



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CIVIL APPEAL NO. 8 OF 2013

(Being an appeal arising from Judgment and Decree in Eldoret Chief Magistrate's Court Civil suit no. 106 of 2012 delivered by F.N. Kyambia Principal Magistrate on 21/1/2013)

ELDORET GRAINS LIMITEDAPPELLANT

VERSUS

CHRISTOPHER KIPKORIR ARUSEI.....RESPONDENT

J U D G M E N T

1. On 16/7/2009 the Respondent worked as a loader for the appellant. He sustained injuries pursuant to an accidental fall while carrying 50 Kg sack of processed flour. The injuries he sustained are;

- 1. Blunt trauma to the neck which was tender**
- 2. Sub laxation of the cervical spine with loss of cervical lordosis**

2. This was as per Dr. Aluda's report. Dr. Gaya on his second medical assessment found the injuries to be of

- a) soft tissue injury of the neck**
- b) Soft tissue injury on the right arm.**

He found the disability to be 3%.

3. The parties agreed on liability at 20:80 in favour of the appellant and respondent respectively.

4. The trial court awarded the respondent kshs 300,000/= as general damages for pain and suffering and loss of amenities.

5. The appellant's substantive complainant is on the damages awarded. According to it the same was majorly excessive in the circumstances.

6. The court has perused the proceedings as well as the parties rival submissions. It was held in the now famous case of *Kemfro Africa Ltd t/a Meru Express Services (1976) & Another Vs Lubia & Another (No. 2) (1987) KLR* that;

“ The Principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were that it must be satisfied that either the judge in assessing the damages took into account an irrelevant fact or left out of account a relevant one, or but short of this the amount is so inordinately high that it must be a wholly erroneous estimate of the damage.”

7. It must also be emphasised that a suit is not a forum for a party to enrich himself or herself. However the court ought to balance both the interest of the plaintiff as well as the defendant.

8. I do not think the injuries sustained by the respondent so severe as those in the case of *Samuel Muthana Vs Kenneth Muindi HCCC No. 102/2003* relied on by Justice Lenaola (As he then was). Neither is it too low as per the authority of *Rowell Mwangi & Another Vs Ndungu Mungai Kimani HCC 901/2003* relied on by the appellant.

9. I note that both decisions were relatively old compared to the case at hand. The respondent has already healed.

10. Taking the facts and the evidence especially the injuries and the period in question into consideration I shall set aside the lower court award of Kshs 300,000/= for pain and suffering and substitute it with a global award of Kshs 120,000/=.

11. Each party shall bear their own costs in this appeal.

Delivered, signed and dated at Eldoret in open court on this 19th day of October, 2018.

H.K. CHEMITEI

JUDGE

19/10/18