Koech & another v Muse (Civil Appeal 35 of 2021)
[2024] KEHC 6737 (KLR) (6 June 2024) (Judgment)

Neutral citation: [2024] KEHC 6737 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAPSABET

CIVIL APPEAL 35 OF 2021

JR KARANJA, J

JUNE 6, 2024

BETWEEN

RUTH KOECH .... 1ST APPELLANT

KITALE TREATMENT WORKS LIMITED .... 2ND APPELLANT

AND

TABURA ISENDI MUSE .... RESPONDENT

(Being an appeal from the judgment and decree of Hon. B. W. Wachira, Resident Magistrate delivered on 5th February 2021 in Kapsabet PMCC No. 50 of 2019)

JUDGMENT

1. This appeal arose from the judgment of the Resident Magistrate at Kapsabet delivered on this 5th February 2021 in PMCC No 50 of 2019, in which the Respondent, Tebura Isende Muse, sued the Appellants, Ruth Koech and Kitale Treatment Works Limited as owners of Motor Vehicle Registration No KBY 600P Station Wagon which was involved in a road accident on the 11th June 2018 along the Kapsabet/ Chebarbar Road and in which the Respondent suffered bodily injuries after the motor cycle on which she was travelling as a passenger was hit by the Appellant's aforementioned vehicle.

2. The Plaintiff/ Respondent pleaded that the said motor vehicle was so negligently driven and with disregard to other road users that it lost control, veered off its lane on to the motor cycle's lane and caused a collusion between the two motorized equipment.

   The Respondent suffered loss and damage as a result of the accident and instituted this suit against the Appellants praying for damages and costs of the suit.

3. The Appellants' defence was a denial of the Respondents' allegations against themselves and a contention that if the accident indeed occurred, then it was caused and/or contributed to by the Respondent and the rider of the motor cycle.

The Appellants therefore prayed for the dismissal of the Respondents' suit with costs.

4. At the hearing of the suit, the Plaintiff/Respondent (PW2) testified and called a health worker, Danson Gitonga (PW1), as her witness. However, the parties entered a consent on liability as follows: -

> " By consent liability be apportioned in ratio of 20:80 in Plaintiff's favour."

The quantum of damages remained as the only issue for determination by the trial court.

In that regard, the trial court considered the evidential material placed before itself and rendered the impugned judgment awarding the Plaintiff/Respondent general damages in the sum of Kshs 350,000/- less 20% contributory negligence i.e. Kshs 285,240/-. The Plaintiff was also awarded special damages in the sum of Kshs 6,550/- together with costs of the suit.

5. Being aggrieved by the award, the Defendant/ Appellants preferred the present appeal which is on quantum of damages only and based on the three grounds set out in the memorandum of appeal dated 18th September 2021 and filed herein on 25th February 2021. The appeal was heard by way of written submissions.

Both parties filed their respective submissions through Onyinkwa & Company Advocates, for the Appellants and Morgan Omusundi Law Firm, for the Respondent.

6. Having considered the evidence availed in the trial, the grounds of appeal and the rival submissions, this court was of the view that the issue which arose for determination at this juncture was whether the trial court applied wrong legal principles in awarding general damages in the sum of Kshs 350,000/- and special damages in the sum of Kshs 6,550/- and/ or whether the award for general damages was excessive in the circumstances.

7. Basically, an Appellate Court would not interfere with an award for general damages unless the trial court proceeded on wrong principles or that it misapprehended the evidence in some material respect and arrived at a figure which was either inordinately high or inordinately low (See, *Butt v Khan* [1982] KLR 349)

8. In *Kemfro Africa Limited t/a Meru Express Service & another v A. M. Lubia & another* [1982 – 88] 1 KAR) 727, it was stated that:-

> " The Principles to be observed by an Appellate Court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were held by the former Court of Appeal of Eastern Africa to be that either that the judge, in assessing the damages took into account an irrelevant factor or left out of account a relevant one, or that short of this the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage."

9. The assessment of damages in claims such as the present one is generally guided by the principles set out in the case of *Charles Oriwo Odeyo v Apollo Justus Andabwa and another* [2017] eKLR to wit: -

> " (1) An Award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained.
>
> (2) The award should be commensurable with the injuries sustained.
>
> (3) Previous awards in similar injuries sustained are mere guide but each case be treated on its own facts.

(4) previous awards to be taken into account to maintain stability of awards but factors such as inflation should be taken into account.

(5) The awards should not be inordinately low or high (See *Boniface Waitu & another v Michael Kariuki Kamau* [2007] eKLR)."

10. In this case, the medical report (P. Exhibit 2(b) by the Clinical Officer (PW1) indicated that the Plaintiff sustained severe soft tissue injuries which were expected to heal with partial disfigurement. The report was dated 7th September 2018.

    The second report produced at the behest of the Appellant/ Defendant was dated 17th March 2020 and was compiled by Dr. V. V. Lodhia. It more or less confirmed the injuries indicated in the first report and confirmed that the Plaintiff/Respondent had recovered well with slight fibrosis of the right upper eye lid. The good doctor placed the Plaintiff's permanent disability at 1%.

11. The import of both reports was that the Plaintiff/ Respondent suffered soft tissue injuries which healed well, but with residual effect of a permanent nature placed at 1%.

    The Plaintiff proposed a sum of Kshs 550,000/- for general damages while the Defendant proposed a sum of Kshs 120,000/- to Kshs 130,000/- under the head.

    Both parties cited authorities which were relevant to their respective proposals.

12. The trial court considered the nature of the injuries suffered by the Plaintiff and the medical opinions expressed in the two medical reports and concluded that the Plaintiff was deserving of a sum of Kshs 350,000/- general damages for pain and suffering.

    The amount, in the opinion of this court, was fair, reasonable and adequate compensation in terms of general damages for pain, suffering and loss of amenities.

13. The Appellant was unable to satisfy or demonstrate to this court that the award was excessive in the circumstances or that it was based on wrong principles of law. This court therefore upholds the award with allowance being given to the 20% contribution by the plaintiff to the occurrence of the accident and indeed the Plaintiff's injuries, meaning that the Plaintiff would be entitled to Kshs 280,000/-, general damages.

    As for special damages, the Plaintiff/Respondent claimed Kshs 16,040/- but what was rightly awarded by the trial court was 6,550/- as established and proved by the necessary documentary evidence in the form of receipts. The Plaintiff was thus entitled to a grand hold of Kshs 286,550/- inclusive of 20% contribution.

14. In sum, this appeal is devoid of merit and is hereby dismissed with costs to the Respondent.

    Ordered accordingly.

DELIVERED AND DATED THIS 6TH DAY OF JUNE 2024

J. R. KARANJAH,

JUDGE