



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS Civil Appeal 27 of 2000

KIMATU MBUVI.....APPELLANT

VERSUS

BENSON NGULI.....RESPONDENT

JUDGMENT

1. The Respondent, Benson Nguli, was allegedly involved in a road traffic accident on 27.10.1997 and he suffered the following injuries;
 - i. blunt injury to the right shoulder
 - ii. blunt injury to the chest
 - iii. blunt injury to the right elbow

2. He filed a suit against the Appellant, Kimatu Mbuvi owner of motor vehicle Registration No. KAK 520C in which he was said to have been a fare paying passenger. The subordinate court awarded him Kshs. 120,000/= and in submissions before me, the Appellant is challenging that award as being overly excessive and unreasonable. I note that the grounds relating to liability were not touched on and were abandoned but, in any event, liability cannot be challenged where a party calls no evidence to rebut the allegations of negligence and hardly challenges the circumstances of the accident in question. I will therefore limit myself to the question whether the award in damages was fair and reasonable or not.

3. The injuries set out above are not denied and in reaching a determination of the issues before me, I am guided by the decision in Arrow Car Ltd vs Elijah Shama Illa Bimomo & others C.A. 344/2001[U.R.] where the Court of Appeal held as follows:-

“What about the injuries sustained by the respondents in this Appeal? We have indicated that taking into account the fact that comparable injuries should be compensated by comparable awards...”

4. I have been pointed to the following authorities in support of the contention by the Appellant that the award was exorbitant;

i. HCCC 2048/1996(Nairobi)–Veronica Turkwell vs Attorney General - Kshs. 60,000/= was awarded for cuts to the forehead, injury to the left arm and bruises on the right leg.

ii. HCCC 4084/1983(Nairobi) – Daniel Nkurne vs Constatino Thomas & another Kshs - 100,000/= was awarded for blunt injuries to the head, chest right knee together with multiple bruises and cuts.

iii. HCCC 116/2008 (Machakos- KPLC vs Samson Makori – Kshs.80,000/= was opined to be a fair award for soft tissues injuries, to the face, chin, rib cage and knee.

5. The Respondents on the other hand relies on the following decisions.

i. HCCC 4676/1990(Nairobi)- Jacinta Akinyi & Another vs Philip Siele & Another – Kshs. 150,000 was awarded for multiple severe soft injuries.

ii. HCCC 4303/1989 (Nairobi)- Susan Mutahi & 3 others vs

Michael Njoroge- Kshs. 150,000/= was awarded for moderate head injury, severe de-gloving of the skin on the left thigh and closed compression chest injury.

6. Being the first appellant court, the award in damages can only be overturned if;

a. the trial court has acted on wrong principles or

b. the award is excessive or

c. the award is too little or

d. that irrelevant considerations were taken into account and relevant ones ignored.

(*see Butler vs Butler [1984] KLR 225*).

7. In his judgment, the learned trial magistrate considered the injuries suffered, applied the authorities cited by advocates for the parties and concluded that taking into account all the prevailing circumstances and “*doing the best*” he could, Kshs. 120,000/= was a reasonable award. I have also considered the injuries, and I agree that the decisions cited by the Appellant are not applicable and the proposed award of Kshs. 80,000/= is low, unreasonable and unfair. I accept that the comparable case would be Jacinta Akinyi(*supra*) where the injuries were a little more severe and that to reduce the award to Kshs. 120,000/= would be unfair.

8. In a nutshell, I see no merit in the Appeal. The same is dismissed with costs to the Respondent.

9. Orders accordingly.

Dated and delivered at Machakos this 11th day of February, 2010.

Isaac Lenaola

Judge

In the presence of; Mr.Makau h/b for Mr. Masika for Appellant

Mrs Nzei h/b for Mr.Mungata for Respondent

Isaac Lenaola

Judge