



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CIVIL APPEAL NO. 91 OF 2014

J S (Suing as Father

and Next Friend of K S alias

K S AAPPELLANT

=VERESUS=

KENYA POWER & LIGHTING COMPANY LTD. RESPONDENT

JUDGMENT

1. This is an appeal against the award of damages in Kakamega CMCC No. 481 of 2013 (hereinafter referred to as '*the suit*') pursuant to the judgment delivered on 21/07/2014.

2. Arising from an accident which occurred on 22/04/2013 where the Appellant herein, **K S alias K S A** was electrocuted by loose high tension electricity transmission lines then serviced, manned and owned by the Respondent herein, the Appellant sustained serious bodily injuries. He subsequently filed the suit in which the Respondent opted to and did not participate.

3. The trial Court found the Respondent wholly liable and assessed general damages at Kshs. 900,000/=. Special damages were awarded at Kshs. 51,050/=.

4. Pursuant to the award of general damages the Appellant herein preferred the following two grounds of appeal that:-

1. The Learned trial magistrate erred in awarding a sum so inordinately low that it represents an entirely erroneous estimate as compared to the nature of permanent injuries suffered by the appellant.

2. The Learned trial magistrate erred in failing to appreciate the long established principal of "stare decisis" thereby driving at an erroneous finding/conclusion.

5. The Appellant filed his submissions urging this Court to make an upward assessment of the general damages to Kshs. 2,500,000/=.

6. As this appeal is on the assessment of damages, I will start by saying that the assessment of damages for personal injuries is a difficult task. The Court is supposed to give a reasonable award which is neither extravagant nor oppressive while being guided by factors including previous awards for similar injuries

and the principles as developed by the Courts. However what constitutes a reasonable award is an exercise of discretion and will depend on the peculiar facts of each case.

7. A Court when dealing with an appeal of this nature must always be reminded of the principles for consideration as enumerated by the Court of Appeal in the case of **Kemfro Africa Limited t/a Meru Express Services, Gathogo Kanini vs. A.M.M Lubia & Another (1982-88) 1 KAR 777.** The court expressed itself clearly thus:-

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

8. The Appellant’s contention in this appeal is that the award made on general damages was so inordinately low that it altogether amounted to an erroneous estimate of the damage sustained by the Appellant.

9. According to the medical documents on record, the Appellant was aged 10 years old when he was involved in the accident. He was then admitted for about 37 days where he underwent extensive medical intervention. The Appellant sustained multiple injuries namely:-

- i) Superficial and deep burns on the right upper limb amounting to 11%;***
- ii) Superficial and deep burns on the right leg amounting to 6%;***
- iii) Superficial and deep burns on the right foot amounting to 4%.***

10. When Dr. J. Stefano Maleche, a Consultant Surgeon examined and prepared the Medical Report dated 27/09/2013 he made the following observations and conclusion:-

- (i) Appellant had lost a lot of blood and had been transfused;***
- (ii) Suffered a lot of pain;***
- (iii) Suffered loss of 20% of his body skin;***
- (iv) The electric shock the appellant sustained had affected his behaviour, and he was very irritable and would sometimes talk to himself;***
- (v) The appellant was still undergoing counseling;***
- (vi) He had ugly scars on the body;***
- (vii) Had impaired movement of the right elbow joint which required further physiotherapy;***
- (viii) He suffered a total of 8% partial incapacity.***

11. The said doctor further noted that the Appellant’s wounds had to be dressed on a daily basis as well as undergoing daily physiotherapy to correct the shoulder joint stiffness.

12. The aforesaid Doctor J. Stefano Maleche further examined the Appellant on 05/04/2014 which was almost one year post the accident and made the following observations and conclusions:-

- (i) He had continued to receive physiotherapy in respect to his right shoulder and elbow joint;***

(ii) He still had abnormal behaviour; was quiet and had retreated from the society. He would easily fight other students in class and does not respect authority.

(iii) There was need for a Psychiatrist's intervention for evaluation and further management;

(iv) While the appellant was admitted to the hospital, his mother out of the appellant's condition was deeply affected and led to her suffering stroke. She is still on treatment;

(v) Both the appellant and his mother were deeply affected by the accident.

13. I have looked at the photographs on record showing the extent of the burns sustained by the Appellant. I have equally and carefully perused the medical literature on record. The electric-shock accident, in respect of which consistent and well supported evidence was given before the trial Court, changed both the life of the Appellant as well as that of the Appellant's mother. The Appellant's mother was so deeply affected by the son's accident that she eventually suffered stroke. At the time the Appellant testified, her said mother was still undergoing stroke management.

14. Of equal measure was the fact that the Appellant was also still undergoing physiotherapy as a result of his erratic anti-social behaviour and he was yet to begin the mandatory psychiatric intervention. He definitely suffered some impairment in the brain which was yet to be managed and its extent determined. With such a condition, the Appellant will definitely be affected in his educational pursuits moreso given the erratic character and in his resultant disobedience to authority. In other words, the Appellant may require a certain degree of further management. His life was definitely affected as a result of this accident and the Appellant may not be able to manage himself independently, but this is subject to the further medical intervention. His future is therefore uncertain given that he is yet to seek psychiatric services. It cannot therefore be known how many more times he will require such care in future. This aspect cannot therefore be overlooked and since it cannot be treated as part of special damages, must be taken into account in the award of general damages.

15. I have also perused the judicial authorities relied upon by the Appellant as well as those relied upon by the trial Court. I do agree with the Appellant in his submissions that the trial Court in relying on the case of **Nzilani Ndari vs. Bonface Musyoka Ndolo & Another; Nairobi HCCC No. 954 of 2000 (unreported)** did not reveal the nature and extent of injuries sustained as the authority only revealed that the Plaintiff therein suffered a disfigurement assessed at 20% to 25%. It remains unclear if the Plaintiff in that case suffered single or multiple injuries and what the case was all about.

16. The trial Court ought to have been properly guided by the decision of **Charles Kimani Ng'ang'a (minor) vs. Kenya Power & Lighting Company Limited (2006) eKLR** which the Appellant availed and which had a lot of similarities with the matter before Court including the fact that the Plaintiff therein was a minor aged 14 years old and that the cause of action was due to an electric-shock. The injuries sustained therein and the resultant effects offer great semblance to those in this case.

17. Had the trial Court addressed itself to the said decision coupled with the then prevailing status of the Appellant and the need for future medical intervention, I am of the considered view that the trial Court would have come to a different and a higher assessment of damages. To that end, I hereby find that the award of damages made by the trial Court in the circumstances of this matter was far below a reasonable assessment. I do therefore set-aside the award of Kshs. 900,000/= on general damages.

18. Looking at the said authority of **Charles Kimani Ng'ang'a (minor) vs. Kenya Power & Lighting Company Limited (2006) e KLR** which is persuasive to this Court, I do note that the injuries sustained therein were abit more serious than those sustained by the Appellant herein.

19. From the foregone and with the caution that awards in general damages ought to be comparable to those made by the Courts in Kenya generally over the years in mind, I would assess general damages at Kshs. 1,600,000/=.

20. The upshot is, and for avoidance of doubt, that judgment for the Appellant against the Respondent is hereby entered as follows:-

(a) Liability – 100% against the Respondent;

(b) General damages for pain, suffering and loss of amenities including future medical care at Kshs. 1,600,000/= with interest from the date of judgment in the trial court.

(c) Special Damages of Kshs. 51,050/= with interest from the date of filing of the suit;

(d) Costs of the appeal as well as of the suit be borne by the respondent.

Orders accordingly.

DELIVERED, DATED and SIGNED at Kakamega this 23rd day of July, 2015

A.C. MRIMA

JUDGE

In the presence of

Mr. Mukele Adv. For the Appellant

N/AFor the Respondent

Miss. SelpherCourt Assistant