



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MARSABIT

CIVIL APPEAL NO. 2 OF 2019

THE BOARD OF TRUSTEES ANGLICAN

CHURCH OF KENYA DIOCESE OF MARSABIT.....APPELLANT

VERSUS

NAOMI GALMA GALGALO.....RESPONDENT

(Being an appeal from the Judgement of Hon. T.M. WAFULA Senior Resident Magistrate

Marsabit Law Court in Civil Suit No.7 of 2018 delivered on 13.12.2018)

JUDGMENT

The respondent was involved in a road traffic accident on 11th April, 2015. She was awarded Kenya shillings two (2) million as general damages for pain and suffering by the trial Court. Parties agreed on liability at the ratio of 80:20% in favour of the respondent. The appellant is dissatisfied by the amount awarded as damages. The grounds of appeal are THAT:

- 1. The learned senior Resident Magistrate erred in law and fact in making an award of general damages that was excessively high that there must be an erroneous estimate of the damages payable to the Respondents herein.***
- 2. The learned Senior Resident Magistrate erred in law and fact in making an award of Ksh.2,000,000/-(2 million) as general damages and which amount is excessively high considering the injuries suffered by the respondent herein.***
- 3. The learned Senior Resident Magistrate erred in law and fact in failing to consider the submissions tendered by the Appellants on the issue of Quantum and the legal Authorities provided therewith.***
- 4. The learned Senior Resident Magistrate erred in law and fact in failing to subject himself to the rule of ratio decidendi and in departing from the established principles of stare decisis.***
- 5. The learned Senior Resident Magistrate misdirected himself into arriving at a wrong decision on the issue of Quantum and in making an award that is obviously exaggerated and against the medical evidence tendered before Court during the trial.***

Mr. Kariuki appeared for the appellant. It is submitted that the respondent suffered fracture of the pelvic. In the case of **JOSHUA MWANIKI NDUATI –V- SAMUEL MUCHIRI NJUGUNA[2005]eKLR** an award of Ksh.250,000 was made for fracture of pelvis right acetabulum. The award of Ksh.2 million is therefore inordinate and excessive.

Counsel for the appellant further referred to the case of **BILDAD MWANGI GICHUKI –V- TM-AM CONSTRUCTION GROUP (AFRICA)(2000) eKLR** where Ksh.250,000 was awarded for fracture of the pelvis and fracture of three (3) ribs. Reliance was also placed on the case of **JOYCE WANJIRU KAMAU –v- KENYA CANNERS LTD & ANOTHER (2004) eKLR**. Ksh.100,000 was awarded for fracture of the collar bone and multiple fracture of the pelvis. It is submitted that an award of Ksh.200,000 is sufficient for the respondent. The trial Court's award is not in line with awards made in comparable injuries and the assessment is obviously exaggerated and against the medical evidence. The respondent will not suffer any permanent incapacity.

Mr. Orayo, Counsel for the respondent, maintain that the trial magistrate did not make anY error in awarding the respondent the sum of Ksh.2 million. The authorities relied upon by the appellant are over fourteen (14) years old. Counsel relies on the case of **MILICENT ATIENO OCHUONYO –V- KATOLA RICHARD(2015) eKLR**.

This is a first appeal and the Court has to evaluate the evidence afresh before drawing its own conclusion. The respondent was the only witness and she informed the trial Court that she suffered a pelvic fracture and back injuries. She was admitted at the Marsabit referral hospital and was discharged on 15.4.2015 from 11.4.2015. She had not healed properly and feels pain at the injured area.

The respondent was examined by Dr. Steve Sureti on 27.3.2018. The doctor summarized the injuries sustained as pelvic fracture and open back facial bruises. She complained of pain when walking or running. She was 33 years old and the doctor opined that she may have complication during pregnancy and delivery.

In the case of **BUTT V KHAN 1981 KLR 349** the Court of Appeal held:

“The appellate Court cannot interfere with the decision of the trial Court unless it is shown that the Judge proceeded on the wrong principle of law and arrived at misconceived estimates.

In the Milicent Atieno Ochuonyo (Supra) case, the claimant sustained pelvic injuries with fracture of the right pubic ramus and diastasis of the symphysis pubis. She experienced pain on the fracture site and walked with a slight limp. Dr. Maina Ruga assessed permanent incapacity at 20%. On his part Dr. Cyprianus Okoth Okera indicated that the claimant suffered complex pelvic fracture resulting to separation of the public symphysis. He assessed permanent incapacity at 40%. In this case the claimant was awarded further damages for loss of future earnings. She used to do manual jobs prior to the accident earning about Ksh.13,624 monthly and her employment was terminated.

Although the Milicent Atieno Ochuonyo (Supra) case provides for comparable injuries, I do find that the injuries sustained by that claimant were more severe compared to those sustained by the respondent. There is no permanent incapacity assessed although there is possibility of pregnancy and delivery complications in future.

The trial Court analysed the authorities relied upon by the appellant. These are the same authorities placed before me. I equally agree with the findings of the trial Court that those authorities are outdated and do not take into account inflationary trends. I am satisfied that the trial Court applied the relevant principles relating to award of damages. However, the trial court’s assessment of damages is quite high.

I do find that although the respondent suffered serious injuries, the sum of Ksh.2 million is excessive. The respondent does not suffer any permanent incapacity. She was hospitalized for only three days and was discharged. I do set aside the award of Kshs.2,000,000 and replace it with an award of Ksh.1,400,000. This award shall be subjected to the 20% contribution. The appellant shall have the costs and interest awarded by the trial court. Parties shall meet their respective cost of the appeal.

DATED, SIGNED AND DELIVERED AT MARSABIT THIS 24TH SEPTEMBER, 2019

S. CHITEMBWE

JUDGE