



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

CIVIL APPEAL NO 180 OF 2013

**(APPEAL FROM DECREE (QUANTUM OF GENERAL DAMAGES ONLY) PASSED ON
29/04/2013 IN MURANG'A SPMCC NO 214 OF 2012 – J J MASIGA, SRM)**

HENRY MBOGO GITAU..... APPELLANT

VERSUS

SAMUEL MAINA MWANGI.....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 400,000/00 general damages, less the 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) Fracture of the left scapula.

(ii) Multiple lacerations.

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 **Thomas Karanja Kamau –vs- Target Guards Ltd,**

Nairobi HCCC No 467 of 2003 (unreported) where Ang'awa, J awarded general damages of KShs 200,000/00 where the injuries were –

- Compound fracture of tibia and fibula
- Dislocation of right ankle
- Fracture of right femur
- De-gloving injury of the right thigh at the distal end
- Multiple severe soft tissue injuries.

6. It is to be noted that the decision of Ang'awa, J was given on 10/02/2005 while in the present case the award was made on 29/04/2013, some eight (8) years later. It would also seem, with respect, that the award of KShs 200,000/00 by Ang'awa, J was much on the lower side even at that time, given the nature of the injuries suffered.

7. As for the submissions of the Respondent's learned counsel, it is merely stated that the award of general damages of KShs 400,000/00 was "very fair to the Appellant...considering the nature of the injuries...".

8. 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.

9. 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.

10. 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 26TH DAY OF MAY 2016

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 27TH DAY OF MAY 2016