



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

CIVIL APPEAL NO. 119 OF 2015

ABEL OMARIBA MATUNDA.....APPELLANT

=VRS=

BONIFACE ORANGI MOGUNDE.....RESPONDENT

[Being an Appeal from the Judgement of Honourable Kahara (RM) dated and delivered on 18th December 2015 in Keroka SRM's Court Civil Suit No. 151 of 2013]

JUDGEMENT

The appellant was a plaintiff in the lower court and had sued the respondent in a claim for special and general damages as a result of a road traffic accident that occurred on the 13th August 2013. Judgement was entered in favour of the appellant at 100% liability and general damages of Kshs. 250,000/= was awarded to the appellant.

The appellant being aggrieved with the quantum of damages preferred this appeal. He raised the following grounds in his memorandum of appeal: -

- “1. The Learned trial magistrate erred in law when she rightly held the appellant 100% liable but proceeded to misdirect herself in respect of quantum.**
- 2. The learned magistrate erred in fact and in law in awarding a minimal award of Ksh. 250,000/= even after noting the seriousness of the injuries sustained by the appellant, vide fractures cum multi soft tissue injuries and loss of teeth, as authenticated, which fairly attracted a higher discretionary award.**
- 3. The Learned trial magistrate erred in law and fact in her evaluation of evidence relating to quantum and ended up misdirecting herself as far as quantum awards are concerned.**
- 4. The trial court disregarded the propensity cum probative value of the exhibits tendered as relates to quantum.**
- 5. The trial magistrate erred in law in failing to appreciate the submissions by the appellant and the authorities cited generally.”**

On the 16th May 2018 the court directed that the appeal shall be canvassed by way of written submissions. The appellant filed his submissions on the 18th May 2018. The respondent's submissions at the time of writing this judgement had not been filed even though leave to file the submissions was granted on the 5th July 2018.

Counsel for the appellant submitted that the appellant had submitted for Kshs. 1,000,000/= but would like the court to enhance the amount to Kshs. 2,000,000/= taking into cognizance the nature and extent of the injuries sustained. It was his submissions that the trial magistrate erred in the manner of taking evidence as the court ignored the injuries relating to the loss of teeth which both Counsels quoted in their submissions. Counsel submitted that the omission was serious as if factored it could have attracted a higher reward in terms of general damages. Counsel relied on **Ochieng Vs Amalgamated Sawmills Ltd.**

The issue in this appeal is on the award of general damages only. Counsel for the appellant contents that the same was inordinately low and was not commensurate with the injuries sustained by the appellant.

In Arkay Industries Limited vs Amani [1990] KLR 309 the Court of Appeal restated that: -

“5. The assessment of damages is essentially a matter of judicial discretion.

6. For a superior court to interfere with a lower court’s assessment of damages it must be shown that the sum awarded is demonstrably wrong or that the award was based on a wrong principle or is so manifestly excessive or inadequate that a wrong principle may be inferred.”

Those are the principles that should guide this court in determining this matter. The trial magistrate awarded the appellant Kshs. 250,000/= for the following injuries which were proved by Dr. Ogando Zoga (Pw1): -

- Brain concussion.
- Deep cut wound on the right maxilla.
- Blunt injury on the maxilla leading or causing loss of seven teeth.
- Deep facial cut wound.
- Fracture of left femoral head.
- Dislocation of the left femoral head.

The Doctor testified that the loss of teeth was permanent but the other injuries were expected to heal with time. He classified the degree of injury as harm. In the lower court, Counsel for the appellant had proposed an award of Kshs. 1,000,000/= and the respondent’s Counsel Kshs. 70,000/=. The issues to be considered when assessing an award are as restated in **Jabane v Olenja [1986] KLR 661 –**

“1.

(a) Each case depends on its own facts;

(b) For the sake of those who have to pay insurance premiums, medical fees or taxes, the awards should not be excessive;

(c) Comparable injuries should attract comparable awards;

(d) Inflation should be taken into account; and

(e) Unless the award is based on the application of a wrong principle or misunderstanding of relevant evidence, or is so low as to be an erroneous estimate it should be left alone.”

It is clear that the learned trial magistrate did not consider the above principles when she awarded Kshs. 250,000/= for such serious injuries and I am satisfied that the award was so inordinately low that it should be interfered with. I am satisfied that the proposal by Counsel for the appellant for Kshs. 1,000,000/= was reasonable. The respondent did not file any submissions in this appeal and it is therefore to be taken that she did not oppose it. The appeal has merit and is allowed. The award of general damages in the lower court is set aside and in its place judgement is entered for the appellant against the respondent for general damages in the sum of Kshs. 1,000,000/= together with interest at court rates from the date of this judgement. The appellant shall also have the costs of this appeal and of the court below.

It is so ordered.

Signed, dated and delivered at Nyamira this 18th day of October 2018.

E. N. MAINA

JUDGE