



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

**AT ELDORET**

**Civil Appeal 149 of 2003**

**SOREN PETERSON ..... 1<sup>ST</sup> APPELLANT**

**ANDERS JACOBSEN ..... 2<sup>ND</sup> APPELLANT**

**VERSUS**

**CHARLES MUHAVI ISINGA ..... RESPONDENT**

**JUDGEMENT**

This is an appeal against the Judgement of the Chief Magistrate's Court delivered on 2<sup>nd</sup> December, 2003 in CMCC. No. 1189 of 2002.

The Respondent who was the Plaintiff in the aforesaid case was the Plaintiff in the aforesaid case had sued the Appellants for special and general damages arising from injuries sustained in a motor vehicle accident on 30<sup>th</sup> March, 1998. The Plaintiff claimed that while lawfully riding his motor cycle along Uganda Road in Eldoret the Defendant by himself or his employee, servant and/or agent drove, managed and/or controlled the Defendant's motor-vehicle a Toyota Landcruiser so negligently, carelessly and/or recklessly that the same collided into the Plaintiff.

The Plaintiff pleaded that he sustained the following injuries:-

- (i) Head injury, brain concussion.
- (ii) Scalp was swollen and tender with bruises.
- (iii) Blunt trauma to the neck which was tender and stiff.
- (iv) Blunt trauma to the thoraco-lumbar spine which was tender.
- (v) Developed severe broncho-pneumonia as a complication while in hospital.
- (vi) Blunt trauma to both shoulder which were tender.
- (vii) Blunt trauma to both shoulders which were tender.
- (viii) The left knee was swollen and tender with a deep cut wound.

- (ix) Sustained a compound fracture of the left tibia and fibula.
- (x) The left ankle was swollen and tender.
- (xi) Sustained fractures of the left interior and left superior pubic rami.

He claimed general damages and special damages of

Kshs. 16,600/=. Before the trial, the parties by consent entered and recorded a consent order in respect of liability. The Defendants were to bear 80% liability while the Plaintiff was to bear 20% liability. The matter went for trial in respect of damages only, both special and general. The Honourable Magistrate awarded Shs. 500,000/= as general damages for the injuries and Shs. 75,625/= as special damages. The total was reduced by 20% being the contribution conceded by the Plaintiff.

The Defendants were aggrieved with the quantum awarded in damages hence this appeal. Four main grounds are raised in the Memorandum of Appeal dated 15<sup>th</sup> December, 2003:-

1. That the learned Chief Magistrate erred in law and in fact by failing to consider the authorities given by the Appellant on quantum as the injuries sustained would not warrant the decretal sum given herein.
2. That the learned Chief Magistrate erred in law and fact by failing to consider the authorities given by the Appellant on magnitude of injuries and/or in awarding damages in the circumstances.
3. That the learned Chief Magistrate erred in law and fact in awarding excessive damages in the circumstances.
4. That the learned Chief Magistrate erred in law and fact in relying upon injuries which were not proved or brought up by the Respondent when awarding damages.

Counsel for the Appellants submitted that those which

were proved were:-

1. Fractures of the tibia and fibula.
2. Soft tissues injuries.

That there was no evidence of other injuries. Those

proved had healed. He said the following had not been proved.

- Head injury
- Pubic rami
- Trauma to thoraco-lumber spine.

Counsel proposed an award of Shs. 300,000/= less the

20% contribution.

The Counsel for the Respondent submitted that the injuries were severe leading to permanent disability of 8%. That the Appellant was unconscious for 12 hours. That the trial Court applied sound principles and exercised its discretion properly being guided by expert evidence from the two medical reports submitted.

I have considered the memorandum of appeal, the pleadings, proceedings and judgment. I have also considered the submissions by Counsel.

First and foremost, the learned trial Magistrate found that the Plaintiff had not sustained any injuries to the pelvic bones i.e. the pubic rami. However, he found that there was compound fracture of the tibia and fibula. He also found all the other injuries listed above in the plaint were proven.

I have carefully perused the two medical reports and the conclusion I make is that the most serious injury was the compound fracture of the left tibia and fibula. The said injury was on the mend but the plates would have to be removed upon surgery. The rest of the injuries were soft tissues injuries but they were extensive.

The learned Magistrate considered quite a number of authorities which are in the judgement. I do find that he duly considered the authorities which had been relied upon by both the Plaintiff and Defendants. The Defendant had relied on the following cases:-

1. Philip Karonei –V- Hassan Noor Abite – Nakuru HCCC. No. 725 of 1995 in which the Court awarded Shs. 300,000/= as general damages for pain, suffering and loss of amenities. The injuries were similar to those sustained by the Plaintiff. The award was made on 23<sup>rd</sup> June, 2000.
2. Simon Githiomi –V- Peter Wachira – Nakuru HCCC. No. 91 of 1993. The injuries were more severe than the present injuries. The Court awarded Shs. 350,000/= on 20.09.2000.
3. John Mburu Kahanya –V- Leonard Kamau Kirumba Nakuru HCCC. No. 408 of 1998. The Court awarded Shs. 120,000/= being general damages for dislocation of the left knee and other soft tissue injuries. The injuries were much less severe than the present case.

The learned Magistrate took into account the inflationary trends and the value of money in December, 2003.

Upon consideration of the law and comparable decisions, I agree with Counsel for the Appellant that an award of Shs. 500,000/= for the aforesaid injuries in 2003 was excessive in the circumstances. I am of the view that a sum of Shs. 400,000/= is a fair estimate of the general damages for the injuries sustained and taking into account all the circumstances including the inflation factor.

From the memorandum of appeal and the submissions, there was no challenge of the special damages awarded.

As a result I do hereby set aside the award of Shs. 500,000/= in general damages and substitute it with an award of Shs. 400,000. The special damages in the sum of Kshs. 76,625/= shall remain undisturbed as also the costs and interest.

However, the sums awarded in general damages and special damages shall be reduced respectively by 20% being the amount conceded in contribution. The Respondent shall pay the costs of this appeal to the Appellants. Orders accordingly.

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

**M. K. IBRAHIM**

**JUDGE**

In the presence of:-

Mr. Chanzu for the Appellants

Mrs. Were for the Respondent