



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 205 OF 1999

DAYSTAR UNIVERSITY APPELLANT

VERSUS

JOSHUA NDAVI RESPONDENT

JUDGMENT

In this appeal the main issue is the award and that is what Mr. Muriithi for the Appellant and Miss Kilonzo for the Respondent told me during the hearing. According the Appellant, the award of Kshs 90,000/= general damages is inordinately high. The ward, in the circumstances of this case, should have been between Kshs 45,000/= and Kshs 50,000/=.

According to the Respondent, the award of Kshs 90,000/= in this case was proper.

I have read the evidence and the judgment of the learned senior Resident Magistrate in light of the submissions before me. Mr. Muriithi, counsel for the Appellant does not think the injury the Appellant suffered warranted the award the court gave. According to him the injuries in the authority cited,

{Margaret Njeri Njau

Vs.

{Mohamed and Mohamed And Another H.C.C.C. No 5497 of 1990, was a more serious case than the instant case.

Margaret Njeri Njau suffered blunt trauma to the left thigh, multiple bruises in left forearm, bruises on left leg and blunt trauma to the left ankle joint. General damages were assessed at Kshs 50,000/=.

The Respondent in the instant case suffered a deep laceration measuring 5 by 5 cm and this is what Dr. A.O. Wandugu said as his opinion and prognosis on 23rd April 1998.

[“The scar has a rather uncosmetic] appearance.

[The pains in the leg are bound to worsen with age. The one on (L) hip will definitely lead to early osteoa-thritis with its debilitating side effects.

[With sexual function already worsened with the] pain the (L) hip, this is bound to worsen further’.

That is clearly more serious than the injuries in Margaret Njeri Njau’s case which, though to various parts of the body, were just bruises with no serious effects.

The learned Senior Resident Magistrate considered all that and also considered the rate of inflation then prevailing and the number of years that had passed since the award in the case of Margaret Njeri Njau in 1992. The judgment appealed from in this appeal is dated 14th March 1999. I find no misdirection, whether on law and/or on fact, in the award of general damages by the learned magistrate. The award is not excessive. On the contrary, it is justified on the evidence before the learned Magistrate.

From what I have been told in this appeal, I take it that ground number one in the memorandum of appeal is abandoned so that only ground number two remained. Otherwise I find that there was evidence for the trial Magistrate to hold that the Respondent was injured while in the course of employment with the Defendant.

From what I have been saying, therefore, this appeal fails. Accordingly, it is hereby dismissed with costs to the Respondent.

Dated this 23rd Day of May 2003.

J.M. KHAMONI

JUDGE

Present:

Mr. Muriithi for the Appellant.