



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 606 OF 2013

DIPLOY PLASTICS LTDAPPELLANT

VERSUS

KENNEDY ANWONG'A MOKAYA RESPONDENT

JUDGMENT

The respondent's claim in the lower court was for damages following personal injuries sustained while in the employment of the appellant. The parties agreed on liability such that the appellant would shoulder 80% while the respondent would be responsible for 20% contributory negligence. Special damages were agreed at Kshs. 4,450/= and the court was left to determine quantum of general damages.

Counsel appearing for the parties agreed to have the medical reports by Dr. Wokabi and Dr. R.P. Shah admitted in evidence without calling their makers alongside the P3 Form and treatment notes from St. Mary's Hospital. Counsel were also asked to file submissions. Several authorities were cited upon which the trial magistrate made an award of Kshs. 1,000,000/= general damages to be subjected to 20% contributory negligence. In the end the trial court entered judgment in the total sum of Kshs. 804,450/= plus costs and interest. This appeal followed the said judgment.

The appellant complains that the lower court misdirected itself in awarding exorbitant damages, failed to appreciate and be guided by the prevailing range of comparable awards. The award was said to be high and the court acted on wrong principles of law. Further, the lower court was faulted for making an award without considering the medical evidence, appreciating the nature of injuries sustained by the respondent, and failed to be guided by cases on comparable awards.

The appellant also faulted the lower court for considering the medical report by Dr. Wokabi and ignoring the other report by Dr. R.P. Shah, yet they were produced by consent and thereby arrived at wrong conclusions on the nature of injuries.

In the brief judgement dated 1st November, 2013 the magistrate said as follows,

“Plaintiff’s counsel urged court to award plaintiff Kshs. 1.5 million and cited several authorities to support his case.

Defendant’s counsel recommended Kshs. 250,000/= as general damages citing several authorities which were old and the plaintiff in the cited authorities suffered less severe injuries to the plaintiff before me.

All factors considered I take the view that the plaintiff suffered very serious injuries and a sum of Kshs. 1,000,000/= will adequately compensate him and I will award less 20% contribution.”

Clearly the trial court considered the cited authorities and the medical reports. He did not have to cite all the reports or authorities verbatim. I have looked at the cited authorities and medical reports. The report by Dr. Wokabi, is dated 12th October, 2010 which was just about two months from the date the respondent was injured, that is 4th August, 2010.

The respondent suffered compression fractures of L3, L4 and L5. He also suffered fracture of pelvic brim on right side. At the time of examination he had not resumed duty, had a lot of backache and could not bend or lift objects. He was still undergoing rehabilitation. Permanent disability was assessed at 30%.

The report by Dr. R.P Shah is dated 7th January, 2012. He was examined by this doctor on 26th July, 2011 but the doctor said he did not get essential medical documents and could only offer medical report and opinion.

The examination done did not reveal any back and spine abnormality. The lower limbs also did not have any abnormality. There was a report on X-rays by consultant radiologist Dr. N. Kennedy. The lumbosacral spine x-ray did not show any evidence of fracture, subluxation or dislocation. The alignment of the lumbosacral spine was well maintained without spondylolithesis.

There was loss of lordosis possibly due to muscle spasm. The doctor listed the other observations and the impression was that the injuries were suggestive of muscle spasm. He concluded that in the absence of essential medical documents, the only opinion he could form and express was that even if the respondent sustained any injury, it was minor soft injury. He did not produce any medical evidence that would indicate that he sustained any significantly severe or serious injury to his back or spine.

His temporary disability would be perhaps a few days and permanent disability is 0%. The doctor was emphatic on his finding by stating,

“On my examination of this man’s back and spine and on his original X-rays I got done on 26/7/2011, I find no evidence of any severe or serious injury sustained by him”.

The report made two months after the accident by Dr. Wokabi and the one prepared by Dr. R.P. Shah almost 12 years thereafter cannot be the same. It is also reasonable to conclude even without any medical expertise that, the latter report would be a better reflection of the injuries, after effects and status of the respondent. These are some of the challenges that are faced by the court in the assessment of damages for personal injuries.

I have looked at the authorities that have been cited. Considering the latest report by Dr. R.P. Shah, I am persuaded that the award made for general damages was excessive in the circumstances of this case. It therefore attracts interference in view of the fact that the trial court was misled by the authorities and applied wrong principles. Accordingly, I am inclined to reduce the said award to Kshs. 500,000/= which shall be subjected to 20% contributory negligence leaving a balance of Kshs. 400,000/=.

Accordingly, the appeal is allowed and the judgment of the lower court set aside insofar as it relates to general damages. There shall be judgment for the respondent against the appellant in the sum of Kshs. 400,000/= general damages plus Kshs. 4,450/= special damages. The appellant shall also have the costs and interest at court rates which shall also be subjected to 20% contributory negligence.

Dated and delivered at Nairobi this 26th Day of April, 2017

A. MBOGHOLI MSAGHA

JUDGE