



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT ELDORET**

**Civil Appeal 113 of 2006**

**LUKA OSORO ..... 1<sup>ST</sup> APPELLANT**

**CHEMELIL SUGAR CO. LIMITED ..... 2<sup>ND</sup> APPELLANT**

**VERSUS**

**DANIEL K. CHERUIYOT ..... RESPONDENT**

**JUDGEMENT**

This is an appeal against the Judgement of the Principal Magistrate at Eldoret in Eldoret CMCC. No. 83 of 2005 delivered on 23.08.06.

The grounds of appeal are substantially in respect of the quantum of damages awarded to the Respondent as a result of injuries sustained in a road accident on 17.04.2004 while he was cycling along Eldoret – Kapsabet Road. The grounds of appeal are as follows:-

1. That the learned trial Magistrate erred in law and in fact in awarding general damages that is not proportionate to the injuries in question.
2. That the learned trial Magistrate erred in law and in fact in ignoring the submissions of the Defendants without proper reason to do so.
3. That the learned trial Magistrate erred in law and in fact in awarding damages which were inordinately excessive in the circumstances.
4. That the learned trial Magistrate erred in law and in fact in disregarding and/or failing to accord the necessary considerations to the medical evidence adduced in Court.
5. That the learned trial Magistrate erred in law and in fact in ignoring the authorities presented to him by the defence.

At this trial, liability was agreed between the parties at

the ratio of 85% - 15% against the Defendants and Plaintiffs respectively.

The injuries that the Plaintiff sustained were:-

1. Soft tissue injuries to the upper arm.

2. Fracture of the right humerus.

The trial Court awarded general damages of Shs.

250,000/= for pain and suffering and loss of amenities and special damages of Shs. 2,000/=.

The Plaintiff had relied on the decision in **NJUGUNA GIKONYO –V- KENYA TEA DEVELOPMENT AUTHORITY NBI HCCC. NO. 1533 OF 2002** in which the Court awarded Kshs. 300,000/= on 11.8.1992. The injuries in the said case was a fracture of the left humerus, injury to the neck, and major injury to the back and soft tissue injuries to both legs. The Plaintiff's disability was assessed at 40%.

The Defendants relied on the case of **LAWRENCE KAMANDIU KOLE –V- GEOFFREY MUSAI & ANOTHER HCCC. NO. 1718 OF 1981 AT NAIROBI**. In the said case the High Court awarded a sum of Kshs. 80,000/= to the Plaintiff for the following injuries:-

- fracture of the upper right humerus
- blunt injury to the shoulder

The decision was tendered on 11.7.91.

I have considered the Memorandum of Appeal, the pleadings, proceedings, authorities and submissions by Counsel.

From the medical reports the injuries had healed by the time of the trial though there was a large surgical scar left on the right upper arm.

From the record, I perused two other decisions relating to

similar injuries. In the case of **CHARO KARISA RANDU –V- CHARO KENGA & ANOTHER HCCC. NO. 5821 OF 1990**, the Court in a decision delivered on 12.10.92 awarded general damages of Shs. 400,000/=. In respect of a fracture of the right humerus, laceration over the right ankle, left parietal region and cut wound on the right knee. The injuries had healed without any permanent residual disability.

In the case of **BEATRICE THOMI –V- USHAM SINGH & ANO. HCCC. NO. 3297 OF 1982 NAIROBI** – the High Court awarded Shs. 120,000/= as general damages for pain, suffering and loss of amenities in respect of the following injuries:-

- a mid shaft fracture of the right humerus,
- laceration, on the forehead
- laceration on the right knee
- swollen eye.

The decision was made on 30.5.91. The said cases show

that the awards in early 1990s for similar injuries ranged between Shs. 80,000/= and Shs. 120,000/= depending on severity of the injuries or permanent disability.

The Judgement in the present case was delivered on

23.08.06, a period of about 17 years from the time most of the aforesaid decisions were made. This is a very long time. The value of the Kenya Shilling has not remained the same and the cost of living has continued to escalate. The parties did not submit more recent cases to assist the trial Court. The inflationary rate of increase over a period of 17 years must be high, probably it has even trebled.

As a result I am of the view that a sum of Kshs.

250,000/= for the injuries sustained was not manifestly excessive in the circumstances as to make the decision erroneous. I think the discretion exercised was reasonable and fair considering all the factors and circumstances.

I therefore do hereby dismiss the appeal with costs to the

Respondent.

**DATED AND DELIVERED AT ELDORET ON THIS 3<sup>RD</sup> DAY OF SEPTEMBER, 2008.**

**M. K. IBRAHIM**

**JUDGE**

**In the presence of:-**

Mr. Nabasenge for the Appellants

Mrs. Were for the Respondent