

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 496 of 2003

(From the original Milimani CM Civil Suit No. 4476 of 2002)

CENTRAL ELECTRICAL INTERNATIONAL CO. LTD.....APPELLANT

V E R S U S

MAURICE OMONDIRESPONDENT

J U D G M E N T

This is an appeal by the defendant in the lower court against the quantum of damages awarded by the lower court. Judgment on liability was entered by consent at 80%/20% in favour of the Respondent (the plaintiff in the lower court). The respondent's claim in the lower court was based on negligence and or breach of the statutory duty. The Respondent has suffered injury to his person on an industrious accident while in course of his duties.

There are three grounds of appeal set out in the memorandum:-

1. The learned Magistrate erred in failing to scrutinize/evaluate the evidence tendered in support of the injuries suffered by the Respondent and to correctly relate it to case law cited to it and thereby failed to arrive at a fair and reasonable compensation to the Respondent for his injuries.
2. The learned Magistrate erred in failing to give her reasons in the judgment for her finding that KShs. 230,000/00 in general damages was reasonable and/or adequate compensation.
3. That the learned Magistrate erred in awarding such an inordinately high award of damages for such minor and/or soft tissue injuries that the said award can only be adjudged to be an entirely erroneous estimate of the correct damages awardable to the Respondent.

I have considered the submissions of the learned counsels appearing. I have also perused the record of the lower court including the judgment. It is a short judgment, run to only one typed page. But it is to be noted that the lower court in the judgment was dealing with issue of quantum only, judgment on liability having been entered by consent on 13th March, 2003. Further, no oral evidence appears to have been tendered before the lower court; the parties proceeded by way of written submissions. Documents, including three medical reports, appear to have been put in by consent. This was not an entirely satisfactory way of proceeding. At least the plaintiff should have tendered oral evidence. So, there wasn't much for the trial magistrate to write on.

The only issue before the trial magistrate was, what was the quantum and damages due to the respondent? In her short judgment it is clear that the trial magistrate perused the medical report submitted. Though she does not state so, she must also have looked at the comparable cases placed before her by the triparties. I therefore do not accept that she failed to scrutinise or evaluate the evidence tendered in support of the injuries suffered by the respondent, or to correctly relate to the case law cited before her. I also do not accept that the trial magistrate failed to arrive at a fair and reasonable award. An appellate court will disturb an award of damages only where the trial court has taken into account a factor he ought not to have or failed to take into account something he ought to have or if the award is so high or so low that it amounts to a wholly erroneous estimate. See the case of KITAVI v COASTAL BOTTLERS LIMITED [1985] KLR 470 (Court of Appeal).

In the present case there is no gainsaying that the respondent suffered fairly serious injuries. He had cut wounds in the head, spleen on the left wrist, spray of the right ankle and blunt injuries to the chest and back. He had fallen down from the 1st to the ground floor at a construction site. He was admitted to hospital for one week. His wounds were sutured and dressed. He wore bandages on his left wrist and right ankle for two weeks. After healing he was left with two scars measuring 3 centimetres each in length in his head. At the time of the trial he said he still suffers pain on movement of the back and also on his right ankle.

All the cases cited by the parties before the lower court were very old. Assessment of damages is not an exact science. The trial court will normally use its experience and good sense and will be broadly guided by what other courts have done before in similar cases. In the present case I am satisfied that the trial magistrate did all that. I am not persuaded that the trial magistrate took into account a factor she ought not to have, or that she fails to take into account something she ought to have. Nor am I satisfied that the award she made is so high as to amount to a wholly erroneous estimate. It is not enough that this court, or any other court for that matter, would have made a slightly different award.

In the event, this appeal fails on all grounds. It is hereby dismissed with costs to the Respondent. Order accordingly.

DATED AT NAIROBI THIS 18TH DAY OF JULY 2007

H. P. G. WAWERU

J U D G E

DELIVERED ON 20TH DAY OF JULY 2007