



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**  
**CIVIL APPEAL NO. 160 OF 2009**

NOAH ASIEGO:.....1<sup>ST</sup> APPELLANT  
COLLATE ATIENO OWICH:.....2<sup>ND</sup> APPELLANT

VERSUS

LEAH JEPKEMBOI:.....RESPONDENT

**JUDGMENT**

The appeal emanates from the judgment of the **Honourable J.M. Njoroge**, Principal Magistrate Kapsabet delivered on the 8<sup>th</sup> September, 2009 in Kapsabet PMCC NO. 251 of 2007.

The grounds of appeal are as set out in the Memorandum of Appeal at page 2 of the Record of Appeal.

There are two (2) grounds of appeal, the same are as set out hereunder:-

- 1) That the Learned Trial Magistrate erred and misdirected himself in law by making an assessment of damages that were far excessive and incongruous to the nature, degree, security and inconvenience of the Respondents' injuries and which were manifestly incomparable to the current judicial award for analogous injuries.**
- 2) That the Learned Trial Magistrate erred in Law in failing to appreciate and apply the principles applicable in assessment of damages in pursuance of injury claims.**

The Appellants prayer was that the judgment entered be reviewed and or set aside. There was also a prayer that the Respondent bear the costs of the appeal.

A short summary of the matter before this court is that the suit arises from a general damages claim. The Respondent was on the 5<sup>th</sup> May, 2007 injured while travelling in a motor vehicle owned by the 1<sup>st</sup> Appellant which was involved in a Road Traffic Accident and had collided with the motor vehicle owned by the 2<sup>nd</sup> Appellant.

The Respondent, as a result of the said accident sustained injuries and was awarded a sum of Kshs. 350,000/- as general damages. Liability was apportioned on 75% to 25% basis. Therefore the net general damages amounted to Kshs. 262,500/-. The Respondent was awarded special damages in the sum of Kshs. 2,000/- plus costs and interest.

The Appellants being aggrieved by the said award for damages have presented this appeal.

Before the counsel for the Appellant and Respondent commenced with their submissions, it was mutually agreed by both parties that the apportionment of contributory negligence remain the same that is 75% to the appellant and 25% attributable to the Respondent.

Counsel for the Appellants submitted that the only injuries sustained by the Respondent were a fractured clavicle and multiple soft tissue injuries. Reference was made to the Discharge Summary from the Moi Referral Hospital which confirmed the above injuries and did not mention the issue of insertion of Plates. Reference was also made to the P3 Form which confirmed that the open wound on the leg was stitched and no plates or screws were inserted.

The Appellants prayer was the award for general was an erroneous estimate and the same be set aside and the same be substituted with a lesser amount.

Counsel for the Respondent opposed the appeal and stated that the Respondent suffered very serious injuries which were captured in the medical report and the plaint. That the Respondent was admitted for twenty three (23) days at the Moi Referral Hospital due to the gravity of her injuries.

In conclusion Counsel for the Respondent submitted that the appellants had failed to annex authorities to their submissions at the trial of first instance and therefore urged this court not to interfere with the award for general damages and prayed that the appeal be dismissed with costs to the Respondent.

I have heard the submission of the Counsel for Appellants and counsel for the Respondent and have read their respective Submissions. I find that there is only one issue for determination which is on quantum, relating to the amount awarded by the trial magistrate for general damages.

The Respondent herein sustained a fracture of the right clavicle together with deep cut wounds on the right thigh and an injury to the head. The medical report prepared by DR. Obed Omuyoma at page 22 of the Record of Appeal confirms the injuries sustained. The Discharge Summary at page 15 and the P3 Form at page 20 of the Record of appeal also confirm the injuries sustained by the Respondent.

The Discharge Summary shows that the Respondent was only admitted for one day and not twenty three (23) days as submitted by the Respondents Counsel.

None of the documents mentioned above indicate or confirm that there was a plate fixation carried out on the Respondents right thigh.

I find that the appellant counsels submissions on the injuries sustained by the Respondent to be more accurate and concur that damages awarded were inordinately high and represent an erroneous estimate.

I find that the trial magistrate erred and misdirected himself by making an assessment for damages that was based on an erroneous estimate as set out on page 32 of the Record of Appeal. The Respondent I reiterate was only hospitalized for one day and not three (3) weeks as stated by the trial magistrate. Nor did the Respondent plead to a surgical scar on the chest nor multiple scars on the right thigh as is set out in the judgment.

For the reasons set out above and in the interest of justice, I shall allow the appeal and set aside the award for general damages made by the trial magistrate and substitute the same with an award for Kshs. 250,000/-. This award is based on the authorities of:-

**1) BENEDICT ONCQABQU BUNDUKI -VS- J. A. KORIR & ANOTHER HCC 1980/88 where V. JUMA J. - awarded a sum of Kshs. 250,000/- for a fracture of the clavicle.**

**2) HASSAN NOOR MAHMOOD [2001] e KLR where ANG'AWA J. - made an award of Kshs. 200,000/- for similar injuries.**

The issue of liability had been agreed upon.

The appeal is hereby allowed and as to the issue of costs, each party shall bear their own costs.

**DATED AND DELIVERED AT ELDORET  
THIS 29<sup>TH</sup> DAY OF NOVEMBER, 2011**

**A. MSHILA  
JUDGE**