



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

CIVIL APPEAL NO. 11 OF 2017

RICHARD KERINI MANYISA-----APPELLANT

=VRS=

YNO (Minor suing through her next friend and father)

AAO-----RESPONDENT

{Being an Appeal against the Judgement of Hon. J. Mwaniki – PM dated and delivered on the 4th day of May 2017 in the original Keroka PMCC No. 81 of 2016}

JUDGEMENT

The respondent sued the appellant for compensation for personal injuries sustained in a motor vehicle accident and was awarded general damages in the sum of Kshs. 350,000/= and special damages of Kshs. 19,334/=. Liability in the ratio of 70%:30% had been agreed between the Advocates for the parties. The gist of this appeal is that the damages awarded were inordinately high and this court should interfere and reduce the same to Kshs. 90,000/=. To support this argument Counsel for the appellant relied on the following cases: -

- 1. JMN (Minor suing through next friend and father) Wilfred Wadibe Nyaundi Vs. Petroleum Industries Ltd [2014] eKLR.**
- 2. Mwavita Jonathan Vs. Silvia Onunga [2017] eKLR.**
- 3. Ndungu Dennis Vs. Ann Ndirangu Wainaina & Another [2018] eKLR.**
- 4. Godwin Ireri Vs. Franklin Gitonga [2018] eKLR.**

The appeal is vehemently opposed. Counsel for the respondent urges this court to find that the trial Magistrate considered the injuries, the medical report as well as comparable awards and dismiss the appeal. Counsel has submitted that if this court interferes with the award it should be to enhance rather than to reduce it given the prevailing circumstances which is the diminishing value of our currency as compared to other major world currencies. Counsel for the respondent relied on the following cases: -

- 1. Vincent Cheruiyot Rono Vs. Mombasa Maize Millers Ltd [2006] eKLR.**
- 2. Sosphinaf Company Limited & James Gatiku Ndolo Vs. Daniel Ng'ang'a Kanyi [2006] eKLR.**
- 3. Ugenya Bus Services Vs. Gachoki [1982] eKLR.**
- 4. Kiwanjani Hardware Ltd & Another Vs. Nicholas Mule Mutinda [2008] eKLR.**

The principles that shall guide this court in this appeal are firstly that the court can only interfere with the award if the trial Magistrate took into account an irrelevant factor or left out of account a relevant factor or the award is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage – see **Shabani Vs. City Council of Nairobi [1985] KLR 516**. Secondly, the principle that there is need for consistency so that generally comparable injuries are compensated by comparable awards but bearing in mind that no case is exactly like the other (see **Kiwanjani Hardware Ltd & Another Vs. Nicholas Mule Mutinda [2008] eKLR** and also **Sosphinaf Company Limited & James Gatiku Ndolo Vs. Daniel Ng'ang'a Kanyi [2006] eKLR**).

It is not in dispute that the respondent herein sustained: -

- Blunt trauma to the occipital area.

- Bruises on the left leg.
- Contusion on the nose.
- Blunt trauma to the chest.
- Bruises on the left toe.
- Head injury.

These were classified as soft tissue injuries and although the doctor was of the opinion that the injury to the head was likely to lead to post traumatic epilepsy there was no evidence adduced at the trial of any such episode. In the cases cited by Counsel for the appellant the plaintiffs sustained injuries that were much more severe than those of the respondent herein yet the awards which are quite recent were much lower than what the trial court awarded the respondent. In **Mwavita Jonathan Vs. Silvia Onunga [2017] eKLR** the plaintiff was awarded Kshs. 400,000/= for injuries that included a left hip fracture and deep wound on the left lower leg and in **Ndungu Dennis Vs. Ann Wangari Ndirangu & Another [2018] eKLR** the plaintiff was awarded Kshs. 100,000/= for injuries similar to those of the respondent. Similarly, in **Godwin Ileri Vs. Franklin Gitonga [2018] eKLR** the plaintiff was awarded Kshs. 100,000/= for two cuts on the forehead, cuts on the scalp to the occipital region, bruises on the left ankle and bruises on the right knee. In the light of the above decisions, the award in this case was inordinately high. Accordingly, the award is set aside and is substituted with one for Kshs. 150,000/= which I consider more reasonable taking inflation into account. The special damages shall remain undisturbed and the entire award shall be subject to the agreed ratio of contribution. Interest shall be calculated from the date of judgement in the trial court and the costs of this appeal shall be borne by the respondent. It is so ordered.

Signed, dated and delivered in Nyamira this 4th day of July 2019.

E. N. MAINA

JUDGE