



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

CIVIL APPEAL NO. 10 OF 2018

SANSORA BAKERS LIMITED.....APPELLANT

=VRS=

NAFTALI GEORGE OBARE.....RESPONDENT

(Being an Appeal from the Judgement and Decree of Hon. B. M. Kimtai – SRM dated

and delivered on the 10th day of April 2018 in the original Keroka Senior Resident Magistrate’s Court Civil Case No. 252 of 2014)

JUDGEMENT

This is an appeal on the quantum of damages awarded to the respondent by the lower court liability having been agreed in the ratio 70:30% in favour of the respondent against the appellant. The contention by the appellant is that the award was excessive both for the injuries suffered by the respondent and in similar cases where the injuries are comparable to those of the respondent.

Counsel for the appellant submitted that an award of Kshs. 1 million would have sufficed based on the following cases: -

- 1. Collins Omondi Muganda Vs Oceanic Oil Ltd & Another [2017] eKLR.**
- 2. Leonard Neoga Ng’ang’a & Another Vs. Lawrence Maingi Ndeti [2018] eKLR.**
- 3. David Muriungi Daniel & Another Vs Martin Githongo Ndereva [2017] eKLR.**

Counsel submitted that the trial Magistrate erred by relying on a list of the injuries that was exaggerated and that the appeal therefore had merit.

For the respondent this court’s attention was drawn to the principles which this court must consider in deciding whether it is justified in disturbing the award. To this end, Counsel for the respondent relied on the case of **Josephine Angwenyi Vs. Samuel Ochillo Kisii HCCA No. 125 of 2008**. Counsel for the respondent then submitted that there is nothing to warrant disturbing the award. Counsel submitted that in **Embu HCCC 9 of 2012 Sabina Nyakena Mwanga Vs Patrick Kigoro & Another** the plaintiff was awarded Kshs. 3,000,000/= for injuries similar to those of the respondent and that the award herein was therefore not excessive. Counsel urged this court to dismiss the appeal with costs and interest as from the date of the award.

Both sides are alive to the principle that this court can only interfere with the award if it is satisfied that the trial court took into account an irrelevant factor or left out of account a relevant factor or if the amount is so inordinately high or low that it must be a wholly erroneous estimate of the damage – **see Butt Vs. Khan [1981] KLR 349**. This is the same test that I shall apply in this case. The court shall also be guided by the principle that similar injuries should attract similar awards. This principle was restated in **Tayab Vs. Kinanu [1983] KLR 114** where it was held: -

“9. In awarding damages, the court ought to assess the general picture, the whole circumstances, the effect of the injuries, the particular person concerned and uniformity. The court must also be guided by recent awards in comparable cases in the local courts.....”

The respondent in this case pleaded the following injuries: -

- (a) Multiple skull fractures.
- (b) Fracture of the radial ulna.

- (c) Fracture of ribs left side 3, 4, 5, 6.
- (d) Plating of radial ulna with multiple fractures.
- (e) Loss of consciousness for 3 days.
- (f) Confusion.
- (g) Radial ulna plating.
- (h) Bruises to the left upper limb.
- (i) Contusion on left side of the chest.
- (j) Multiple bruises on the face.

Dr. Ogando Zoga summarized the injuries as follows: -

1. Multiple skull fractures.
2. Severe head injury and loss of consciousness for three days.
3. Multiple bruises on the face.
4. Multiple fracture of ribs left side 3, 4, 5, 6 (4 ribs).
5. Segment fracture of the left radius and ulna.

According to Dr. Zoga the effect of those injuries on the respondent were that epilepsy was a likely complication, the left arm was weak and would require physiotherapy for a long time and was unlikely to recover fully (see the original report produced). He assessed permanent disability at 20%.

Counsel for the appellant contends that the injuries relied upon by the respondent were exaggerated. The judgement of the trial Magistrate however shows that he relied on the medical evidence adduced before him. I am not persuaded therefore that the injuries were exaggerated. I note however that the trial Magistrate assessed the award based on the case of **Sabina Nyakenya Mwanga Vs. Patrick Kigoro & Another Embu HCCC No. 9 of 2012**. In that case the plaintiff was awarded Kshs. 3,000,000/= for: -

- Multiple soft tissue injuries.
- Fracture of the right upper arm.
- Fracture of distal femur.
- Fracture of right thigh bone.
- Fracture of right patella knee.
- Fracture of the pelvis.
- Fracture of the distal radial wrist.

Those injuries were much more serious than the ones suffered by the respondent herein and are in no way comparable. In my view the respondent's injuries were more comparable to those of the plaintiff in **Leonard Neoga Ng'ang'a & Another Vs. Lawrence Maingi Ndeti [2018] eKLR** where Kshs. 1,500,000/= was awarded. While I appreciate that no case can be like the other and that each case must be determined on its own merits I am also required to uphold the principle of consistency in the awards. Accordingly, I must interfere with the award in this case as it was excessive. As I have stated the respondent sustained injuries similar to those in the case of **Leonard Neoga Ng'ang'a & Another Vs. Lawrence Maingi Ndeti (Suppra)**. The judgement therein is fairly recent and I am satisfied that the award of Kshs. 1,500,000/= would also suffice in this case. Accordingly, the award of general damages in the court below is set aside and substituted with an award of Kshs. 1,500,000/=. The special damages shall remain undisturbed and the entire sum shall be subjected to the agreed ratio of contribution. Interest on the sums awarded shall be calculated at court rates in the usual manner. The costs of this appeal shall be borne by the respondent. It is so ordered.

Signed, dated and delivered in Nyamira this 13th day of June 2019.

E. N. MAINA

JUDGE