



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

CIVIL SUIT NO.277 OF 2013

SILAS MUTHURI MURAGA.....1ST
 APPELLANT

LEONARD MIRITI.....2ND
 APPELLANT

Versus

MARGARET MWENGWA MUNENE.....
RESPONDENT

JUDGMENT

[1] The Respondent was the Plaintiff in the lower court where he had sued the Appellants seeking the following reliefs:

- a) **General damages for pain, suffering and loss of amenities.**
- b) **Special damages at Kshs 17,631.**
- c) **Costs and interest at court rates.**

[2] Liability was agreed by consent of the parties on 6th February 2013 at 85:15 in favour of the Appellant and Respondents, respectively. Upon conclusion of the case the Trial Court awarded the Respondents a sum of Kshs 650,000 for General Damages for pain and suffering and loss of amenities less 15% contributory negligence. The trial court also awarded Special Damages to the Respondent in the sum of Kshs 17,631 plus costs of the suit.

The Appeal

[3] The Appellants were aggrieved by the said award and filled this appeal; the grounds of which are set out in the Memorandum of Appeal as follows:

1. **The learned magistrate erred in fact and in law in finding that the plaintiff was entitled to general damages of Kshs 650,000 that was too high in view of the injuries suffered by the plaintiff.**
2. **The learned magistrate erred in fact and law in failing to consider the defendants submissions on quantum.**

3. **The learned magistrate erred in fact and law in failing to consider conventional awards for General Damages in cases of similar injuries.**
4. **The learned magistrate erred in fact and in law in making an award for special damages of Kshs 12,600 that had not been strictly proved occurred from the alleged accident.**

[4] Directions were given on 9th October 2014 upon consent of the parties that the appeal be determined by way of written submissions.

[5] The Appellants submitted that the learned trial magistrate erred in fact and law in awarding the Plaintiff General Damages of Kshs 650,000, for the award was too high in view of the injuries suffered by the Plaintiff and the circumstances of the case. They argued that the injuries sustained by the Respondent had healed completely as at the time of giving evidence. And so, they beseeched the court to reduce the award to Kshs 100,000. According to the Appellants, the Special Damages awarded was not specifically proved by the Respondent, in particular that she paid Kshs 12,600 indicated in the invoice. They stated that the court should have awarded Kshs 8,181 as Special Damages instead of Kshs 17,631 as that was the amount that was proved.

[6] The Respondents on the other hand submitted that the Respondent sustained fracture of the sixth cervical (neck) vertebrae, cut on the forehead and lacerations over the lower limbs and that the Respondents injuries were set out in the medical reports by John Macharia and the Appellant's own doctor Dr. Wairoto Kagwi. It was submitted that the learned trial magistrate relied on the authority of **Mary Nyadzua Ngale vs. Shetkh Bin Dahman T/A Malindi Bus (2005)** which had been quoted by the Appellants. Consequently it was submitted that the award was not excessive but fair and reasonable as the Respondents' injuries inter alia involved a fracture of the neck which was life threatening. The Respondent also submitted that Special Damages were specifically pleaded and proved by the receipts that were produced in court in support of the award of special damages of Kshs 17,631.

DETERMINATION

[7] I have carefully considered the rival submissions by the parties. The Appellants' grounds of appeal can be condensed into two main grounds as follows:

1. **Whether the trial court's award was excessive considering the nature of the injuries sustained by the Respondent; and**
2. **Whether the claim of special damages of Kshs 17,631 was proved?**

The Threshold on general damages

[8] Circumstances in which an appellate court will interfere with the quantum of damages awarded by a trial court were clearly laid out in the case of **Kenya Bus Services Limited vs. Jane Karambu Gituma Civil Appeal Case No. 241 of 2000** by the Court of Appeal as follows:

"...in this regard, both the East African Court of Appeal (the predecessor of this Court) and this court itself have consistently maintained that an appellate court will not interfere with the quantum of damages awarded by a trial court unless it is satisfied either that the trial court acted on a wrong principle of law (as by taking into account some irrelevant factor or leaving out of account of some relevant one or adopting the wrong approach), or it has misapprehended the facts, or for those or any other reasons the award was so inordinately high or low so as to represent a wholly erroneous estimate of the damages."

[9] From the medical reports, the Respondent suffered the following injuries:

1. **Fracture of the sixth cervical (neck)**
2. **Cut on the forehead**

3. Laceration on the lower limb

The learned trial magistrate awarded the Respondent a sum of Kshs 650,000 as General Damages for pain and suffering and loss of amenities. In awarding the said amount she relied on the case of **Mary Nyadzua Ngale vs. Shetkh Omar Bin Dahman T/A Malindi Bus (2005)**, which had been cited by the Appellants in their submissions. In that case, the plaintiff who had suffered subluxation (dislocation of cervical vertebrae C3 and C4 with narrowing disc space between) was awarded Kshs 300,000 as General Damages for pain and suffering and loss of amenities. In awarding the said figure, the trial magistrate noted that the injuries sustained by the plaintiff in that case bore some relevance on the ones suffered by the Respondent. She also considered the lapse of time since the award was made and the age of the Respondent. The injuries that were sustained by the plaintiff in the above cited judicial authority that was relied upon by the trial magistrate were not exactly the same as the ones sustained by the Respondent herein, but I do not find anything to suggest that the trial court acted on wrong principle or took into account some irrelevant factor or left out of account some relevant ones or adopted a wrong approach or misapprehended the facts. No case which will have exactly same injuries as another; there will always be some difference or variance or degree of variance. And the court is simply supposed to consider the relevance of the case and treat it as a guide in assessment of damages which is purely discretion of the court. Similarly, the trial magistrate should take into consideration the nature of the injuries and other relevant factors including inflation. The totality of these factors will produce reasonable assessment. The judgment by the trial court was short, but took into account all relevant factors in assessing the damages. There is, therefore, nothing to suggest that the trial court made an award which is inordinately high or excessive as to represent a wholly erroneous estimate of damages. Consequently I hold and find that the award of Kshs 650,000 less 15% contribution for General Damages for pain and suffering and loss of amenities was not manifestly excessive. I see no basis of interfering with the discretion by the learned trial magistrate in making the award herein. I have dealt with ground No 1, 2 and 3 in the Memorandum of Appeal. All these grounds fail and are dismissed.

Of Special Damages

[10] It was urged that the trial court ought to have awarded Special Damages in the sum of Kshs 8,181 instead of Kshs 17,631. The former sum was the one that was proved in court. The Respondent on the other urged the court to find that receipts were produced in court in support of the award of Kshs 17,631 as Special Damages. It is trite law that special damages must not only be strictly pleaded but must also be strictly proved. I have carefully considered the receipts tendered in evidence and I am satisfied that the receipts produced in court are for a sum of Kshs 17,581 and not Kshs 8,181 or Kshs. 17,631 as submitted by the Appellant and Respondent respectively. I therefore, substitute the award of Kshs. 17,631 with an award in the sum of Kshs. 17,581 as Special Damages.

[11] In view of the foregoing, I find the Appellants' appeal to be without merit and I accordingly dismiss it with costs to the Respondent. It is so ordered.

Dated, signed and delivered in court at Meru this 10th day of December 2015.

F. GIKONYO

JUDGE

In the presence of:

Muthomi Advocate for the respondent

Kieti advocate for Kairu & McCourt Advocates for Appellant.

F. GIKONYO

JUDGE