

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL APPEAL NO. 120 OF 2012

JOHN ONYANGO OMOLLO.....APPELLANT

VERSUS

MARY OMOLO NDEGE.....RESPONDENT

J U D G M E N T

1). The respondent sustained injuries on 19-12-2010 where she was a fare paying passenger aboard motor vehicle Reg. No. KBH 395T owned by the defendant which was traveling along Ndori – Uyoma road. The injuries sustained were:

1. **Deg loving injuries of the right upper limb with loss of tendons.**
2. **Cut wound on the forearm.**

2). The respondent was awarded general damages of Kshs. 600,000/= as well as cost. This appeal is premised on the fact that the above damages were excessive in the circumstances and not commensurate to injuries. Both parties have filed rival submission and authorities.

3). It is now well established that an appellate court shall not interfere with an award of damages unless it is shown that the same were inordinately high or low in the circumstances and that the court applied wrong principles of law. See **Butt -VS- Khan Civil Appeal No. 40 of 1977.**

4). The basis of this award can be deduced from the evidence of Dr. Kiamba where on cross examination he said:

“There were no fractures. They not soft tissue injuries because there was loss of muscles and tendons, they are very serious injuries. I examined the patient on 30-7-2011 more than seven month had passed since the accident. The scars had healed but the upper limb was permanently deformed. My report indicates loss of tendons. She cannot do anything gainful with that upper limb. When tendons are lost nothing can be done to restore them”.

5). The said doctor attributed permanent disability at 30%. From the above evidence although there was no skeletal fracture, the respondent would be unable to use her right hand. The respondent testified that she was right handed and this obviously would require her to learn how to use her left hand.

6). The injuries as concluded by Dr. Kiamba were serious. But was the award excessive as suggested by the appellant? Did the trial court apply wrong principles? I do not think so. The lack of use of her right hand is not a mundane matter. She has to train her left hand. The 30% disability is a permanent mark on her life.

7). The authorities cited by the parties are relevant depending on the site of the divide. What I consider relevant is that of **Spin Knit Limited -VS- Johnstone Otara, 2006 (eKLR)** where the respondent was awarded general damages of Kshs. 300,000/= and degree of disability assessed at 10%. The respondent as in this case lost use of his right hand. This was of course in 2006. Comparatively therefore I do not find the sum of Kshs. 600,000/= excessive. The nature of the injuries sustained by the respondent and in particular the lack of use of the right hand mitigates the award. Taking into totality the facts herein and

having read the pleadings, proceedings and the trial court's judgment I am satisfied that the award is reasonable, and fair taking into consideration the current inflation. The trial court did not take into consideration such irrelevant matters.

I do disallow this appeal with costs to the respondent.

Dated, signed and delivered at Kisumu this 24th day of June, 2014.

**H.K. CHEMITEI
JUDGE**