

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 475 OF 2012

IBRAHIM KALEMA LEWA..... APPELLANT

- V E R S U S -

ESTEEL CO. LTD..... RESPONDENT

(Being an appeal from the judgment of Honourable Mr. Ole Keiwua, P.M. sitting at Nairobi Milimani Commercial courts in CMCC No. 4896 of 2011 Ibrahim Lewa –vs- Esteel Company Ltd, dated 10th August 2012)

JUDGEMENT

1. Ibrahim Kalema Lewa, the Appellant herein, filed an action against Esteel Co. Ltd, the Respondent herein claiming for damages arising from the injuries he suffered on 14.10.2010 while he was carrying a pipe jerk on his shoulder at the Respondents' premises as an employee. It is said that when the pipe jerk knocked the wall losing its control and eventually fell on the Appellants left leg at the upper part. Hon. D. Ole Keiwa, learned Principal Magistrate, heard the suit and in the end he awarded the Appellant kshs.300,000/= as general damages. The parties had recorded a consent on apportionment of liability. The Appellant was to shoulder 30% liability while the Respondent shouldered 70% liability. Being aggrieved by the decision on quantum, the Appellant preferred this appeal.
2. On appeal, the Appellant put forward the following grounds:
 1. ***The learned magistrate erred in law and in fact in failing to appreciate the relevant principals and case law in assessing damages on pain and suffering and thereby arrived at a very low award on general damages.***
 2. ***The learned magistrate erred in law in failing to properly evaluate the evidence on record, in particular the plaintiff's witness evidence on permanent in capacity of the appellant and thereby erroneously awarded a low award on general damages.***
 3. ***The learned trial magistrate misdirected himself and failed to give any due and proper consideration to the pleadings and evidence on record and submissions by age of the authority relied upon by counsel for the appellant.***
3. When the appeal came up for hearing, learned counsels recorded a consent order to have the appeal disposed off by written submissions.
4. At the time of writing this judgment, the Appellant was the only party who had filed his submissions. I have considered the written submissions. It is the submission of the Appellant that the trial magistrate erred by failing to properly evaluate the medical report and thereby erroneously making a low award on general damages. It is argued that the award given was not commensurate with the injuries suffered.
5. On my part, I have re-evaluated the case, that was before the trial court. The records shows that the medical report reveals that the Appellant sustained intertrochanteric fracture of the left femur and physical and psychological pains. The recorded evidence further shows that the Appellant was admitted in hospital for two months and thereafter he attended outpatient clinics. The doctor who examined the Appellant also opined that he had suffered 25% permanent incapacity. The doctor further noted that the Appellant would not regain normal functional capacity of his limb. The

Appellant's advocates cited **Nairobi H.C.C.CC no. 20 of 2002 Jairus Nwanza =vs= James Karanja** which this court awarded ksh.300,000/= as general damages for near similar injuries. The learned trial magistrate considered the material placed before the court. Though the Appellant had urged the trial court to award him kshs.800,000 as general damages, that request did not attract any favour.

6. I have on my part reconsidered the submission and the authorities cited and I am convinced that the learned principal magistrate cannot be faulted over his decision on quantum. He gave an award that is commensurate with the injuries the respondent suffered. For this reason I find no merit in the appeal. The same is dismissed with order as to costs.

Dated, Signed and Delivered in open court this 22nd day of April, 2016

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent