation the court finds an award of 700,000/= adequate general damages. “

It is now established that the appellate court may interfere with the assessment of damages by the trial court, if satisfied that it took into account an irrelevant factor or left out a relevant one, or that the sum awarded is so inordinately high or low to give a wholly erroneous estimate.

Both parties have filed submissions and cited some authorities. These include **Civil Appeal No. 349 of 2011 Ali Isa Ali vs. East Africa Port land Cement Co. Limited, Julius Chelule & Another vs. Nathan Kinyanjui (2013) e KLR & Mombasa HCCC NO. 834 OF 1995 Sammy Mutinda vs. Tawfiq Bus Services .**

Comparable injuries should attract comparable awards, bearing in mind that no two cases are the same. It is clear from the brief Judgment that the trial court took into consideration the material placed before him and relevant principles. Going by the decided cases which I have cited above, it cannot be said that the award in general damages was inordinately high to attract the interference by this court. There was every justification to make the said award. It follows therefore that this appeal should be, and is hereby dismissed with costs to the respondent.

Dated, signed and delivered at Nairobi this 26th Day of September, 2019.

A. MBOGHOLI MSAGHA

JUDGE