



**Chebweka v Jaswinder Singh Enterprises & 2 others (Civil Appeal
036 of 2017) [2024] KEHC 16979 (KLR) (21 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 16979 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL 036 OF 2017
F WANGARI, J
NOVEMBER 21, 2024**

BETWEEN

BOAZ BEN CHEBWEKA APPELLANT

AND

JASWINDER SINGH ENTERPRISES 1ST RESPONDENT

VALID MUNYIKE MWANG'OMBE 2ND RESPONDENT

VELJI MANJI PATEL 3RD RESPONDENT

JUDGMENT

1. This is an Appeal from the Judgment of Hon. L.T. Lewa (Mrs), delivered on 27/01/2017 in Mombasa CMCC No. 814 of 1995. The Appeal is on quantum only.
2. Through the undated Amended Plaintiff, the Appellant claimed general and special damages as a result of injuries sustained in an accident that occurred on 14/04/1994. It was pleaded that the Appellant was a lawful passenger in motor vehicle registration no. KZA 675, Nissan which collided with the Defendants' vehicle which had obstructed their path, where the Appellant sustained injuries.
3. The Trial Court heard the parties and proceeded to render judgement on 27/01/2017. In the Judgement, the Court found 100% liability against the Respondents. Kshs. 500,000 was awarded as General Damages for pain and suffering, with special damages of Kshs. 3,000.
4. Aggrieved by the finding of the Trial Court, the Appellant lodged a Memorandum of Appeal hence this Appeal. The appeal was on quantum only.

Submissions on quantum

5. In the trial court, the Appellant in his submissions sought for Kshs. 2,000,000 as General Damages for pain and suffering. He relied on the case of Charles Mathenge v Mark Mboya Likanga & 2 others



(2011) eKLR, Robson Ngowa Masha v Summit Cove Line Ltd & another (2013) eKLR and Joseph Musee Mua v Julius Mbogo Mugi & 3 others (2013) eKLR.

6. On the other hand, the 1st Respondent relied on the case of Simon Mutisya Kavii v Simon Kigutu Mwangi (Mombasa Civil Appeal No. 197 of 2007) in proposing an award of Kshs. 250,000 to 260,000 as General Damages.
7. The 2nd and 3rd Respondents, they relied on the cases of Pamela Ombiyo Okinda v Kenya Bus Service Ltd (HCCC No. 1309 of 2002) and Isaac Mend Micheni v Mutegi Murango (NBI HCCC No. 335 of 2004) where Kshs 100,000 was proposed as General Damages for the injuries sustained.
8. Upon filing this appeal, this court directed that the appeal be disposed of by way of written submissions and all the parties complied by filing of rival submissions. The Appellant filed submissions dated 03/04/2024 submitted that the trial court's award of Kshs. 500,000 as General Damages was too low as the severity of the injuries was not taken into account.
9. The Appellant relied on the authorities cited therein in submitting that an award of Ksh. 5,000,000 would be sufficient compensation for the injuries suffered and taking into account inflation rates, and considering that the authorities cited in the lower court are 10-15 years old.
10. The Respondents submitted that the award in the lower court was fair, just and comparable to the injuries sustained, hence the court need not interfere with the award on quantum. They further submitted that the claim for future medical expenses was never pleaded hence the same should not be awarded. They prayed that the appeal be dismissed with costs.

Analysis

11. This being a first Appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a Trial Court, unlike the Appellate Court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand. (see Peters vs Sunday Post Limited [1958] EA 424 and Selle & Another vs. Associated Motor Boat Co. Ltd & Others [1968] EA 123)

Quantum

12. The Appellant submitted that an award of Kshs. 500,000 was too low for general damages for pain and suffering as commensurate compensation in the circumstances of this case.
13. The Court of Appeal, pronounced itself succinctly on the principles for disturbing award of damages in *Kemfro Africa Ltd Vs Meru Express Service Vs. A.M Lubia & Another* 1957 KLR 27 as follows: -

“The principles to be observed by an appellate Court in deciding whether it is justified in distributing the quantum of damages awarded by the trial Judge were held in the Court of Appeal for the former East Africa to be that it must be satisfied that either the Judge in assessing the damages, took into account an irrelevant facts 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 damages.”

14. It is thus settled that for the Appellate court, to interfere with the award it is not enough to show that the award is high or had if I handled the case in the subordinate court, I would have awarded a different figure. Damages are said to be at large. They must be commensurate with similar injuries.



15. Fact finding is primarily the duty of the trial court and once evidence is presented before it on the basis of which it could arrive at a finding one way or the other, as was held in *Job Obanda vs. Stage Coach International Services Limited & Another* Civil Appeal No. 6 of 2001, it is not for the appellate court to set aside the trial court's exercise of discretion and substitute its own simply because if it had been the trial court it would have exercised the discretion differently.
16. There is no dispute that the Respondent suffered the injuries as pleaded. In assessing injuries arising from a road traffic accident, consistency in the award of damages is necessary for judicial predictability and certainty. This is achieved through awarding similar injuries with similar or relatively similar damages.
17. The Court of Appeal in *Odinga Jacktone Ouma V Maureen Achieng Odera* [2016] eKLR stated that "comparable injuries should attract comparable awards"
18. The principle on the award of damages is settled. In *Charles Oriwo Odeyo vs. Appollo Justus Andabwa & Another* [2017] eKLR the court set out the principles which guide the court in the assessment of damages in a personal injury case. The considerations include but not limited to; -
 - 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.
19. The Appellant suffered fracture of the right leg, sprain of the ankle, blunt injury to the chest and forehead, soft tissue injuries and 9% permanent injury of the right knee. In *Joseph Kimanthi Nzau v Johnson Macharia* [2019] eKLR, the court, G.V. Odunga J. as then he was, considered a case where the plaintiff suffered cut wound on the occipital region with lacerations on the left temporal region of the head, fracture of the skull on the occipital region, subluxation of the cervical vertebrae C1, C3 and C4, fracture of 2nd, 3rd, 4th, 5th, 6th, 7th and 8th ribs of the left side of the chest, fracture of the left scapula and cut wound on the left hand and left arm and awarded Kshs. 800,000.
20. In the case *Easy Coach Bus Limited v Mary Adhiambo Okuru*, HCCA No. 68 of 2015 [2020], Kshs. 300,000 was awarded for similar injuries as sustained by the Appellant in this case. I find no reason to interfere with the award on quantum by the lower court as the same was commensurate to the injuries sustained.

Future medical expenses

21. The Appellant in his submissions prayed for an award of future medical expenses for Kshs. 900,000. The issue of future medical expenses was only brought up at the submissions stage. Its trite law that



future medical expenses, just like special damages must be specifically pleaded. In the case of Tracom Limited & another vs Hassan Mohamed Adan (2009) eKLR, the Court of Appeal stated: -

“... We readily agree that the claim for future medical expenses is a special claim though within general damages, and needs to be specifically pleaded and proved before a court of law can award it.”

22. In this case, the claim was not pleaded. A party is bound by its own pleadings. The claim under that head therefore fails.
23. On costs, I consider that the matter in the lower court was filed in year 1995. Litigation must come to an end, and no further proceedings need to be entertained. I hereby exercise the discretion of the court and order that each party shall do bear its own costs.

Determination

24. In the upshot, I make the following orders: -
 - a. The Appeal lacks merits and is hereby dismissed.
 - b. Each party to bear its own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA ON 21ST DAY OF NOVEMBER, 2024.

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F. WANGARI

JUDGE

In the presence of;

N/A by the Appellant

N/A by the 1st Respondent

Akech Advocate for the 2nd and 3rd Respondents

Brian, Court Assistant

