



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MURANG'A**  
**CIVIL APPEAL NO 179 OF 2013**  
**(APPEAL FROM DECREE (QUANTUM OF GENERAL DAMAGES ONLY) PASSED**  
**ON 29/04/2013 IN MURANG'A SPMCC NO 215 OF 2012 – J J MASIGA, SRM)**  
**HENRY MBOGO GITAU.....APPELLANT**  
**VERSUS**  
**EDWIN IRUNGU MUKERA.....RESPONDENT**

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

1. The Respondent herein (plaintiff in the trial court) claimed against the Appellant (defendant) damages for personal injuries sustained in a traffic accident. Liability was agreed at 70% to 30% in favour of the Respondent. The trial court awarded him KShs 500,000/00 general damages, less contribution of 30%. This appeal is against that award only.
2. The grounds of appeal appearing in the memorandum are –
  - (i) That the award was “excessive and not commensurate with the...injuries sustained by the Respondent’.
  - (ii) That the trial court ignored the medical reports presented.
  - (iii) That the trial court erred in not taking into account the fact that the Respondent did not suffer any “residual disability”.
  - (iv) That the trial court ignored submissions made and authorities tendered.
3. This appeal was canvassed by way of written submissions. The Appellant’s submissions were filed on 01/02/2016 while those of the Respondent were filed on 12/04/2016. I have considered those submissions, including the cases cited here and in the court below. I have also perused the trial court’s record.
4. The trial court noted that the Respondent sustained the following injuries –
  - (i) **Deep cut wounds and lacerations on upper and lower lips.**
  - (ii) **Multiple lacerations of the gum and mouth.**

**(iii) Lower incisors and molars lost.**

**(iv) Loose upper and lower incisors 22, 31 &32.**

**(v) Deep cut wounds on the gums.**

**(vi) Swollen and tender palm.**

5. Learned counsel for the Appellant has submitted that an award of KShs 200,000/00 general damages should have been adequate and has cited the case of **Samuel Kinyanjui Thuo –vs- Francis Kuria Gathuka, Nyeri HCCC No 18 of 2003** (unreported) where Okwengu, J awarded general damages of KShs 250,000/00 where the injuries were –

- Concussion
- Cuts on the forehead, left hand and upper lip
- Loss of upper left incisor and canine, and lower left canine teeth
- Residual scars on the left frontal region of the face, on the upper and lower lips and on both forearms.

It is to be noted that the decision of Okwengu, J was given on 22/04/2005 while in the present case the award was made on 29/04/2013, some eight (8) years later.

6. As for the submissions of the Respondent's learned counsel, it is merely stated that the award of general damages of KShs 500,000/00 was "very fair to the Appellant...considering the nature of the injuries...".

7. An appellate court will interfere with an award of damages for personal injuries where the same was so manifestly excessive or low as to be an entirely erroneous estimate given the circumstances of the case or injuries suffered.

8. The complaint in this appeal is that the award was **excessive and not commensurate with the injuries sustained**. It is not enough that the appellate court, had it been the one trying the case, might have awarded a little, or somewhat less, than, or not as much as, was awarded by the trial court. The award that is challenged must be **manifestly** excessive and clearly not a proper and just compensation for the injuries suffered.

9. That is not the case here. I find no merit in this appeal. The same is dismissed with costs to the Respondent. It is so ordered.

**DATED, SIGNED AT MURANG'A THIS 26<sup>TH</sup> DAY OF MAY 2016**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 27<sup>TH</sup> DAY OF MAY 2016**