

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

CIVIL APPEAL NO. 42 OF 2017

BETWEEN

ABYSSINIA IRON AND STEEL LIMITED.....APPELLANT

AND

ISAACK OKOTH OCHIENG.....RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. J. Mitey, RM dated 21st April 2017 at the Senior Resident Magistrates Court at Winam in Civil Case No. 221 of 2015)

JUDGMENT

1. This is an appeal against the award of Kshs 380,000/= as general damages for injuries sustained following a road traffic accident which took place on 17th August 2014 while the respondent was travelling in the appellant's motor vehicle registration number KBN 667F along Kibos Sugar Factory road within Kisumu County.
2. The nature and extent of the respondent's injuries are not in dispute. According to the report of Dr Manasseh O. Onyimbi dated 19th August 2014, the respondent sustained a blunt head injury, dislocation of the left shoulder, chest injury with damage and the right rib cage, fracture at the left elbow part with a deep penetrating wound at the same region, dislocation of the lumbar-sacral spine at the back and injury of the left foot, with cut wounds and dislocated metatarsal bones of the pedis. Dr Onyimbi classified the injury as grievous harm.
3. In their submissions before the trial court, both parties relied on my decision in ***Gogni Construction Company Limited v Francis Ojuok Olewe HB HCCA No. 1 of 2014 [2015]eKLR*** where I awarded Kshs. 350,000/= as general damages where the respondent in that case fell and sustained a fracture of the left distal radius and ulna and dislocation of the left elbow and was hospitalised for 6 weeks. Based on this decision, the respondent suggested an award of Kshs. 400,000/= while the appellant proposed Kshs. 350,000/=.
4. In awarding damages, the court takes into account the nature and extent of injuries in relation to awards to similar cases to ensure consistency of awards. In this case the trial magistrate was guided by the case cited by both parties and took into account the rate of inflation and arrived at the figure of Kshs 380,000/=.
5. For an appellant court to interfere with an award of damages, it must be shown that the trial court, in awarding damages, took into consideration an irrelevant fact or the sum awarded is inordinately low or too high that it must be a wholly erroneous estimate of the damage, or it should be established that a wrong principle of law was applied (see ***Butt v Khan [1981] KLR 349***). Taking into account these principles, I cannot detect any error on the part of the trial magistrate that would warrant interference. The trial magistrate relied on the decision that was accepted by both parties and cited to her.
6. I affirm the judgment. The appeal is dismissed with costs to the respondent which I now assess at **Kshs 40,000/=** all inclusive.

DATED and DELIVERED at KISUMU this 20th day of MARCH 2018.

D.S. MAJANJA

JUDGE

Mr Oduor instructed by L. G. Menezes and Company Advocates for the appellant.

Mr Okoth instructed by Geoffrey Okoth & Company Advocates for the respondent.