



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KISUMU**

**CIVIL APPEAL NO. 9 OF 2016**

**BETWEEN**

**KENYA POWER & LIGHTING COMPANY LIMITED.....APPELLANT**

**AND**

**BENSON ASEKA ANYANZWA .....RESPONDENT**

***(Being an appeal from the Judgment and Decree of Hon.M.C.Nyigei, RM dated 27<sup>th</sup> January 2016 at the Principal Magistrates Court at Maseno in Civil Case No. 90 of 2014)***

**JUDGMENT**

1. This appeal concerns the quantum of damages awarded by the trial court. The respondent was injured in accident that occurred on 27<sup>th</sup> October 2012 along the Yala-Ulumbi road. While riding a motorcycle, the respondent ran over a live electric wire which caused him to be thrown off. As a result of the injuries sustained, he sued the appellant for damages and in due course the issue of liability was resolved by consent in the ratio 80:20 against the appellant. After assessing damages, the trial court awarded the respondent Kshs. 580,000/- and Kshs. 22,550/- as general and special damages respective.
2. Counsel for the appellant, Mr Maganga, condensed the grounds of appeal contained in the memorandum of appeal dated 11<sup>th</sup> February 2016 in his oral submissions. He contended that the trial magistrate treated the appellant's evidence and submissions on quantum superficially. He submitted that by ignoring the authorities cited by the appellant to support its case, the trial magistrate made an award of general damages that was inordinately high given the nature and extent of injuries suffered by the respondent.
3. Mr Kimanga, counsel for the respondent, supported the trial court judgment and submitted that the trial magistrate appreciated the evidence, took into account the nature of the injuries sustained, which were serious in nature, and made a reasonable award based on the authorities cited by the parties.
4. The extent to which an appellate court may interfere with an award of damages by the trial court is well settled. It must be shown that the trial court took into consideration an irrelevant fact or ignored a relevant fact or the sum awarded is inordinately low or too high that it must be a wholly erroneous estimate of the damage, or that a wrong principle of law was applied (see *Butt v Khan [1981] KLR 349*).
5. The appellant does not dispute the injuries sustained by the respondent. According to the plaintiff, he sustained the following injuries: head injury with loss of consciousness, injuries on the chest, in the mouth with loss of teeth, on the back, left and right shoulder, left and right knees, left and right leg with bruises and the groin. He also sustained a left hand fracture. The respondent testified that on the day he

was electrocuted, he became unconscious and was treated at Yala Hospital after being taken there by a good Samaritan. He was later treated at Kakamega General Hospital. At the time of the hearing, he told the court that his hand had not fully healed and he could not ride a motorcycle.

6. According to the medical report prepared by Dr L. W. Okombo on 27<sup>th</sup> March 2013, the plaintiff was complaining of headache with pains in the chest, back, teeth, both hands, knees and loss of libido. He noted that the plaintiff required further treatment particularly physiotherapy and analgesics. As regards the fracture, he noted that it was healing but it would require further attention in future. He also recommended that lost teeth be replaced. Dr Okombo classified the injuries as grievous harm.

7. Before the trial court, the respondent submitted that an award of Kshs. 700,000/- would be reasonable based on the decision in ***Philip Kipkorir Cheruiyot v Nebca (K) Ltd & Another Kericho HCCC No. 70 of 2000 [2006]eKLR***. Although the case was not attached to the written submissions before trial court, the official report shows that the claimant sustained a fracture of the femoral head and dislocation of the right shoulder joint, fracture of midshaft of the right humerus and injury to the radial nerve all resulting in wasting of all muscles of his arm. Disability was assessed at 30% disability. The claimant was awarded Kshs. 600,000/- in 2006.

8. The respondent submitted that Kshs. 230,000/- was reasonable based on the case of ***Patrick Kinoti Miguna v Peter Mburunga Muthama MERU HCCA No. 92 of 2012 [2014]eKLR*** where the court upheld an award of Kshs. 300,000/- in 2014. The claimant suffered a dislocated shoulder, injuries to the left and right leg, chest area, right knee and the loss of two teeth.

9. After considering the evidence and submissions, the learned trial magistrate concluded as follows:

*I have considered the cited case law and note the case cited by the defendant bears almost similar injuries to those of the plaintiff in the case before me but it does not include the fracture to the hand which the plaintiff sustained in this case. The case cited by the plaintiff counsel has more or less similar injuries to those of the plaintiff before me.*

10. 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 bearing in mind that no two cases are exactly alike as the Court of Appeal observed in ***Stanley Maore v Geoffrey Mwenda NYR CA Civil Appeal No. 147 of 2002 [2004]eKLR*** that:

*Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases.*

11. In addition, the current value of the shilling and the economy have to be taken into account and although astronomical awards must be avoided, the court ought to 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***).

12. It is apparent that the trial magistrate did not appreciate the case cited by the respondent as it was not placed before the court. The case; ***Philip Kipkorir Cheruiyot v Nebco (Supra)*** clearly shows that the claimant sustained far more serious injuries than those sustained by the respondent. Since the injuries were far more serious, it could not be relied upon as guidance for the trial magistrate. On the other hand, the trial magistrate accepted that the case cited by the appellant; ***Patrick Kinoti Miguna v Peter Mburunga Muthama (Supra)*** reflected injuries similar to those sustained by the respondent save for the fracture. I therefore find that trial court misapprehended the authorities relied on by the parties and erred in assessing the level of award by failing to give proper consideration to the cases cited resulting in an inordinately high award of damages. Before I conclude, I wish to point out that it is the duty of advocates to assist the court reach a reasonable decision by citing relevant cases.

13. Taking into account the nature of the injuries including the fracture and the element of inflation, I think an award of Kshs. 300,000 would be reasonable compensation for the respondent.

14. I set aside the award of general damages and substitute the same with an award of Kshs. 300,000/- which shall be subjected to the agreed contribution. This amount shall accrue interest at court rates from the date of judgment in the lower court.

15. The appellant shall have costs of this appeal

**DATED and DELIVERED at KISUMU this 4<sup>th</sup> day of August 2017.**

**D.S. MAJANJA**

**JUDGE**

Mr Maganga instructed by L. G. Menezes & Company Advocates for the appellant.

Mr Kimanga instructed by Kimanga and Company Advocates for the respondent.