



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO. 83 OF 2014

WEST KENYA SUGAR COMPANY LIMITED.....APPELLANT

VERSUS

JAMES SAKULA.....1ST RESPONDENT

ATAWOI JEMIMA ESTHER.....2NDST RESPONDENT

STEPHENSON LUTOMIA.....3RD RESPONDENT

(suing as the legal representative and administrator of estate of James Sakula)

(Appeal from the Judgment of Hon. J Ong'ondo, Principal Magistrate (PM), in Kakamega CMCCC No. 128 of 2012 of 7th July 2014)

JUDGMENT

1. James Sakula had been hit by a motorcycle on 3rd October 2011, and initiated the suit at the primary court. The parties recorded a consent on liability at 70:50 in favour of the principal respondent. The court thereafter proceeded to assess damages for the injuries sustained, being fractures to the left tibia and fibula, and left radius, and left hand, a cut on the forehead and injuries to the left forearm, neck and left leg. He was awarded Kshs.1,800,000.00 general damages, special damages of Kshs.4, 200.00 and lost income of Kshs.17, 085.00.

2. The appellant was aggrieved by the trial court's determination of the suit before it, and lodged the appeal herein dated 5th August 2014. He listed five grounds, which are as follows:

(a) That the award in respect of lost income was based on unpleaded material and was not proved;

(b) That the award of general damages was excessive as the proven injuries were only bruises;

(c) That the authorities cited by the appellant had not been considered by the trial court;

(d) That the award of general damages did not take into account the global economic effect that that award would have on the appellant and the country at large; and

(e) That the trial court relied only on the authorities cited by the respondent.

3. On the matter of the award of loss of income, I note that the respondent did plead in his plaint, at paragraph 6, about loss of income during the period of his hospitalization. He pleaded that he had lost Kshs.13,206.00. His statement was silent on the said loss, but he did attach documents showing that he was a *bona fide* employee of Butali Sugar Company Ltd. At the oral hearing he led evidence on the loss of income and produced documents to support his case. It cannot be, therefore, true that the loss was not specifically pleaded nor specifically proved.

4. On the matter of general damages being excessive, I note that at the oral hearing the doctor who examined the respondent did not testify but the medical report that he had prepared was put on record by consent and so was a letter from the Ministry of Medical Services. According to that medical report, by Dr. Charles M. Andai, dated 25th January 2012, the respondent had closed fractures of the left tibia and fibula, and closed fractures of the left radius. He also had a laceration wound on his head. These were serious injuries and not the bruises that the appellant mentions in its memorandum of appeal. I have also seen in the trial court record a medical report by Dr. PW Oketch, who had been commissioned by the appellant, dated 15th November 2012. It identified similar injuries – bruises on the right side of the head, fractures on the bones of the left forearm and fractures of the bones of the left leg. There cannot be any merit in the submission that the respondent

suffered mere bruises.

5. On the question of the trial court disregarding the authorities cited by the appellant and relying overly on the authorities submitted by the respondent, I note that the respondent presented the decisions in *Uziel Chen vs. Kenya Power & Lighting Co. Ltd* [2010] eKLR, *Mwaura Muiruri vs. Suera Flowers Limited & another* [2014] eKLR and *Jecinta Wanjiku vs. Samson Mwangi* [2006] eKLR. I have noted that the injuries sustained in those matters were equally severe and the damages awarded matched those awarded in the instant case. The appellant cited one authority, *Michael Ouma Nyaoke vs. Cires Nyanchama Nyasoko* Kisumu HCCA No. 104 of 2007, where two medical reports on the injuries sustained by the claimant in that case varied greatly, but the same were, in any event, in both medical reports, not as severe as those sustained in the instant matter, and damages were awarded at Kshs.300,000.00. I am not persuaded that the trial court overly relied on the authorities cited by the respondent and only glossed through the authority the appellant relied on. I find that the injuries sustained in the instant case were similar to those in the authorities relied on by the respondent and were not close to those in the authority cited by the appellant.

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 AT KAKAMEGA THIS 29TH DAY OF NOVEMBER, 2019

W. MUSYOKA

JUDGE