



REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

CIVIL APPEAL NO. 153 OF 2011

BETWEEN

COAST BUS (MSA) LIMITED APPELLANT

AND

ANNE KURIA RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. P. Biwott, PM dated 11th October 2011 at the Principal Magistrates Court at Winam in Civil Case No. 397 of 2006)

JUDGMENT

1. The respondent, Anne Kuria, was injured in a road traffic accident which occurred on 24th March 2011. She was travelling in the appellant's bus registration number KAP 759T when it collided with another bus registration number KAS 874M belonging to Dolphin Coaches Limited. Following injuries sustained, she sued Dolphin Coaches Limited as 1st defendant and the appellant as 2nd defendant. The issue of liability was settled in a test suit and apportioned at 10:90 as between the 1st defendant and the appellant. The trial court assessed damages and awarded the respondent Kshs. 250,000/- as general damages and Kshs. 1,500/- as special damages. It is the award of damages that has precipitated this appeal.

2. The thrust of the appellant's case contained in the memorandum of appeal dated 26th October 2011 is that the award of damages was inordinately high and unjustified considering that the injuries suffered by the respondent were minor soft tissue injuries. Ms Simiyu, counsel for the appellant, submitted that in light of the injuries sustained and decisions cited, an award of Kshs. 50,000/- was reasonable in the circumstances.

3. Counsel for the respondent, Mr Ouma, supported the decision of the trial magistrate. He submitted that the award was reasonable and reflective of the nature and extent of the injuries sustained by the respondent and the decisions cited.

4. The extent to which an appellate court may interfere with an award of damages is well settled. It must be shown that the trial court in awarding of the 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**).

5. The injuries sustained by the respondent were not in dispute and according to the plaint, the respondent sustained the following injuries; multiple tender bruises on the right side of the chest and abdomen and injuries to the neck and right hip. The parties adopted an unorthodox way of determining the matter by submitting all the following documents to the court by consent; treatment notes from the Provincial

General Hospital in Nakuru, treatment notes from Kisumu District Hospital, medical report prepared by Dr. Mwangi dated 27th March 2006 (P3 form), medical report prepared by Dr. Nyamongo who examined the respondent on 13th July 2006 and a further medical report from Dr. J. O. Odondi dated 18th May 2006.

6. What is clear from all these documents is that the respondent sustained minor soft tissue injuries. The doctors who examined her after the accident were satisfied that she had recovered without any residual injury or disability. The main issue then was the level of compensation the respondent was entitled to. The trial magistrate held as follows;

From the above injuries, the Plaintiff's Counsel proposes Kshs. 300,000/= in general damages. Both the 1st and 2nd Defendant's Counsels proposed Kshs. 50,000/= in general damages. I have perused the authorities cited and relied upon by both defence counsels. They persuade me. Nevertheless the 2 learned Counsels failed to appreciate inflation trends in our economy. Their proposal is on the lowest side. Taking inflation trends into account, I find Kshs. 240,000/= to suffice in general damages

7. 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 as the Court of Appeal observed in **Simon Taveta v Mercy Mutitu Njeru CA Civil Appeal No. 26 of 2013 [2014] eKLR**, "The context in which the compensation for the respondent must be evaluated is determined by the nature and extent of injuries and comparable awards made in the past." Additionally, our courts have also pointed out that there is need for consistency in awarding damages. The current value of the shilling and the economy have to be taken into account and although astronomical awards which must be avoided, the court must ensure that awards make sense and result in fair compensation (see **Ugenya Bus Service v Gachoki NKU CA Civil Appeal No. 66 of 1981 [1982]eKLR** and **Jabane v Olenja [1986] KLR 661**).

8. The trial magistrate agreed that the cases cited by the appellant were more reflective of the injuries sustained by the respondent. The cases were that of **Peter Thiongo Mbai v Karen Mbugua NBI HCCC No. 4851 of 1986(UR)** where the plaintiff was awarded Kshs. 25,000/= in 1989 for multiple injuries sustained on the head, neck and face leaving permanent scars and **Justus Mwema Malinga and Others v Wilson Kadzoyo Karisa NBI HCCC No. 2760 of 1987 (UR)** where the plaintiff was awarded Kshs. 35,000/- in 1989 for a dislocation of the neck, blunt chest injury and other multiple soft tissue injuries.

9. By the time judgment was rendered, the decisions cited by the respondent were more than 20 years old hence the need to consider the element of inflation. The decisions were not particularly helpful in that regard, the counsels must take the blame for failing to assist the court arrive at a fair decision. As I have noted, the respondent is entitled to fair compensation having regard to the duty of the court to ensure consistent awards across the board. In a more recent case involving the same accident subject this appeal, I awarded Kshs. 130,000/- where the appellant had sustained soft tissue injuries (see **Coast Bus (Msa) Ltd v Joseph Odhiambo Okello KSM HCCA No. 155 of 2011 [2016]eKLR**). I find the sum reasonable in these circumstances.

10. The appeal is allowed to the extent that I set aside the award of general damages and substitute it with an award of **Kshs. 130,000.00** subject to contribution by the 1st defendant before the trial court. The said sum shall accrue interest at court rates from the date of judgment in the subordinate court.

11. The appellant shall have costs of the appeal.

DATED and DELIVERED at KISUMU this 28th day of March 2017.

D.S. MAJANJA

JUDGE

Ms Simiyu instructed by Akwala and Company Advocates for the appellant.

Mr Ouma instructed by Ouma Njoga and Company Advocates for the respondents.