



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
CIVIL APPEAL NO. 1 OF 2016
PETER KOLEE AMODHE APPLICANT
VERSUS
RASHID METAYAN MESHAMIRESPONDENT

(Being an appeal from the judgment delivered by Hon. J N Nyaga Chief Magistrate at Nanyuki Chief Magistrate Court Civil Case No. 152 of 2009 dated 20th November 2013)

JUDGMENT

1. **RASHID METAYAN MESHAMI** (Rashid) sued **PETER KOLEE AMODHE** (Peter) before the Nanyuki Chief Magistrate's Court, in Civil Case No. 152 of 2009, seeking an award of damages in respect of injuries he suffered. Rashid was a passenger in the motor vehicle registration No. KXX 885 on 18th November 2008 which was driven by Peter. The vehicle rolled and as a consequence Rashid suffered injuries.
2. The trial court found Peter liable and awarded Rashid Ksh. 1,400 in **general damages** and Ksh. 216,270 in **Special damages**. That award is the subject of this appeal filed by Peter.
3. Peter did not tender any evidence before the trial court.
4. The duty of this court, in this appeal, as the first appellant court is to re-evaluate, re-assess and analyze the trial court's evidence and reach its own conclusion. In reaching that conclusion this court should bear in mind that it neither saw or heard the witnesses testify and should therefore make due allowance in that respect: See the Court of Appeal case of **KENYA PORTS AUTHORITY – VERSUS – KUSTON (KENYA) LIMITED 2009 E A 212**.
5. Peter had presented 5 grounds of appeal but abandoned grounds 1 and 2. The remaining grounds primarily and substantially are against the quantum of damages. Peter's by his appeal submitted that the trial court erred both in law and fact in awarding hefty award which he submitted were unjustified. It is clear however, from the submissions before court, that Peter challenges the award in general and not in special damages.
6. Peter's Learned Counsel submitted that the damages awarded by the Learned trial Magistrate were inconsistent with the injuries Rashid suffered.
7. Evidence of the injuries suffered by Rashid was tendered at the trial by doctor Muthiora. The doctor found the following injuries:

- **General blunt injuries all over the body resulting from the impact of rolling;**
- **Bruises on the face;**
- **Soft tissue injuries to the chest;**
- **Fracture right femur distal end;**
- **fracture on the left scapula,**
- **Soft tissue injuries to the left leg.**

8. The trial court, in its judgment, was guided by the following authorities.

9. EDWARD MZAMIU KATANA – V- C M C MOTORS GROUP LTD & ANOTHER (2006) eKLR. The case was determined in the year 2006. The injuries of the claimant were:

- *Head injury leading to concussion.*
- *Cut wound and bruises of the scalp*
- *Fracture of the left scapula*
- *compound fracture dislocating of the left elbow*
- *Chest injury with multiple fractures of left 5th, 6th, and 7th ribs,*
- *Fracture of the left femur upper 1/3 shaft;*

In summary of what were the effects of those injuries to the claimant the court stated thus:

“ He was severely shocked and urgent and emergent resuscitative measures were taken by the administration of intra-venous fluids; the cut wounds were stitched, the left elbows joint was immobilized in a plaster and open reduction operation was done on the femoral shaft by plating and bone graft from iliac crest. He was discharged on crutches on 28th October 1994 after 32 days admission. He resumed light duties on 2nd May, 1995”.

The court awarded Ksh. 2 million as compensation for pain and suffering and loss of amenities.

10. The second case that the trial court relied upon was **MOMBASA HCCC NO. 60 of 1999 DAVID THANJU KARANJA – VERSUS – SAMUEL KIMANI.** The case was determined in the year 2002. The claimant in that case suffered the following injuries:

- *fracture of right tibia (comminution fracture)*

A plastic cast was applied.

- **Fracture of right femur. (Open reduction and fixation with a K-nail was done.**
- **Fracture of the mandible I M F wiring was done.**
- **Injury to the left foot - fractures of metatarsals.**

The court awarded the claimant Ksh. 1 million as compensation for pain and suffering and loss of amenities.

11. The trial court was of the view that the authority relied upon by Peter, namely Nairobi **HCCC No. 467 of 2003 THOMAS KARANJA KAMAU – V- TARGET GUARDS LTD & ANOTHER** determined in the year 2005 where an award of Ksh. 200,000 in general was made comparatively did not represent the serious injuries that Rashid suffered.

12. Doctor Muthiora presented the medical report he had prepared after attending Rashid. I wish to reproduce part of that report for the full capture of the injuries Rashid suffered and their consequences. The medical on Rashid is as follows:

MANAGEMENT OF THE INJURIES

1. At Kimanjo dispensary the patient was received by the nurse on duty who realized that the

injuries were severe. He started the patient on IV fluids and also dressed the wounds. The patient was going into shock hence the reason for quick referral;

2. At the Nanyuki District hospital he was on analgesics and the fracture immobilized in a Thomas splint. The relatives opted to transfer him to Consolata Hospital Mathari;

3. At Consolata Hospital he was taken to theatre after resuscitation for one week. The fracture was fixed with plates. He was admitted from 19th November 2008 to 8th January, 2009 then discharged on clutches.

The patient was not well at the time of discharge due to extensive sepsis. He was readmitted on 28th January, 2009 to 12th February, 2009. During the readmission period it was thought wise to remove the plates to allow for infection to go down. Unfortunately most of the bone was lost to infection. The sepsis subsided but very little bone remained. X-rays show very little bone remaining. The Surgeon advised to have amputation and prosthesis which the patient declined.

PRESENT CONDITION

1. The patient sought help from a hospital for disabled. He was given calipers to support the leg. He now walks on clutches.

2. Lots of shortening on the same limb has resulted in enhanced sole for his shoes.

3. Patient has a lot of pain on the fracture site.

EFFECTS OF THE INJURY TO THE PATIENT

1. The patient can no longer walk straight again even if he was to have prosthesis. The caliper is also too cumbersome

2. He had two children prior to the accident and has not been able to have normal conjugal duties since the accident.

3. He requires special traveling and toilet arrangements all the time.

4. He is now classified as a disabled person.

13. I have labouriously reproduced the injuries suffered in the authorities relied upon by the trial court and Rashid injuries and treatment in order to demonstrate that the appeal of Peter has no merit. The trial court did not err in making its award.

14. The effects of the injuries suffered by Rashid which speak for themselves above were very serious. They turned him from an abled to a disabled man who needed special traveling and toilet arrangements. It also ought to be remembered that assessment of damages in personal injuries cases is not a science. This is what the court stated in the case **S J – V – DINELLO & ANOTHER [2015]**.

“The assessment of damages.... is not an easy one as there is no possible mathematical calculation because it is impossible to assign any formula for determination of the extent to which a plaintiff would be handicapped by his disability if he is thrown on the open labour market”.

15. Having stated so, however I am of the view that the trial court’s award was reflective of the previous and comparable awards. The trial court considered authorities cited and also considered all the relevant factors and kept in mind that the award fairly compensated Rashid.

16. It is for the above reason that the appellant's appeal is dismissed costs.

Dated and Delivered at Nanyuki this 14th December 2017

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

Court Assistant: Njue /Mariastella

For appellant

For respondent

Language

COURT

Judgment delivered in open court

MARY KASANGO

JUDGE