



**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CIVIL APPEAL NO. 118 OF 2017**

**CORAM: D. S. MAJANJA J.**

**BETWEEN**

**CALEB ALPAYO ORANGA.....APPELLANT**

**AND**

**GEORGE ANTONY MUMIA.....RESPONDENT**

*(Being an appeal from the Judgment and Decree of Hon. Ambasi, CM*

*dated 27<sup>th</sup> November 2017 at the Chief Magistrates Court*

*at Meru in Civil Case No. 54 of 2015)*

**JUDGMENT**

1. The appellant is dissatisfied with the award of Kshs. 200,000/- as general damages by the trial court. He prays that that award be enhanced on the ground stated in the memorandum of appeal dated 23<sup>rd</sup> December 2017 as follows:

*THAT the award by the magistrates was inordinately low as to amount to an erroneous estimate regard being had to the nature and extent of the injuries sustained by the appellant.*

2. The appellant sustained a compound fracture of the right wrist, open wounds on the right tibia aspects and open wounds on the right knee, following a road traffic accident that took place on 7<sup>th</sup> June 2014 when motor cycle registration number KMCY 029K which he was riding, was knocked by the respondent's motor vehicle registration number KAT 879T along the Meru – Nanyuki road. The issue of liability was settled when the parties agreed to apportion liability equally.

3. The nature and extent of the appellant's injuries was not in dispute. The appellant was examined by Dr Nicholas Koome who prepared a report dated 5<sup>th</sup> February 2015 which was produced without objection from the respondent. At the time the appellant was examined, he had moderate pain on the right wrist with slight deformity and scarring on the anterior aspect of the right tibia and knee. The doctor concluded that, "the wrist has fully recovered but has occasional pain when lifting heavy objects. The degree of injury was ascertained as maim."

4. In his submissions before the trial court, the appellant submitted that a sum of Kshs. 1,500,000.00 would be reasonable. He relied on the case of *Michael Maina Gitonga v Serah Njuguna alias Serah Wanjiku Mungai* NKU HCCC No. 202 of 2009 [2012] eKLR where the claimant sustained multiple fractures of the pelvis, dislocation of the right hip with displaced fracture of the right acetabulum, comminuted fracture of the right tibia on the proximal end with fracture of the tibia plateau and soft tissue injuries. She was awarded Kshs. 1,500,000/- in 2012.

5. The respondent submitted that a sum of Kshs. 80,000/- was reasonable. He cited the case of *Samwel Mburu Ng'aari and Others v Wangiki Wangare and Another* NRB HCCC No. 173 of 2008 [2014] eKLR where the 1<sup>st</sup> plaintiff suffered compound fractures of the left and right hands and a compound fracture of the left leg and injury to the muscle. He was awarded Kshs. 120,000/- in 2014. In *Eastern Produce (K) Limited (Savani Estate) v Gilbert Muhunzi Makotsi* ELD HCCA No. 76 of 2012 [2013] eKLR the respondent sustained a pricked wound on the left foot (dorsal aspect) which was tender and severe pains and was awarded Kshs. 70,000/- as general damages.

6. 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. As I stated earlier, the appellant's injuries were not disputed. The issue is whether the award is adequate taking into account awards given for comparable injuries in other cases. General damages are damages at large and the court does the best it can in reaching an award that reflects the nature and gravity of the injuries. In assessing damages, the general method of approach should be that comparable injuries should as far as possible be compensated by comparable awards but it must be recalled that no two cases are exactly alike (see **Stanley Maore v Geoffrey Mwenda NYR CA Civil Appeal No. 147 of 2002 [2004]eKLR**)

8. *In order to assist the court assess damages, the duty of the advocates is to cite appropriate cases from which the court can make a decision. In this case, the appellant cited a case which reflected more serious injuries and was an outlier in terms of the damages awarded. On the other hand, the respondent's cases were quite dated and on the lower side. The trial magistrate doing the best and applying her mind to the issues, awarded Kshs. 200,000/-.*

9. *This is a case where the decisions cited were not particularly helpful and counsel must take the blame for failing to assist the court to arrive at a fair decision by citing more recent and relevant cases. I therefore cannot detect any error on the part of the trial magistrate that would warrant interference and the trial court's discretion cannot be remedied by citing other cases which were not brought to the attention of the trial court.*

10. I dismiss the appeal and for reasons I have stated I make no order as to costs.

**DATED and DELIVERED at KISUMU this 18<sup>th</sup> day of October 2018.**

**D.S. MAJANJA**

**JUDGE**

Mr Mwanzia instructed by Muia Mwanzia and Company Advocates for the appellant.

Mr Mahugu instructed by Wangai Nyuthe and Company Advocates for the respondent.