



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 310 OF 2014

HANNAH WANJIKU WAMBUI.....APPELLANT

- V E R S U S -

BENERD NGARUIYA WATAKU.....RESPONDENT

(Being an appeal from the judgment of Githunguri Principal Magistrate's Court in Case No. 1 of 2013 by Hon. E. O. Wambo (RM) delivered on 5th November 2014)

JUDGEMENT

1. Hannah Wanjiku wambui the appellant herein, filed an action against Benard Ngaruiya Wataku, the respondent herein for compensation for the injuries she had sustained in a road traffic accident.

2. It is alleged by the appellant in her plaint dated 28.01.2013 that on 24.05.2012 she was given a lift in the respondent's motor vehicle registration number KAQ 398N together with other people. At a place near Magomano along Githunguri- Kiambu road, the aforesaid motor vehicle veered off the road and rolled causing the appellant serious bodily injuries.

3. The injuries sustained by the appellant were as follows;

Deep cut on the forehead, deep cut just above the left eye extending to the temporal region of the scalp, grazes and bruises on the left cheek and injuries to the neck and shoulders.

4. The case was heard by Hon. E. O. Wambo, the learned Resident magistrate who found the respondent wholly to blame for the accident and gave judgment in favour of the appellant in the following terms;

i. General damages for pain and suffering and loss of amenities Ksh.400,000/-

ii. Special damages of Ksh.41,095/-

5. Being aggrieved, the appellant preferred this appeal and put forward the following grounds of appeal in its memorandum.

1. The learned trial Magistrate erred in fact and in law in his appreciation of the extent of the injuries suffered by the appellant.

2. The learned trial magistrate misdirected himself in law by treating an item of general damages as special damages.

3. The learned trial magistrate erred in fact and law by failing to take into consideration the grievous nature of the appellant's injuries that would require future surgery and failed to include an award for such future treatment.

4. The learned magistrate erred by making an award that is too low in the circumstances of the case.

6. When the appeal came up for hearing, learned counsels appearing in this matter recorded a consent order to have the appeal disposed of by written submissions. I have re-evaluated the case that was before the trial court. I have also taken into account the appellants written submissions. The respondent did not file their submissions.

7. Though the appellant put forward a total of 6 grounds, the issues raised revolve around the question as to whether or not the trial magistrate erred in his award on quantum.

8. The appellant submits that the amount awarded as general damages is too low in the circumstances. It is the appellant's further submission that the trial magistrate should have taken into account Dr. Wokabi's medical report which had stated that the plaintiff would have required corrective surgery at an approximate cost of ksh. 150,000/-

9. It is also argued by the appellant that even if the claim was not payable on account of lack of pleading, the sum awarded as general damages was too low for such a young woman who had not only been crippled in the accident but also disfigured . The appellant proposes that the amount awarded be enhanced upwards to Ksh. 1,000,000/- for pain and suffering. The appellant cited the case of **Sosphinaf Company Limited & another –vs- Danuiel Ng'ang'a Kanyi, Civil Appeal No. 315 of 2001**, where the Court of Appeal held inter alia that; **“future medical expenses are general damages and need not be specifically pleaded.”**

10. The trial court awarded Ksh.400,000/- as general damages for pain and suffering. In my view, the amount awarded is not too low as alleged. It is reasonable and commensurate with the nature of injuries sustained by the appellant.

11. As it regards future medical expenses, the medical report pegged it at Kshs.150,000/=. It is clear in my mind that the appellant established this claim and it was wrong for the trial magistrate to deny the appellant the claim. On the basis of the above grounds I find the appeal to be meritorious. Consequently, the appeal is partly allowed. The judgment and decree of the trial court is varied so that the appellant is awarded over and above what was awarded by the trial court, a sum of ksh.150,000/= for future medical expenses. Consequently the final award is as follows:

i. General damages for pain and suffering and loss of amenities Ksh.400,000/-

ii. Future medical expenses Ksh.150,000/-

iii. Special damages of Ksh.41,095/-

Net Total Ksh.591,095/-

12. In the circumstances of this appeal a fair order on costs is to order which I here do that each party bears its own costs.

Dated, Signed and Delivered in open court this 26th day of January, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent