



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CIVIL APPEAL NO. 9 OF 2014

JOHN IMBENZI INDIAZI-----APPELLANT

=VRS=

HUDSON N. SARALA (Suing as next friend and father of

FANUEL NYABERA)-----RESPONDENT

Being an appeal against the Judgement & Ruling of Hon. B. J. Bartoo – RM Eldoret dated and delivered on the 24th day of January 2014 in the original Eldoret Chief Magistrate’s Court Civil Case No. 106 of 2013

JUDGEMENT

The respondent’s claim against the appellant arose from a road accident that occurred along the Eldoret – Kitale Road on 15th December 2012. The respondent, a minor was lawfully cycling at a place called Nangili along the said road when he was hit by the appellant’s vehicle Registration No. KBN 851T.

Counsel for the parties recorded a consent on liability in the ratio 30:70% in favour of the respondent and left it to the trial court to assess the quantum of damages which the trial Magistrate assessed as follows: -

(a) Special damages – Kshs. 108,710/=

(b) General damages – Kshs. 1,000,000/=.

This appeal is against the quantum of general damages and it is the appellant’s contention that the same were excessive given that the medical evidence adduced revealed only two fractures of the right tibia and left femur. Counsel submitted that by 24th January 2014 when the judgement was delivered the injuries had healed without any permanent disability. Counsel for the appellant proposed an award between Kshs. 300,000/= to 500,000/= and relied on three cases: -

- **Akamba Public Road Services v Abdikader Adan Galgalo [2016] eKLR.**
- **Zacharia Mwangi Njeru v Joseph Wachira Kanoga [2014] eKLR.**
- **Harun Muyoma Boge v Daniel Otieno Agulo [2015] eKLR.**

Counsel for the respondent opposed the appeal and submitted that in arriving at the award the trial Magistrate considered the cases cited by both parties, the nature of the injuries suffered, the age of the respondent at the time and the effluxion of time. Counsel urged this court not to disturb the award.

This court will not disturb an award unless it is satisfied that the trial Magistrate acted on a wrong principle or misapprehended the facts or that the award was so inordinately high or low as to be a wholly erroneous estimate of the damage suffered – **see Mariga v Musila [1984] KLR 251.**

The prognosis in respect of the respondent at the time of discharge from Moi Teaching & Referral Hospital was that he sustained a fracture of the right tibia and a fracture of the right femur as well as multiple soft tissue injuries. The P3 Form and the medical report both of which were prepared after the discharge summary therefore seem to have exaggerated the injuries. Even then it is my finding that given the principle that comparable injuries ought to attract similar awards, the sum of Kshs. 1,000,000/= awarded to the respondent was excessive. In the case of **Akamba Public Road Services v Abdikadir Adan Galgalo [2016] eKLR** decided not too long ago the appellant had sustained “a fracture of the right tibia leg bone malleolus and the right fibular bone among other injuries. Those injuries were very similar to those of

the respondent and there the appellant sustained 3% permanent disability but the award for general damages was reduced from Kshs. 800,000/= to 500,000/=. Having regard to that case and the effluxion of time I am persuaded that an award of Kshs. 500,000/= is adequate in the present case.

Accordingly, the award for Kshs. 1,000,000/= is set aside and substituted with one for Kshs. 500,000/= (five hundred thousand shillings only). The award for special damages shall not be disturbed. The gross award shall be subject to the agreed ratio of contribution and the respondent shall be entitled to the costs of the case in the lower court. The appellant shall however get the costs of this appeal. It is so ordered.

Signed and dated this 21st day of January 2020.

E. N. MAINA

JUDGE

Dated and delivered in Eldoret this 5th day of February 2020.

H. A. OMONDI

JUDGE