



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NO. 598 OF 2012**

**W.E. TILLEY (M) LIMITED ..... APPELLANT**

**VERSUS**

**PETER NJUGUNA MWANGI ..... RESPONDENT**

*Being an appeal against the judgment of Honourable D. Ole Keiwua P.M. delivered on 8<sup>th</sup> October, 2012 at Milimani commercial Courts)*

**JUDGMENT**

The respondent filed a suit against the appellant following a fish bone prick injury in the cause of his employment. The appellant denied the claim but after the trial the lower court found in favour of the respondent and awarded him a sum of Kshs. 120,000/= general damages, Kshs. 6,000/= special damages, costs and interest. General damages were reduced by 10% which was found to be his degree of contributory negligence. The appellant was aggrieved by that judgment and filed this appeal.

In the memorandum of appeal, the appellant challenged the award of general damages which it said was manifestly excessive and not commensurate with the injuries suffered. It also contended that, the learned trial magistrate failed to attach any weight on the appellant's submissions and testimony as to the occurrence of the incident leading to the accident.

It is my duty to evaluate the evidence adduced in the lower court to arrive at independent conclusions. From the evidence I am persuaded that the injury occurred in the cause of the employment of the respondent with the appellant. On the issue of general damages, I agree with appellant that going by the injury sustained, the sum of Kshs. 120,000/= general damages was inordinately high considering the injury sustained. Other than the cosmetic scar that remained no other concern remained with the respondent. The description of the injury itself was instructive. The respondent said as follows,

**“I was working with others. Were to work on a table. Fish would be thrown on the table by a colleague known as Omondi. As I stood there Omondi threw the fish without my knowledge. So the fish bone pricked me on the middle finger and cut my skin. Then I reported to the superisor Rose who sent me to Edith to write for me a referral note to Baba Dogo Medical Clinic. I went and I was treated in hospital. “**

The medical report produced does not add much to what the respondent said. Other than some blood loss suffered, no incapacity has been identified. In my judgment the correct award in general damages should have been Kshs. 50,000/= which I now substitute in place of Kshs. 120,000/=. This shall be reduced by 10% contributory negligence leaving a balance of Kshs. 45,000/=.

To that extent this appeal succeeds. The respondent shall be entitled to costs and interest based on the above figure.

***Dated, signed and delivered at Nairobi this 15<sup>th</sup> Day of December, 2016.***

**A. MBOGHOLI MSAGHA**

**JUDGE**