



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT ELDORET

Civil Appeal 74 of 2004

PAN PAPER MILLS (EA)LTD

DISMAS WANGILA WARUNGA:.....APPELLANT

VERSUS

ASHA HASSAN:.....RESPONDENT

J U D G E M E N T

The Respondent **ASHA HASSAN** had sued the appellant **PAN AFRICA PAPER MILL E.A. LTD** together with **DISMAS WANGILA WARUNGA** who was the 1st defendant seeking special and general damages for injuries he sustained in a road accident. The respondent's case was that the appellant who was the 2nd defendant owned motor vehicle Reg. No. **KAL 943Q** and that on 16th July **2001 DISMAS WERUNGA** who was a servant of the appellant drove the said vehicle negligently along Turbo/Mautuma road and hit the respondent who was a pedestrian. As a result the respondent sustained several injuries. After hearing of the case the trial magistrate found that the respondent did not prove that Werunga the 1st defendant was the driver of the said motor vehicle at the time. Consequently the case against him was dismissed. The court however found the appellant was liable for the accident at the tune of 100%. The trial court awarded a sum of shs.300, 000/= as general damages and Shs.8, 038/= as special damages together with costs and interest. Being dissatisfied with the award on quantum of damages the appellant preferred this appeal. There are two grounds of appeal, namely:-

1. That the learned trial magistrate erred in law and fact in awarding damages that were excessive in the circumstances of the case before him.
2. That the trial Magistrates erred in law and fact in using wrong principles in assessment of damages such that the sum awarded was erroneous estimate of the injuries actually suffered by the Respondent.

Mr. Kuloba who prosecuted the appeal submitted that the injuries suffered by the respondent were soft tissue injuries. She was admitted in hospital for only one day and there was no evidence of internal bleeding. He therefore said the award was excessive. He said the authorities cited and relied on were wrong as injuries in those cases were serious. He said the award should not have been more than Shs.100, 000/=.

Mr. Ngala for the respondent opposed the appeal. He said the injuries suffered were classified as grievous harm and as such were serious even if there were no fractures. He said the findings of the trial

magistrate were proper and the court should not interfere. Award was not excessive nor did the trial magistrate misapprehend the medical evidence.

As stated the appeal is against quantum of damages only. There seem to be no quarrel of special damages of Shs.8, 038/= awarded. These had been pleaded and were proved. Receipts were produced. What is in contention is the award of general damages of Shs.300, 000= . It has been held over and over again that an appellant court will not disturb an award of damages unless it is so inordinately high or low as to represent an erroneous assessment, or the trial court proceeded on wrong principles or misapprehended the evidence in some material facts – see **BUTT VS KHAN (1982-88) KAR.**

I have considered the appeal and the evidence before the trial court. In the initial plaint filed on 27th June, 2001 the respondent gave the following particulars of injuries:-

- i. Cut wound on the left eye.**
- ii. Severe blunt trauma to the left shoulder.**
- iii. Severe blunt trauma to the right leg**
- iv. Dislocation of the left wrist joint**
- v. Severe blunt trauma to the chest.**
- vi. Severe injuries incurred during and after the accident.”**

An amended plaint was later filed which added other particulars of accident as follows:-

- vii. Laceration of the upper eyelid.**
- viii. Bruises on the left shoulder and left side of the chest.**
- viii. Subluxation of the left wrist**
- ix. Soft tissue injuries on the right thigh with closed degloving injury**
- x. Cosmetic disfigurement due to swelling of the right thigh and scars on the left eyelid.**

The respondent produced a medical report prepared by DR. LELEI (Exh.4), treatment chit – Exh.5, physiotherapy treatment chit (exh.6) and a P3 form – exh.7. A careful look at all those medical documents shows that the respondent had suffered serious injuries. True the injuries did not include any fractures but nonetheless they were serious. DR. LELEI an orthopedic surgeon made the following conclusions in his report.

“These were serious injuries which have significantly affected the life of Asha Hassan. She cannot do any strenuous activities and can only do her business with difficulties. She needs treatment frequently for the pains of the left shoulder and right lower limb”.

This medical evidence was not seriously challenged. Infact the appellant did not call any evidence or even seek to have the respondent examined by another doctor. Also the P3 form – exh.7 – concluded that the injuries suffered amounted to grievous harm. The respondent lost consciousness after she was hit and was admitted for a day. She thereafter attended out patient treatment and physiotherapy due to the injuries on her leg. It is therefore clear that the trial magistrate did not misapprehend the medical evidence at all. He properly concluded that the injuries were serious.

In the light of the seriousness of the injuries the award of Shs.300, 000/= as general damages cannot be said to be excessive or inordinately high. The estimate was not erroneous. The trial magistrate rightly

considered the authorities cited to him before making the award. Only the respondents advocate had cited authorities and proposed a sum of Shs.500, 000/=. The appellants advocates did not cite any authority and proposed a sum of shs.60, 000/=. The three authorities cited by the respondents counsel were cases where injuries suffered were similar.

From the above therefore I find the appeal has no merit. I uphold the trial magistrate's findings and consequently dismiss the appeal with costs to the respondent.

Dated and Delivered at Eldoret this 21st day of November, 2007.

KABURU BAUNI

JUDGE

DELIVERED IN THE PRESENCE OF:-

C/C- David

N/A - for Appellant

Mr. Terer for Ngala for Respondent.