



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NUMBER 304 OF 2016

HENRY OBIERO NAMULETA.....APPELLANT

VERSUS

KENNEDY DAVID.....1ST RESPONDENT

GEOFFREY LANGAT.....2ND RESPONDENT

JAMES OMINDE AHOYA.....3RD RESPONDENT

JACK PETER.....4TH RESPONDENT

(Being an appeal from the Decision of the Hon. I. Gichobi (Mrs), Resident Magistrate at Milimani Commercial Courts' in CMCC No. 4389 of 2014 dated 27th May, 2016)

J U D G M E N T

1. **Henry Obiero Namuleta**, the Appellant herein, filed a compensatory suit against **Kennedy David, Geoffrey Lang'at, James Ominde Ahoya** and **Jack Peter**, the 1st, 2nd, 3rd and 4th Respondents respectively before the Resident Magistrate's court, Nairobi for the injuries he sustained on 8th December, 2013.

2. The Appellant averred that on the aforesaid date he was passing in between motor vehicles registration Numbers KAA 591E and KAA 699P which had been stationary at Olympic Stage, when the drivers of both vehicles caused them to collide and to entrap him in between thus sustaining injuries.

3. The Respondents each filed a defence to deny the Appellant's claim.

4. Hon. Gichobi, Learned Resident Magistrate heard and determined the case in favour of the Appellant and against the owner and driver of KAA 591E namely: **Kennedy David** and **Jack Peter**, being the 1st and 4th Respondents respectively.

5. The case as against the 2nd and 3rd Respondents was dismissed.

6. The Appellant was awarded Ksh.564,628/- representing both special and general damages plus costs and interest .

7. The Appellant was dissatisfied with the award on damages and was therefore prompted to file this appeal and put forward the following grounds: -

i) The learned magistrate erred in her award of damages for pain, suffering and loss of amenities of life by making an award which: -

a) Was too low.

b) Represents an overt erroneous estimate of the damages thereof.

c) Did not take into account.

i) The nature and extent of injuries.

ii) The past and future operations and associated pain and suffering.

iii) Precedents of awards made for comparable injuries.

ii) The learned magistrate erred by failing to award the Appellant all his pleaded and proved special damages.

iii) The learned magistrate failed to apply or to take into account the correct legal principles in making the awards of damages.

8. 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 submission.

9. I have re-evaluated the case that was before the trial court and further considered the rival written submission. The appeal is basically against the award on quantum on general damages.

10. It is the submission of the Appellant that he suffered a fracture of the femur which was operated on and fixed with a metal which is to be removed by operation in future and also suffered a dislocation on the sternoclavicular joint.

11. It was argued by the Appellant that the trial magistrate failed to take into account comparable awards made in respect of similar awards. The Appellant cited the case of **Stanley Gicheru Njogo Vs Kijara Joseph Kagu and Elizabeth Kihanda (Unreported) CA No. 198 of 2016** in which the Court of Appeal sustained an award of Ksh.700,000/- for a fracture of femur.

12. This court was beseeched to set aside the award of the trial court award instead Ksh.800,000/-.

13. The Appellant further pointed out that the case cited by the Respondent which the trial court relied on was in respect of a fracture of the femur simplicitor requiring no operations past or future, therefore, not comparable.

14. It is apparent from the record that the Appellant was awarded Ksh.420,000/- for general damages and Kshs.100,000/- for future medical expenses.

15. The Appellant's appeal is against the award of Kshs.420,000/- given for general damages.

16. The main complaint is that the trial magistrate did not take into account comparable awards for comparable injuries.

17. In the case of **Stanley Gicheru Njogo Vs Kijara Joseph Kagu & another** (supra) the Court of Appeal affirmed the award of Kshs.700,000/- as general damages for near similar injuries.

18. I am convinced by the arguments of the Appellant that the award by the trial court should be interfered with since, the trial court did not take into account comparable awards.

19. In the end, this appeal is allowed. Consequently, the award of ksh.420,000/- as general damages is set aside and is substituted with an award of Ksh.700,000/-. The other awards made by the trial court remain unchanged.

20. Costs of this appeal is awarded to the Appellant. The award on general damages to attract interest at court rates from the date of judgment of the trial court until full payment.

Dated, signed and delivered at Nairobi this 28th day of September, 2018.

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J K SERGON

JUDGE

In the presence of

..... *for the Appellant*

..... *for the Respondents*