



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**CIVIL APPEAL NO. 162 OF 2011**

**SIMON KIMANI KURIA.....PLAINTIFF**

**VERSUS**

**TRANSPARES (K) LTD .....DEFENDANT**

*(Being an appeal from the Judgment/Decree of Hon. S. Soita, Principal Magistrate, Molo delivered on 16<sup>th</sup> August, 2011 in Molo PMCC No. 6 of 2011)*

**JUDGMENT**

1. The appeal is in regard to the award of general and special damages awarded to the respondent on the 16<sup>th</sup> August, 2011 by Honourable S. Soita Principal Magistrate in Molo PMCC Number 6 of 2011.

The respondent had sustained injuries in a road traffic accident while traveling in the appellant's motor vehicle Registration Number KAP 877T on the 4<sup>th</sup> January 2011. He sued the appellant as the owner of the vehicle for the negligence of its driver and agent. At the commencement of the hearing of the suit, a consent judgment was recorded where the plaintiff now respondent was to shoulder 30% while the defendant now the appellant was to shoulder 70% contributory negligence.

The trial court assessed damages for pain and suffering, in the sum of Kshs.150,000/= and a sum of Kshs.10,260/= in special damages.

The appellant was aggrieved by the awards terming them excessive in view of the injuries sustained by the respondent. The award on special damages was under attack as having not been proved to the required standard, hence this appeal.

2. This court has been urged to set aside the said awards and review the awards.

The Respondent's injuries are summarised in the P3 form dated the 6<sup>th</sup> January, 2011 and Dr. Obed Omuyoma's medical report dated the 15<sup>th</sup> June 2010. These documents were produced as exhibits in the trial court. The injuries as shown in the above documents and also as pleaded in the plaint filed on the 1<sup>st</sup> February, 2011 are as follows:

- **Soft tissue injuries to the face,**
- **Blunt injury to the right eye**

- **Soft tissue injury to both hands.**

When the plaintiff/respondent testified before the trial court he stated that he was scratched on the ribs and injured on the left hand and that his teeth become numb. I have looked at the P3 form and the medical report. I find no mention of injury to the ribs or the teeth.

3. In his submissions before the trial court, the Respondents counsel proposed an award of Kshs.200,000/= and relied on the authority of **Job Chanzu & Another -vs- Joseph Okolo and Another -vs- Joseph Okolo & Another, HCCC No. 4494 of 1989** where an award of Kshs.150,000/=. A copy of the said authority is not availed for the court to see what injuries the plaintiff had sustained. The appellant proposed a sum of KShs.20,000/= damages for pain and suffering and relied on the authority **Loise Nyambeki Oyugi -vs- Omar Haji Hassan HCCC No. 42150 of 1991** where a sum of KShs.20,000/= was awarded in 2001 and **Grace Nduta -vs- Sokoro Ltd Nakuru HCCC No. 99 of 2003** where the court awarded KShs.30,000/= in 2006 for soft tissue injuries.

4. I have looked at the trial courts judgment dated the 16<sup>th</sup> August, 2011. I have perused the authorities above. The injuries in the authorities were minor and soft tissue in nature without any residual incapacitation. In his very short judgment, the trial Magistrate stated that he considered the submissions by both parties and assessed general damages at KShs.150,000/=. subject to apportionment of liability. On special damages he stated that the plaintiff exhibited receipts of KShs.13,000/= and awarded the same.

5. This court as the first appellate court is mandated to re-evaluate the evidence before the trial court and come up with its own findings and conclusions as held in the case **Kemfro Africa Ltd t/a Meru Express Services -vs- A.M. Lubia and Another – civil appeal No. 21 of 1984**, where it was held that:

***“The principles to be observed by this appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge are that it must be satisfied that either the Judge, in assessing the damages took into account an irrelevant factor, or left out of relevant one, or that, or short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of damages.”***

6. The appellant in his written submissions urged that the award on general damages of Kshs.150,000/= was manifestly excessive for the soft injuries sustained and submitted that there was no justification to award the same. A sum of KShs.50,000/= was proposed as fair and reasonable and urged this court to exercise its discretion and re-assess the damages on its own, as held in **Butt -vs- Khan C.A No. 40 of 1997**.

He relied on the case of **Sokoro Saw Mills Ltd -vs- Grace Nduta Ndungu (2006) e KLR** where the court set aside an award of Kshs.80,000/= and substituted with an award of KShs.30,000/= in 2006, for soft tissue injuries which had healed.

7. The Respondent in his submissions argued that the appellant failed to demonstrate how the trial court failed to consider the established principles in assessment of damages as he stated that in arriving at the award, he considered submissions by both sides.

There is no dispute as to the nature of injuries that the respondent sustained, these being soft tissue injuries to the face, both hands and blunt injury to the face.

8. While assessing damages, the court ought to consider comparable awards, age of the awards and the incidence of inflation. In my view, had the trial court considered comparable and then recent cases, he would have arrived at a different award, of not more than KShs.80,000/= to the respondent. I have considered the cases of **Zipporah Wambui Waimbaira and 17 Others -vs- Gachuru Kiogora & Others (2004) KLR**. Some of the appellants' had sustained more or less

similar injuries and each was awarded KShs.50,000/= in 2008. I have also considered the case of **Josephine Angwenyi -vs- Samuel Ochillo C.A. No. 125 of 2008.**

The court awarded a sum of KShs.70,000/= to the Respondent for very similar injuries to the respondent herein in 2010. Taking the inflationary trends in the country, I think a sum of KShs.90,000/= would be more appropriate as fair and reasonable. I shall set aside the award of KShs.150,000/= and substitute it with an award of KShs.90,000/= in general damages for pain and suffering.

9. On special damages, I note that a bundle of receipts were produced by the respondent as an exhibit. The sum of KShs.13,000/= was pleaded in the plaint. I have looked at the receipts they amount to KShs.10,260/=. They represent medical expenses from the Nakuru Provincial Hospital, medical report charges, KRA motor vehicle records charge and P3 form charge. The appellant has not told the court how the said sum of KShs.10,260/= was not proved. I find no reason to interfere with this award.

10. For the reasons stated, I find that the trial Magistrate erred and misdirected himself in the assessment of general damages and to that extent the appeal succeeds. I proceed to set aside the award and substitute it with an award of KShs.90,000/=. This sum shall be subjected to a 30% reduction as agreed by parties as the respondent's share of contributory negligence, leaving a Sum of KShs.63,000/= with costs and interest. The award on special damages is confirmed at KShs.10,260/=.

Each party shall bear its costs on the appeal.

**Dated, signed and delivered in open court this 18<sup>th</sup> day of June 2015.**

**Judgment read and signed in open court.**

**JANET MULWA**

**JUDGE**

**In the presence of**

Ms. Kamsi holding brief for Ms. Kamoini for appellant

No appearance for Respondent

Court clerk – Lina.