



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL APPEAL NO. 125 OF 2015

REVITAL HEALTHCARE (EPZ) LTDAPPELLANT

VERSUS

MARK ANYAMA.....RESPONDENT

J U D G M E N T

1. In this appeal all the grounds challenge the award of general damages as being too high excessive and onerous and thereby fit to invite the interference by this court as a first appellate court. There is in fact no challenge on finding and decision on liability

2. Award of general damages is largely an exercise in judicial discretion by the trial court and it is not for an appellate court to slightly freely and in every even interfere^[1]. It is also said that assessment of damages in personal injury claims is a difficult task ^[2] and that an appellate court should not interfere merely because it would have awarded a different sum had it sat as the trial court^[3].

3. By this court is also mandated on a first appeal to proceed by way of a retrial by reappraising and reevaluating the entire material availed at trial not a view to coming to own conclusions while being cognizant that the trier of facts had the advantage which the appellate court lacks^[4].

4. The material presented at trial and relating to the injuries suffered by the respondent included the medical report by Dr. Ajoni Adede and a medical summary from Bomu Hospital. Both documents reveal that the Respondent suffered cut wound of about 30 centimeters long which was stitched but necessitated a multiple visits to the hospital for wound care. He had healed but with residual pain upon exertion for which the doctors advised no heavy duty work.

5. That evidence together with the Respondents oral evidence was taken into account by the trial court which then found and held:-

“On evaluation, the plaintiff suffered cut wound. The scare was about 20cm and still not dully (*sic duly*) healed. No organ injury was shown and the doctor clarified it as soft tissue with no permanent disability. I therefore, find and award General damages of Kshs.400,000/= as adequate compensation of 100% liability less 20% contribution.

6. This decision is faulted and challenged on the basis that the award arrived at was high and excessive. The basis of that contention emerges to be the Appellant’s view in both submissions at trial and those offered here that the authorities cited to court awarded much lower awards. What must however be noted is that the decisions cited to court were those made in 1991 and 1992, some over 23 years, prior to the decision by the trial court. To this court the appellant ought to have been of better assistance to the trial court by citing more recent decisions because damages being compensatory must keep pace with the passage of time and the attendant erosion of the value of money. Even the decisions cited by the respondent at trial were equally too old to as to pass for being outdated for purposes of guidance to the court.

7. Having been faced with such level of contribution from the counsel the court did exercise a discretion in assessment of damages and came up with the sum of Kshs.400,000/= on 100% basis. That to this court was not inordinately too high but comparable to the decisions cited when the passage of time is reckoned with. I find nothing untoward to merit my interference because even the persistence of pain months after the injury with attendant multiple visits to the hospital were all relevant factors for consideration in assessing damages. I may only add by quoting Madam J, as there was in the case of in **Ugenya Bus Service v James Kongo Gachohi, Civil Appeal No. 66 of 1981** that days of small and stingy awards are long gone.

8. I find no merit in the appeal and thus order it dismissed with costs.

Dated and delivered at Mombasa this 14th day of October 2019.

P.J.O. OTIENO

JUDGE

[1] *Butt Vs Khan* (1982-88) 1 KAR,1

[2] *Sosphinaf Company Limited v James Gatiku Ndolo* [2006]eKLR

[3] *Kenya Breweries Ltd. v Saro* [1991] e KLR

[4] *Abok James Odera t/a A. J. Odera & Associates v John Patrick Machira & Co. Advocates* [2013] eKLR