



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
CIVIL APPEAL 151 OF 2008

STRATBAG INTERNATIONAL GMBH.....
.....APPELLANT

VERSUS

MOHAMD MAALIM ALIORESPONDENT

J U D G E M E N T

This is an appeal against the quantum of general damages awarded to the Respondent (who was plaintiff in the lower court) for injuries suffered in an accident that involved a truck. The only ground of appeal is that the lower court misdirected itself when it assessed general damages at KShs 800,000/00, **“which sum is inordinately high as to be an erroneous estimate of damages payable considering the fact that the Respondent sustained injuries which have healed leaving no permanents functional disability”**.

I have perused the record of appeal. I have also considered the written submissions filed on behalf of the parties, including the cases cited. Judgment on liability was entered by consent at the ratio of 80/20 in favour of the Respondent.

The accident occurred as follows. As the Respondent was boarding a fuel tanker apparently in the course of his duties, the driver began to drive off. As a result the Respondent fell on his back thereby hitting his head hard on the ground. The truck then ran over his right thigh and pelvis.

The medical evidence tendered before the lower court showed that the Respondent suffered the following injuries.

1. Linear fracture of the skull.
2. Linear fracture of the pelvis
3. A cut on the back of the scalp

4. Bruises and abrasions on the right groin and knee.
5. Laceration on the right thigh.
6. Brief unconsciousness.

The accident occurred on 26th January 2005. He was admitted in hospital until 2nd March 2005. Treatment consisted mainly of bed rest for the fractured pelvis. He was mobilized from about the third week of February 2005 and was walking when he was discharged. He then attended a weekly clinic at the hospital for about two months. At one of the clinics his thigh was drained. In early May 2005 he resumed work on light clerical duties. From June 2005 he went back to his duties as a fuel clerk.

The Respondent's fractures healed without any residual problems. He has permanent scars at the injury sites, but these are in the covered region of his body and do not present any major cosmetic issue. The pain in his knee during cold weather and the swelling in his right thigh (as a result of soft tissue injuries) will subside and settle down in time.

The Respondent also had a complaint of diminished sexual frequency which medical opinion thought was rather exaggerated and not related to his injuries.

The doctors who examined the Plaintiff opined that the Respondent had, all in all, healed very well and suffered no permanent functional disability. But he had suffered temporary disability that had lasted for about four months.

An award of damages is an exercise of discretion. An appellate court will interfere with an award of damages only if it is satisfied that the trial court acted on a wrong principle of law, or misapprehended the facts of the case, or, for those or other reasons, made a wholly erroneous estimate of the damages. See the case of **Kassim vs Kampala Aerated Water Co. Ltd [1965] E.A. 587**. An appellate court will also interfere where the damages awarded are so inordinately high or low as to constitute a wholly erroneous estimate.

I have looked at the cases cited by the parties herein, both before the lower court and here. In the cases cited by the Respondent the damages awarded ranged between KShs. 800,000/00 and KShs. 1,500,000/00. But the injuries suffered in those cases were decidedly more serious than those suffered by the Respondent herein. The awards were over 15 years old. In the cases cited by the Appellant the awards ranged from KShs. 200,000/00 to KShs. 250,000/00.

It cannot be gainsaid that the Respondent suffered serious injuries which, fortunately, healed

well. One aspect that has not been commented upon by the parties, or even the lower court, was the fairly long hospitalization of the Respondent. He was admitted into hospital on the day of the accident (*25th January, 2005*) and was discharged on 2nd March 2005. He was thus an in-patient for over a month. There followed weekly clinics for about two months.

Assessing damages is not a science but an art. Though similar damages should be awarded for similar injuries, no injuries will be exactly the same. There are also other variables that the courts will consider at the time of the award, for example the cost of living, the standard of living, the rate of inflation, etc. Besides, assessing damages is an exercise of discretion that will not be lightly interfered with.

In the present case, I am not satisfied that the trial court acted on any wrong principle of law, or misapprehended the facts of the case, or that it made a wholly erroneous estimate of the damages. I am also not satisfied that the damages awarded are so inordinately high as to amount to a wholly erroneous estimate of the same. It is not enough that were I the trial court I would probably have awarded a somewhat lesser sum.

I find no merit in this appeal. The same is hereby dismissed with costs to the Respondent. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS

23RD DAY OF APRIL 2010.

**H.P.G. WAWERU
JUDGE**