

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL APPEAL NO. 47 OF 2015

CORAM: D. S. MAJANJA J.

BETWEEN

GODWIN IRERI APPELLANT

AND

FRANKLIN GITONGA RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. D.A. Ocharo, SRM dated 16th September 2015 at the Senior Resident Magistrates Court at Nkubu in Civil Case No.114 of 2010)

JUDGMENT

1. This is an appeal against the award of Kshs. 300,000/= as general damages for injuries sustained following a road traffic accident which took place on 18th June 2010 while the respondent was walking along the Meru-Nkubu-Chuka road. He was hit by the appellant's motor vehicle registration number KAQ 385L Toyota Matatu. At any rate, the issue of liability was agreed in the ratio of 70:30 against the appellant. The only issue in this appeal is the quantum of damages awarded by the trial court.

2. According to the plaint, the plaintiff sustained two cuts on the forehead, cuts on the scalp to the occipital region, bruises on the left ankle and bruises on the right knee. The parties adopted on a most unorthodox manner of proceeding for determination of the case by relying on the written submissions and documents produced in the matter.

3. The respondent relied on the medical report of Dr I M Macharia dated 4th November 2011. He noted that the respondent had a cut on the scalp and forehead, swelling on the dorsum of the left foot and a bruise on the right knee. After perusing treatment notes, x-rays and hospital discharge summary, he recorded that the respondent was treated on 18th June 2010 after admission at Consolata Hospital, Nkubu. He was discharged on 22nd June 2010. He was reviewed at the hospital on 7th July 2010 when stitches were removed. At the time of examination, he was complaining of numbness on the left leg. He noted that the scar had healed. Dr Macharia's opinion was that the numbness on the leg was expected to subside and that he had healed well.

4. The nature and extent of the respondent's injuries is not in dispute. What is in dispute is the extent of the award. Before the trial court, the respondent submitted that an award of Kshs. 400,000/- would be adequate compensation based on the case of ***Habiba Abdi Mohamed v Peter Maleve NRB HCCC No. 950 of 1998 (UR)*** where the plaintiff sustained injuries on the left arm and face and was awarded Kshs. 400,000/- in the year 2000.

5. The appellant contended that the injuries were in the nature of soft tissue injuries and that a sum of Kshs. 80,000/- would suffice in the circumstances. He relied on the case of ***Eastern Produce (K) Limited v Gilbert Muhunzi Makotsi ELD HCCA No. 76 of 2012[2013] eKLR*** where an award of Kshs. 130,000/- was reduced to Kshs. 70,000/- on appeal. In that case the respondent sustained a pricked wound on the left foot which was tender with severe pains occurring after the injury. He also cited ***Soroko Saw Mills Ltd v Grace Nduta [2006] eKLR*** where an award for soft tissue injuries was reduced to Kshs. 30,000/- from Kshs. 80,000/-.

6. In coming to her judgment, the trial magistrate was guided by the cases cited by the respondent's counsel. For an appellate 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***).

7. In awarding damages, the court takes into account the nature and extent of injuries in relation to awards in similar cases to ensure consistency of awards. In this case, it was not contested that the respondent sustained soft tissue injuries. However, the trial magistrate failed to consider the cases cited by the appellant's counsel and relied on the case cited by the respondent which was an outlier. I would venture to say that it is good practice for counsel to cite several cases to assist the court reach a just conclusion. I find that the cases cited by the appellant were more reflective of the injuries sustained by the respondent and taking into account the element of inflation, I hold that a sum of Kshs. 90,000/- is reasonable in the circumstances.

8. I allow the appeal and set aside the award of Kshs. 300,000/- as general damages and substitute it with an award of Kshs. 90,000/-. That sum shall accrue interest from the date of judgment before the trial court.

9. The respondent shall pay costs of this appeal assessed at Kshs. 20,000/-.

DATED and DELIVERED at MERU this 30th day of May 2018.

D.S. MAJANJA

JUDGE