



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI
CIVIL APPEAL NO. 43 OF 2015

REA VIPINGO PLANTATIONS LIMITEDAPPELLANT

VERSUS

CHITSAKA RUNGUWA CHIRO ALIAS CHITSAKA RUNGUWARESPONDENT

(Being an Appeal from a Judgement and decree of Hon. Mrs. M. Obura, Senior Resident Magistrate delivered on 21st June 2015 in Kilifi, in the Magistrate's Court Civil Case No. 143 of 2014)

JUDGEMENT

The respondent was involved in an industrial accident on 12th August 2013 while working for his employer – the appellant. The respondent suffered an injury to her right eye. She filed the civil suit before the trial court and was awarded Kshs.500,000/= as general damages. This triggered the filing of this appeal.

The grounds of appeal rotates around the amount of damages awarded. The grounds are that the trial magistrate erred by awarding Kshs.500,000/= as general damages, that the award amounts to a wholly erroneous estimate of the damages, that the award is disproportionate and does not take into account the nature and extent of the sustained injuries and that the award is very high and contrary to the evidence on record. The appellant is seeking to have the award set aside and thereby reduced.

Mr. Nabhan, counsel for the appellant submit that the process of assessing damages is discretionary. However, such discretion should be exercised judiciously. It is submitted that an assessment of the amount of general damages will be disturbed if the trial court:

- a). Took into account an irrelevant factor or**
- b). Left out of account a relevant factor or,**
- c). The award is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages.**

Mr. Nabhan submit that a medical report was produced by PW1, Dr. Ajoni Adede. The respondent suffered a thorn prick to the right eyeball. She resumed her work meaning that she healed well and can see properly. The amount of damages awarded is excessive. Counsel relies on the case of **WELLINGTON E. MIEWA V NAIROBI CITY COMMISSION - Nairobi HCCC No. 1148 of 1993** where Kshs.80,000/= was awarded on 26th April 1995 for a penetrating injury to the left eye resulting to

15% loss of eye sight. There is also reliance on the case of **JOSEPH ORESO AGER V MANJI KESHRA CONTRACTORS – Nairobi, HCC No. 913 of 1993**. Kshs.80,000/= was awarded on 8th May 1997 for a penetrating injury to the right eye leading to 15% loss of eye sight. Reliance is also placed on the case of **SAMUEL WERE V LINT MARKETING BOARD UGANDA LTD – Mombasa HCCC No. 44 of 1987**. Kshs.120,000/= was awarded for loss of eye sight. Mr. Nabhan is of the view that an award of between Kshs.50,000/= and 100,000/= would be sufficient.

On her part, Miss Osino, counsel for the respondent, opposes the appeal. Counsel submit that the trial court followed the legal principles involving assessment of damages. The award is reasonable, not inordinately high or erroneous and that there is no contention that the trial court proceeded on wrong principles or misapprehended the evidence.

On the issue of quantum, counsel relies on the case of **STEPHEN MUREITHI WAHOME V PETER NJOROGE GATHURI & OTHERS – Nairobi HCCC No. 3579 of 1985**. Kshs.150,000/= was awarded on 26th October 1989 for injury to the left eye leading to a squint and reduced vision. Reliance is also made to the case of **WAINAINA MWANGI V A.G. – Nairobi HCCC No. 3473 of 1991**. On 31st July 1997, Kshs.450,000/= was awarded for injuries to the left eye leading to loss of vision and 40% permanent disability. There is the case of **JONNAH GASHU KIMANI V INTERFREIGHT (K) LTD; Nairobi HCCC No. 2678 of 1991** whereby on 25th February 1998 Kshs.200,000/= was awarded for loss of right eye sight. Lastly, counsel relies on the case of **CHARLES OCHOLA V MUMIAS SUGAR CO. LTD, Kakamega HCCA No. 81 of 2012** whereby I did award Kshs.300,000/= for injury to the left eye leading to reduced vision and 25% incapacity.

The record of the trial court indicate that two witnesses testified. PW1, Dr. Ajoni Adede informed the court that he saw the respondent on 22nd March 2014. The respondent suffered a prick injury to the right eye ball resulting to bleeding within the eye, lacerations and reduced vision. He assessed permanent incapacity at 5%. He is not an eye specialist.

PW2, Chisaka Runguwa is the respondent. She informed the court that she was cutting sisal on 22nd August 2013 in the morning when a thorn jumped and pierced her eye. She was attended at Rea Vipingo dispensary and was later taken to Coast General Hospital where she was treated and discharged. She complained that she could not see properly with her right eye which is cloudy. She resumed her work.

The main issue for determination is whether the amount of damages awarded by the trial court is excessive or disproportionate to the injuries sustained by the respondent. The trial court relied on the authorities cited by counsel for the respondent namely the case of **STEPHEN MUREITH WAHOME** (Supra), that of **WAINAINA MWANGI V A.G.** (supra) and that of **JONNAH GASHU KIMANI** (supra).

It is evident that all the authorities relied upon by counsel for the appellant are quite old. They were decided in the 1980s and 1990s. The case of **WELLINGTON E. MIEWA** (supra) and that of **JOSEPH OSERO AGER** (supra) gives almost similar injuries although the level of permanent incapacity is 15% as opposed to the 5% suffered by the respondent. Those two authorities are now almost twenty (20) years old. Inflation has affected the level of damages awarded and the purchasing power of the shilling. A similar sum of Kshs.80,000/= cannot be a fair award after a period of about twenty years.

Similarly, some of the authorities relied upon by the respondent's counsel are quite old. In the case of **JOSEPHAT WAINAINA MWANGI V A.G.**, Kshs.450,000/= was awarded in 1997 for loss of vision on the left eye. Permanent incapacity was assessed at 40%. This is a more serious injury than those suffered by the respondent. Even the effects of inflation cannot equate the amount of damages for the injuries in the two cases. In the case of **CHARLES OCHOLA V MUMIAS SUGAR CO. LTD** (supra), the appellant was also able to resume his work provided that he puts on a special gadget. That was necessitated by the nature of his work as a welder. Permanent incapacity was assessed at 25%. I did award the appellant Kshs.300,000/= in 2014.

Given the nature of the injuries sustained by the respondent, I do find that the award is quite high and is not proportionate to the injuries sustained. The respondent testified that she resumed her work of cutting sisal meaning that she can see properly despite the 5% incapacity. I do find that an award of Kshs.250,000/= is sufficient in the circumstances. The appeal is only on quantum and the trial court's findings on liability shall not be disturbed.

In the end, the appeal succeeds. The amount of Kshs.500,000/= awarded to the respondent by the trial Magistrate as general damages is hereby set aside. The damages sustained by the respondent are assessed at Kshs.250,000/=. The special damages of Kshs.2,000/= awarded by the trial court is hereby retained. The respondent shall have the costs awarded by the trial court. Each party shall bare their own cost of this appeal.

Dated and delivered in Malindi this 15th day of August, 2016.

S.J. CHITEMBWE

JUDGE