



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**CIVIL CASE NO. 34 OF 2017**

**RO (A minor suing thro' GOK as next of friend).....APPELLANT**

**VERSUS**

**JOHN MWANGI.....RESPONDENT**

**JUDGMENT**

1. The Appellant filed Kericho CMCC No. 53 of 2015 against the Respondent seeking General damages and special damages for injuries the Appellant sustained while travelling in the Respondents Motor Registration No.KBX 935B on 13/9/2014.

2. The Appellant alleged that he said motor vehicle was being driven along Nakuru – Kericho on the material day when it hit a pothole and rolled several areas as a result of which the Appellant suffered bodily harm.

3. The Appellant further said the aforesaid motor vehicle being driven at a high speed and was so negligently, carelessly or recklessly driven, managed or controlled by the Respondents or his driver, agent or servant that it was caused to hit the pothole.

4. The Appellant sustained the following injuries;

**(i) Backache**

**(ii) Chest tenderness**

**(iii) Swollen and tenderness on the right shoulder joint**

**(iv) Tenderness and bruised right leg**

**(v) Swollen right ankle joint**

5. The Respondent denied the Appellant's claim and even the occurrence of the accident.

6. The Respondent did not call any witnesses and the trial court found the testimony of the Appellant corroborated and unchallenged and the Respondent was found 100% liable for the accident.

7. The trial court assessed quantum of damages as follows:

General damages – Kshs. 150,000

Special damages – Kshs. 3,500

**Total                   Kshs. 153,500**

Plus costs of the suit

8. The Appellant has now appealed to this court against the award of quantum of damages on the following grounds;

*(i) THAT the award of damages was inordinately too low.*

*(ii) THAT the Appellant suffered serious injuries*

*(iii) THAT the trial magistrate misdirected himself in arriving at a wrong estimate against the weight of evidence adduced.*

*(iv) THAT the trial magistrate applied the wrong principles in making an award of damages.*

9. The parties filed written submissions in the appeal which I have duly considered. This being a first appeal, the duty of this court is to re-evaluate the evidence adduced before the trial court which had the advantage of seeing the witnesses.

10. The award of general damages is an exercise of discretion by the trial court based on the evidence and impressions on demeanor of witnesses made by the trial court which advantage an appeal court by its mode of delivery lacks (see **SIMON TAVERA -VS- MERCY MUTITU NJERU (2014) eKLR**).

11. Notably, of greater significance is the acknowledgment that the court does not have the jurisdiction to interfere with the assessment

12. The Appellant submitted that the trial court misdirected itself in arriving an inordinately low award and further that the Appellant suffered serious injuries and was admitted in hospital.

13. The Appellant also submitted that from the medical evidence, the injuries sustained were as follows:

*(i) Cut wound on the head with depressed fracture on the right parietal head.*

*(ii) Backache*

*(iii) Chest tenderness*

*(iv) Swollen and tenderness on the right shoulder joint*

*(v) Swollen right ankle joint*

14. The Appellant urged this court to review the said award and increase the same to Kshs. 600,000.

15. The Respondent opposed the appeal and submitted that the Appellate court should not interfere with the findings of the trial court unless it is demonstrated that in reaching the decision, the trial court made an error of law or took into account irrelevant considerations or that the trial court based its decision on no evidence at all or a misrepresentation of evidence (see **BUTT -VS- KHAN [1982-88] 1 KAR 1**, ).

16. The Respondent also submitted that the award of damages must not be too low or excessive and the same must be within the limits set out by decided cases within limits.

17. The Respondent relied on the case of **OSMAN MOHAMED & ANOTHER -VS- SALURO BUNDIT MOHAMED CIVIL APPEAL NO. 30 OF 1997 (unreported)** and also other authorities.

18. The Respondents further submitted that the Appellant suffered soft tissue injuries and he has since recovered and urged the court not to disturb the award.

19. In the case of **DENSHIRE MUTETI WAMBUA -VS- KENYA POWER & LIGHTING CO. (2013) eKLR** it was held that the general method of approach for assessing damages is that comparable injuries should be compensated by comparable awards.

20. The Court of Appeal in **MBAKA NGURU & ANOR -VS- JAMES GEORGE RAKWAR NAIROBI CIVIL APPEAL NO. 133 OF 1998 [1998] eKLR** held that: "**The award must however reflect the trend of previous, recent, and comparable awards. Considering the authorities cited and also considering all other relevant factors this court has to take into account, and keeping in mind that the award should fairly compensate the injured within Kenyan conditions.**"

21. Similarly, the Court of Appeal in **ODINGA JACKTONE OUMA -VS- MOUREEN ACHIENG ODERA [2016] eKLR** stated that "**comparable injuries should attract comparable awards.**"

22. I find that it is not in dispute that the Appellant suffered soft tissue injuries. I find that the Appellant has not demonstrated that the court relied on wrong principles in arriving at award of Kshs. 150,000.

23. I have considered the above authorities and I find that the award by the trial court is reasonable given the nature of injuries sustained by the Appellant. I hereby find no reason to interfere with the award.

24. The appeal herein lacks in merit and the same is dismissed with no orders as to costs.

Delivered, dated and signed at Kericho this 11<sup>th</sup> day of June 2021.

A. N. ONGERI

JUDGE