



Jared v TJ (A Minor Suing Through Mother and Next Friend ENM) (Civil Appeal 506 of 2018) [2023] KEHC 23229 (KLR) (Civ) (5 October 2023) (Judgment)

Neutral citation: [2023] KEHC 23229 (KLR)

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

CIVIL

CIVIL APPEAL 506 OF 2018

JN MULWA, J

OCTOBER 5, 2023

BETWEEN

MOIBI MOIBI JARED APPELLANT

AND

TJ (A MINOR SUING THROUGH MOTHER AND NEXT FRIEND ENM) RESPONDENT

(Being an appeal from the Ruling and Order of the Chief Magistrates Court at Milimani in CMCC No. 4092 of 2017 delivered by Hon. D. O. Mbeja (SRM) on 26th September 2018)

JUDGMENT

1. This is an appeal against quantum of damages. It arises from Milimani CMCC No. 4092 of 2017 where the Respondent sued the Appellant for general and special damages arising from injuries sustained in a road traffic accident which occurred on 14/11/2016 at Chokaa Estate. In the Plaint, it was pleaded that on the material day, the Respondent was walking within the Estate when the Appellant and/or his authorized driver negligently drove his motor vehicle registration number KAR 253U causing it to lose control, veer off the road and hit the Respondent. As a result, the Respondent sustained serious bodily injuries for which he held the Appellant liable.
2. The Appellant denied the claim and alleged contributory negligence on Respondent's part.
3. After full trial, the learned magistrate held the Appellant wholly liable for the accident and awarded the Respondent general and special damages in the sum of Kshs. 800,000/- and Kshs. 3,550/- respectively. The Respondent was also awarded costs of the suit plus interests.
4. Being dissatisfied with the trial court's assessment of general damages, the Appellant lodged the instant appeal vide a Memorandum of Appeal dated 23/10/2018. The main ground of appeal is that the



learned magistrate erred in fact and in law in awarding the Respondent general damages that are so excessive as to amount to an erroneous estimate.

5. The appeal was canvassed by way of written submissions which this court has taken note of. The only issue for determination therefore is whether the trial magistrate's award on general damages of Kshs. 800,000/- was excessive in the circumstances of the case.
6. It is well settled that an award of damages is an exercise of discretion by the trial court and thus an appellate court will not interfere with such discretion unless there are good grounds to do so. In *Bashir Ahmed Butt v Uwais Ahmed Khan* (1982-88) KAR, the Court of Appeal stated thus:

“An appellate court will not disturb an award for general damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect and so arrived at a figure which was either inordinately high or low...”
7. Further, as a matter of principle, an award of damages for personal bodily injuries must be commensurate to the injuries suffered and comparable to those made in past similar cases. In *Harun Muyoma Boge v Daniel Otieno Agulo* [2015] eKLR, Majanja J. stated thus:

“The assessment of general damages is not an exact science and the court, in doing the best it can, takes into account the nature and extent of injuries in relation to awards made by the court in similar cases. It ensures that the body politic is not injured by making excessively high awards and that the claimant is fairly compensated for his or her injuries.”
8. In the instant case, there is no dispute that following the accident, the Respondent sustained a fracture on the right distal femur and had swollen, tender left femur as pleaded at paragraph 6 of the Plea. The Medical Report of Dr. G. K. Mwaura dated 15/1/2017 confirmed the injuries pleaded. It is noteworthy that Dr. Mwaura examined the Respondent two months after the subject accident by which time, the Respondent was still on treatment and his prognosis was observed as fair.
9. In his submissions filed herein, the Appellant urged that the trial court's award on general damages be reviewed downwards to Kshs. 400,000/-. He relied on *DG (Minor suing through her next friend MOR) v Richard Otieno Onyisi* [2021] eKLR where the court awarded Kshs. 400,000/- to a minor who suffered a chest contusion, left tibia fracture, bruises on the left foot and bruises on the left leg. He also relied on *Rayan Investments Limited v Jeremiah Mwakulegwa Kasha* [2017] eKLR where the claimant was awarded Kshs. 300,000/= for the following injuries: fracture of the right fibula, severe blunt trauma on the left ankle joint and bruises on the right elbow. Reliance was also placed on *Mbitshi Muinde William v Rose Mutheu Mulatia* [2019] eKLR where the court awarded Kshs. 400,000/= as compensation for swollen, tender left wrist and left leg, fracture of the 5th metacarpal bone and fracture of the right tibia.
10. The Respondent did not file submissions on this appeal.
11. It is noteworthy that in determining the award for general damages, the learned magistrate did not consider any past decisions where victims suffered comparable injuries. The Respondent herein suffered a single fracture of the right distal femur and soft tissue injuries on the left femur. Courts have awarded general damages of Kshs. 800,000/- in instances where victims suffered multiple fractures or injuries that are more serious. It was therefore an inordinately high amount in the circumstances of this case. In the court's considered view, the injuries suffered in the authorities cited by the Appellant are more comparable to those sustained by the Respondent. The court is thus persuaded that there is



merit in interfering with the learned magistrate's award for general damages by substituting it with an award of Kshs. 480,000/- taking inflation into account.

12. Consequently, the appeal has merit and is hereby allowed as follows:

- a. The trial court's award of Kshs. 800,000/- on account of general damages is hereby set aside and substituted with a sum of Kshs. 480,000/-.
- b. Each party shall bear its own costs on the appeal.

Orders accordingly.

DATED, SIGNED AND DELIVERED THIS 5TH DAY OF OCTOBER 2023.

JANET MULWA

JUDGE

