



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CIVIL APPEAL NO 69 OF 2014**

**(Appeal from decree passed on 20<sup>th</sup> June 2014 in Kandara PMCC No 74 of 2013 – P. Nditika, SPM)**

**MICHAEL NJOROGE MAINA..... APPELLANT**

**VERSUS**

**PETER KARANJA NJOROGE..... RESPONDENT**

**J U D G M E N T**

1. The Appellant herein was the defendant before the trial court while the Respondent was the plaintiff. The Respondent's claim was in negligence; general and special damages were sought on account of personal injuries suffered in a road traffic accident. Consensual judgment was entered on liability at 80% to 20% in favour of the Respondent. There was then a hearing on quantum. The Respondent was awarded general damages of KShs 1,300,000/00, special damages of KShs 167,095/00 – all less 20% contributory negligence, plus costs and interest. The appeal is against quantum only. All the grounds of appeal revolve around the main complaint that the award of general damages was manifestly excessive in light of the injuries suffered by the Respondent and the comparative cases cited.

2. I have read through the record of the trial court in order to evaluate the evidence placed before the court and arrive at my own conclusions regarding the same. This is my duty as the first appellate court. I have also considered the submissions by the Appellant's learned counsel. There was no appearance for the Respondent at the hearing of the appeal despite the hearing date having been given by the court in the presence of both counsels. The counsel sent to hold brief had no instructions to proceed with the hearing.

3. The Respondent suffered the following injuries as set out in the medical report dated 18/03/2013 by Dr George K. Karanja –

- **Intertrochanteric fracture right femur.**
- **Displaced comminuted left posterior wall acetabulum.**

Treatment included open reduction and internal fixation. He was on various medications and follow for one year.

4. The doctor's assessment and prognosis was that the Respondent

**“sustained grievous injury. The trauma was quite significant affecting both lower limbs. Due to the injuries, he had to be operated on twice and was not able to walk for close to six months. The numbness, stiffness and pain of lower limbs can be attributed to the effects of the trauma. Considering his advancing age, he might not be able to resume full mobility of his lower limbs. In my opinion, the degree of permanent disability is 20%.”**

5. The Respondent told the trial court the following of his injuries –

**“...I was taken to Thika Level 5 Hospital where I was admitted for 4 days. I was referred to Kenyatta and the Kijabe hospitals. I (stayed) at Kijabe for 178 days. I had...fractures on both legs...I am not able to work...I am not able to walk properly....”**

6. The Respondent suffered very serious injuries and underwent a long and painful course of treatment that included open reduction and internal fixation of the fractured bones. I have perused the comparable cases cited before the trial court. That court took into account the passage of time. It cannot be said that the sum of KShs 1,300,000/00 (less contributory negligence) for pain, suffering and loss of amenities was manifestly excessive. I do not find that the trial court, in arriving at that figure, considered any matters it should not have, or failed to consider matters it should have; nor do I find that the trial court applied a wrong principle. It matters not that this court would probably have awarded a little less had it been the one trying the case. I find no lawful reason to disturb the award.

7. I have also added up the sums in the various receipts produced in proof of the special damages. I do not find any fault in the sum awarded of KShs 167,095/00.

8. In the result I find no merit in this appeal. It is hereby dismissed. As to costs, I will award the Respondent only half of his costs of this appeal for failure to attend the hearing. It is so ordered.

**DATED AND SIGNED AT MURANG'A THIS 25<sup>TH</sup> DAY OF MAY 2017**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 31<sup>ST</sup> DAY OF MAY 2017**