

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL 476 OF 2014

AGRO MANUFACTURING COMPANY LIMITEDAPPELLANT

VERSUS

PATRIK KARIUKI KABURIA RESPONDENT

(Being an appeal from the judgment /decree of the Chief Magistrate's court at Nairobi Teresia Ngugi (Mrs) S.PM dated 7th October, 2014 in CMCC No. 2042 of 2012)

JUDGMENT

The appellant herein was the employer of the respondent who was injured in the course of his employment. The respondent filed a suit against the appellant for damages arising from the said injuries and blamed the appellant for negligence. The parties entered a judgment on liability at 80% against the appellant and 20% contributory negligence on the part of the respondent. Special damages were agreed at Kshs. 16,565/=.

Two medical reports were admitted in evidence without calling the makers. These were by Dr. Theophilus Wangata dated 12th January, 2015 and the other by Dr. Vladimir Shchukin dated 6th August, 2012.

The lower court in a judgment delivered on 7th October, 2014 awarded the respondent Kshs. 800,000/= which was discounted by 20% contributory negligent leaving a total of Kshs. 656,565/= inclusive of special damages. The respondent was also awarded costs of the suit and interest at court rates.

The appellant was aggrieved by the said award and in the Memorandum of Appeal dated 23rd October, 2014 complained that the award was manifestly excessive in light of the injuries sustained and the medical report prepared by Dr. Vladimir Shchukin.

Parties have filed written submissions which I have considered. Ordinarily, the appellate court will not interfere with the award of damages made by the trial court unless that court acted on wrong principles, or misapprehended the facts or made a wholly erroneous estimate. That is to say, the court will interfere if the award is inordinately high or low.

The common approach is that comparable injuries should attract comparable awards. Each case however rests on its own facts and circumstances. The time that has gone by from the previous awards comes into play, because the depreciation of currency or otherwise, has to be taken into consideration.

The injuries identified in the medical reports related to the right foot which was treated and operated upon at Mater Hospital and Kenyatta National Hospital. Although the healing was relatively good, Dr. Vladimir assessed his permanent disability at 1.5% while Dr. Wangata assessed permanent and functional incapacity at 25%. I note that the plaintiff was injured on 19th March, 2010 and so, when Dr. Wangata examined him it was just about two years less two months from the dates of the accident.

On the other hand, Dr. Vladimir examined him on 6th August, 2012 which was about two and half years from the date of the accident. I am unable to reconcile the degree of permanent disability that the two doctors identified in their reports. Whatever the case, the trial court considered those assessments and the authorities that had been cited. She also addressed the time when the previous awards had been made and the rate of inflation. The approach and principles applied in arriving at the said award, also took into consideration the period of hospitalization and the nature of treatment that the respondent underwent.

I have also considered the submissions and the authorities cited by both counsel herein. With respect, I do not agree with the appellant that the award was inordinately high so as to attract interference from this court. I therefore uphold the same and find that the appeal is lacking in merit and therefore dismissed with costs to the respondent.

Dated, signed and delivered at Nairobi this 20th Day of December, 2018.

A. MBOGHOLI MSAGHA

JUDGE