



REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL NO. 52 OF 2012

BETWEEN

DICKSON NDUNGU KIREMBE 1ST APPELLANT

JOHN KINUTHIA MBURU 2ND APPELLANT

AND

ANNA ANYANGO CHAKA RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. Nangea, SPM dated 1st March 2012 at the Senior Principals Magistrates Court at Maseno in Civil Case No. 66 of 2010)

JUDGMENT

1. This is an appeal against the quantum of damages awarded in the subordinate court. The respondent filed suit against the appellants as a result of an accident which occurred on 24th October 2009 along the Ukwala – Ugunja road near Siranga. The respondent was a passenger in the vehicle belonging to the 1st appellant being driven by the 2nd appellant. As a result of the injuries he sustained he filed suit against the appellants seeking damages. The issue of liability was agreed at 85:15 in favour of the respondent. The trial court awarded Kshs. 200,000/- as general damages for injuries sustained.

2. According to the plaint, the respondent sustained the following injuries; chest injuries, back injury, neck injury, injury to the lower limbs, injuries of the shoulders and facial lacerations. At the hearing the respondent testified that she sustained injuries to the right eye, nose, left leg and right leg. She told the court that she was treated in Siaya and Kisumu and that she was admitted for one day in Siaya Hospital. In cross-examination she stated that she did not sustain any fractures and that the injury on her right leg was stitched. She produced treatment notes and a P3 form.

3. Counsel for the appellant, in urging the appeal, submitted that the award was inordinately high in light of the soft tissue injuries sustained by the respondent. He stated that a sum of Kshs. 80,000/- would adequately compensate the appellant. The respondent's counsel did not attend court despite being served with process.

4. The general principle upon which this Court, as an appellate court, will interfere with an award of damages was stated in ***Bashir Ahmed Butt v Uwais Ahmed Khan [1982-88] KAR 5*** as follows;

An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a

figure which was either inordinately high or low

5. In the subordinate court, only the appellants filed submissions. They cited the case of ***Sokoro Saw Mills Ltd v George Nduta Ndungu NKU HCCA No. 99 of 2003 [2006]eKLR*** where the court set aside an award of Kshs. 80,000/- for soft tissues on the back and hip and awarded Kshs. 30,000/- in 2006. Having considered the soft tissue injuries sustained and the fact that the respondent did not suffer any form of disability, I find that the sum of Kshs. 200,000/- was inordinately high. I therefore set it aside and substitute it with an award of Kshs. 90,000/-.

6. In the result appeal is allowed and the judgment in the subordinate court is substituted with a judgment in favour of the respondent for the sum of **Kshs. 76,500/-** being Kshs. 90,000/- less 15% contribution with costs thereon. The sum shall accrue interest from the date of the judgment in the subordinate court.

7. The appellants shall have costs of the appeal.

DATED and DELIVERED at KISUMU this 11th day of August 2016.

D.S. MAJANJA

JUDGE

Mr Onsongo instructed by Onsongo and Company Advocates for the appellants.

Kuke and Company Advocates for the respondent.