



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL APPEAL NO. 67 OF 2008

CORAM: D.S. MAJANJA J.

BETWEEN

GITARI GITONGA1ST APPELLANT

BOARD OF GOVERNORS

EGOJI TEACHERS TRAINING COLLEGE2ND APPELLANT

AND

SAMMY WACHIRA WACHUKARESPONDENT

(Being an appeal from the Judgment and Decree of Hon.A. N. Kaniaru, PM dated 25th June 2008 at the Principal Magistrates Court at Nkubu in Civil Case No.69 of 2004)

JUDGMENT

1. This is an appeal against the award of Kshs. 500,000/= as general damages for injuries sustained following a road traffic accident which took place on 2nd July 2003 along Meru-Chuka road. The accident involved the collision of the 1st appellant's vehicle registration number KRX 326 and the respondent's motor vehicle registration number KAD 218B. The respondent was injured as a result. The issue of liability was agreed at 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 a cut wound on the scalp and chin and a deep cut wound on the right leg below the knee. The respondent testified that after the accident, he became unconscious and was admitted to Consolata Hospital where he stayed for a week and was transferred to Kerugoya Hospital where he was admitted. He stayed in hospital for two weeks and was discharged on 28th July 2003. He was examined by Dr Fredrick Mutua Ndambuki on 21st November 2003. He noted that the respondent was complaining of headaches which would sooner subside. He concluded that the respondent had recovered fully without residual neurological effect.

3. The nature and extent of the respondent's injuries are 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. 600,000/- would be adequate compensation based on the case of ***George Gachie and Another v Pelican Haulage Service and Tawfiq Services MKS HCCC No. 37 of 1997(UR)***. An abstract of the case shows that the plaintiff suffered loss of consciousness for more than 12 hours, cut above the left eye, fracture of the right leg near the knee, blunt injuries on the chest and four broken teeth and was awarded Kshs. 320,000/- in 2002.

4. 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***).

5. In this case, there is no doubt that the appellant sustained soft tissue injuries that did not leave any form of disability. The trial magistrate after considering the cases came to the conclusion that Kshs. 500,000/- was reasonable in the circumstances. 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.

6. Before the trial court, the respondent suggested the sum of Kshs 600,000/- as general damages. Counsel cited the case of ***Gachie and Another v Pelican Haulage Service Limited v Tawfiq Services MKS HCCC 37 of 1997 (UR)*** where the plaintiff sustained loss of consciousness for more than 12 hours, a cut above the left eye, fracture of the right leg near the knee, blunt injuries to the chest and four broken teeth and was awarded Kshs. 320,000/- as general damages in 2002.

7. On their part, the respondent suggested that Kshs. 40,000/- was adequate as general damages. They cited two decisions. ***Daniel Warobi Mwangi v Boniface Kamau and Another NKU CA Civil Appeal No. 197 of 1994 (UR)*** where the appellant sustained mainly soft tissue injuries and was awarded Kshs. 25,000/- in 1995 and ***Muchendu Njuguna Macharia v Tom-O-Metal Limited NRB HCCC No. 3474 of 1989 (UR)*** where the plaintiff was awarded Kshs. 30,000/- in 1995 after being hospitalised for 2 days and suffered a relatively minor head injury without any disability.

8. Considering the injuries sustained by the appellant were minor soft tissue injuries without any fractures or any residual disabilities, I think an award of Kshs. 500,000/- was inordinately high. The gulf between what both counsel submitted was wide, however the cases cited by the appellant's counsel, though dated, were more relevant. Taking into account the element of inflation, I find Kshs. 120,000/- a reasonable award.

9. In the circumstances, I allow the appeal and set aside the award of Kshs. 500,000/- as general damages and substitute it with an award of Kshs. 120,000/- subject to contribution. That sum shall accrue interest from the date of judgment before the trial court.

10. 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

Kiautha Arithi and Company Advocates for the appellants.

J.K. Kibicho and Company Advocates for the respondent.