



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CIVIL DIVISION

HIGH COURT CIVIL APPEAL CASE NO. 30 OF 2017

F A (Minor suing through next friend and father) A F W K.....APPELLANT

VERSUS

KARIUKI JANE.....1ST RESPONDENT

JOSEPH KARIUKI MUKURIA.....2ND RESPONDENT

(Being an appeal from the Judgment delivered on 10th December, 2014

by Hon. N. Makau (Resident Magistrate) Senior Principal Milimani

at Limuru Courts in SPMCC No.145 of 2014).

JUDGMENT

1. F A, a minor aged 15 years was involved in a Road Traffic Accident.
2. Liability was agreed on by the parties at 30% against the Appellant and 70% against the Respondent.
3. The medical report by Dr. Cyprianus Okoth Okere prepared on 23rd April, 2014, a P3 form and treatment notes from Kenyatta National Hospital were among the documents produced as exhibits.
4. The medical report described the injuries sustained as follows:
 - a. **Degloving injury left ankle**
 - b. **Fracture of the left distal femur**
5. The trial magistrate awarded Ksh.500,000/= general damages, Ksh.149,181/= special damages, interest and costs.
6. The Appellant was dissatisfied with the said judgment and appealed to this court in the following grounds:
 - a) **The trial Magistrate failed to take into account the principles of law regarding assessment of damages.**
 - b) **That the award of damages is low and did not take into account the permanent incapacity.**
 - c) **That the pleadings, evidence and submissions on record were not considered.**
7. The appeal was canvassed by way of written submissions. The Appellant submitted for an award of Ksh.2,000,000/=. The Respondent supported the judgment of the trial magistrate.
8. This being a first appeal, this court is duty bound to re-evaluate the facts afresh and come to its own independent findings and conclusions.

See for example the case of **Selle v Associated motor Boat Co. & others [1968] E.A. 123** where it was stated as follows:-

“An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally (Abdul Hameed Saif v Ali Mohamed Sholan (1955), 22 E.A.C.A. 270)”.

9. The Appellant relied on the case of **Desmond Kipruto v Brazille Simaro Musumba [2006] eKLR** where a minor was awarded 1,500,000/= for injuries which resulted in the amputation of the right leg. The injuries in the said authority are more severe and are not comparable to the injuries sustained in the case at hand.

10. The Respondent relied on the case of **Nzish, Mary Nzomo & others v Headmistress Machakos Girls & another** where an award of Ksh.250,000/= was made for an incomplete fracture of the left tibia and blunt trauma to left hip.

11. In addition to the cases referred to by the parties herein, I have considered the following authorities:

a. Denshire Muteti Wambua v Kenya Power & Lighting Co. Ltd [2013] eKLR, where the Court of Appeal referred to cases where awards of between Ksh.400,000/= to Ksh.450,000/= for fracture of the femur.

12. I have considered the submissions by the counsels for the respective parties. The award of Ksh. 500,000/= as general damages is within the range of similar injuries and this court will not disturb the same. I am guided by the case of **Kemfro Africa Ltd t/a Meru Express Service Gathogo Kanini v A M. Lubia and olive Lubia 91985) 1 KAR 727**, where the Court of Appeal observed:-

“...the principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial court are well settled. The appeal court must be satisfied either that the judge, in assessing the damages took into account an irrelevant factor, or left out of account a relevant one, or that the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages.....”

13. The upshot is that I find no merits in the appeal and dismiss the same with costs.

Dated, signed and delivered at Kiambu this 6th day of July, 2018

B. THURANIRA JADEN

JUDGE