

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 614 OF 2000

JAMES AGWENYI SIMONAPPELLATE

VERSUS

ANTHONY KIOO

CECILIA NJOKI MBUGUARESPONDENT

J U D G M E N T

This appeal is really against quantum of damages awarded to the appellant by the respondent in the lower court. The appellant had sued the respondent to seek special and general damages from them arising from a road traffic accident which occurred on 1.10.97. Judgment on liability was entered by consent against the respondents on 100% basis and the task of the learned magistrate was to assess damages.

The learned magistrate based her assessment of general damages on the medical report of Dr. Njuguna J.M. of Thika Nursing Home in which it was stated that the appellant had suffered a bruise on the left front region, right shoulder and a blunt fracture of occipital bone.

According to the doctor, the appellant was seen on same day of accident and was observed at the Nursing Home until 4th October 1997 when he was discharged. The learned magistrate part of the judgment which said that the appellant was seen by the doctor on the same day of the accident, treated and discharged "hence the injuries were not serious " was not supported by evidence on the medical report.

The doctor had also opined that though the occipital fracture would heal it could be a site of headache on and off. The learned magistrate dismissed this finding as farfetched as it was too soon for the doctor to make such finding. But the doctor's was an expert's opinion and without another doctor being called to challenge this opinion there was no basis for the magistrate to dismiss it as farfetched.

Given all this facts and the effect of fractures, however small, on the future of the victims, my considered view is that an award of Kshs.30,000/= in general damages was manifestly inadequate for pain suffering and loss of amenities and in particular considering the inflationary trend in the country and that the respondents had infact offered a sum of Kshs.120,000/= during their written submissions on quantum, Rashid Abed (suing through his father Abed Rashid as next friend) Vs Omar Mohamed & Another [1982-88] 1 KAR 322.

I feel this award should be and is hereby increased to Kshs.100,000/= and the appeal allowed to this extent with costs.

Delivered and dated this 25th July, 2002.

D.K.S. AGANYANYA

JUDGE