

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 308 OF 2014

KENYA POWER & LIGHTING COMPANY LTD..... 1ST APPELLANT

BENJAMIN KOMEN2ND APPELLANT

VERSUS

GEORGE NJUGUNA KINUTHUA.....RESPONDENT

(Being an appeal from the Judgment of G.H. Odour S.P.M. at the Senior Principal Magistrate's Court at Limuru Civil Case No. 489 of 2012 delivered on 26.6.2014)

JUDGMENT

The respondent was injured as a result of a road traffic accident involving motor vehicle registration No. KAY 477V owned by the 1st appellant and driven by the 2nd appellant at the time of the accident which took place along Nairobi-Limuru Road. He blamed the accident on the negligence of the 2nd appellant in the way he drove and managed the said motor vehicle.

The appellants denied the respondent's claim in the defence, but the parties agreed in the lower court on liability such that the appellants were to bear 70% and the respondent 30% contributory negligence. The parties then agreed to file submissions on quantum.

In a judgment delivered on 26th June, 2014 the lower court made an award of Kshs. 1 Million general damages for pain and suffering, which was discounted by 30% contributory negligence leaving a balance of Kshs. 700,000/= plus costs and interest at court rates. No special damages were proved and none were awarded.

This appeal is on quantum only. The appellants have complained that, the award of general damages was excessive and disregarded the appellant's submissions, while relying totally on the submissions of the respondent. As required of me, I have made an evaluation of the material presented before the trial court. These included the medical report, submissions by counsel and authorities cited.

It is now established that this court may not interfere with the award made by the trial court, unless such an award is inordinately too high or too low so as to give an erroneous estimate of damages. - see **BUTT VS. KHAN (1981) 1 KLR 349** and **KEMFRO AFRICA LIMITED T/A MERU EXPRESS SERVICE VS AM LUBIA & ANOTHER 1987**. The lower court also cited the case of **WESTCH & SONS LIMITED VS SHEPHERD 91964) AC 326** where the court emphasised that comparable injuries should be compensated by comparable awards.

The respondent herein sustained serious injuries as set out in the report by Dr. Wokabi. The injuries cited were intracranial bleeding and fractures of the skull. The respondent was rendered unconscious and slowly recovered from that condition after a period of two weeks. As at the time Dr. Wokabi was examining him in November, 2012 it was one year down the line, because the accident took place on 4th December, 2011. At that time, he experienced frequent headaches and nose bleeding. He however did not exhibit any neurological deficit. He was still recovering but the type of head injury is one that will predispose him to possible epilepsy any time in his life time.

The lower court relied on several authorities in making the award complained of. Some more authorities have been cited in the submissions before me. Guided by the medial report and relevant authorities, I am not persuaded that the award made by the lower court was in any way inordinately high to attract the intervention of this court. It was comparable to comparable injuries in the cited cases and therefore this appeal is dismissed with costs to the respondent.

Dated, signed and delivered at Nairobi this 5th Day of December, 2019.

A. MBOGHOLI MSAGHA

JUDGE