

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CIVIL APPEAL NO. 73 OF 2017

IMA HAULIERS LIMITED.....APPELLANT

VERSUS

MARY MWINJISI AMWAYA.....1ST RESPONDENT

BLUE SHUTTLE CO. LTD.....2ND RESPONDENT

(An appeal arising from the judgment and decree of the Hon. M Shimenga,

Resident Magistrate (RM), in Butere PMCCC No. 277 of 2014 of 15th June 2017)

JUDGMENT

1. The suit at the trial court was initiated by the 1st respondent herein against the appellant for general and special damages for pain and suffering arising from a motor traffic accident involving a motor vehicle in which she was a passenger and another owned and controlled by the appellant. The appellant entered appearance and filed defence, essentially comprising of denials and an averment that the subject accident had been caused solely by the negligence of the 2nd respondent. Liability was resolved by consent of the parties. On damages, the court awarded Kshs.800,000.00, general damages and special damages of Kshs.332,505.00, subject to contribution.

2. The appellant was aggrieved by the award of damages and lodged this appeal, principally against the quantum, its principal grouse being that the amounts were excessive in the circumstances.

3. On the general damages, various medical documents were put in evidence. There are treatment notes and P3 form duly filled, which I need not give much attention. There is also a discharge summary and a medico-legal report. I shall pay attention to these two. The discharge summary is dated 8th April 2013, and is in the hand of Dr. John O. Hawala of St. Mary's Hospital Mumias. It shows that the 1st respondent was admitted at the hospital on 19th October 2012 and was discharged on 8th April 2013. According to the summary, the 1st respondent had not sustained any fractures but had pyomyositis of the right thigh which necessitated skin grafting. The medicolegal report is dated 6th April 2013 and was prepared by Dr. Charles M. Andia, of Lubinu Medical Clinic. The injuries identified were blunt injury to the chest and bruise to the right thigh which later developed pyomyositis, which led to skin grafting. It left the 1st respondent with scars on her thighs.

4. I have gone through the record of the trial court and noted that the parties did not place before the court authorities on injuries that necessitated skin grafting to guide the court in arriving at a fair decision. I have also looked at the submissions presented on appeal. The respondents have not placed any authorities before me. The appellant has placed dated authorities and some which are more recent. The more recent authorities are not relevant for they do not relate to injuries similar to those suffered by the 1st respondent. The older decisions of 1993 are more relevant, for they dwell on injuries that left the claimants with multiple and ugly scars similar to those suffered by the 1st respondent. The awards made in 1993 were in the region of Kshs.150,000.00. I believe that after twenty-six years awards such as those imposed by the trial court cannot be unreasonable, taking into account the havoc inflation has inflicted on the Kenyan shilling over that period.

5. On medical expenses, the 1st respondent produced some documents. The total bill was put at Kshs.538, 905.00. Out of that amount NSSF contributed Kshs.144,900.00. The 1st respondent then paid Kshs.186,400.00. The amount of the bill that was proved to have been paid was Kshs.331,500.00. There was a balance still outstanding as at the time of trial. There was also money spent on the medicolegal report, a receipt of which was put in evidence. Again, I do not see any error on the part of the trial court in the assessment of the special damages.

6. Overall, I find that the appeal before me is not merited and I hereby dismiss the same with costs. Any party aggrieved by the orders made herein is at liberty to move the Court of Appeal appropriately, within twenty-eight (28) days.

DELIVERED DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 29TH DAY OF NOVEMBER, 2019

W. MUSYOKA

JUDGE