



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CIVIL DIVISION

HIGH COURT CIVIL APPEAL CASE NO. 29 OF 2017

I A (Minor suing through next

friend and father) A F W KAPPELLANT

VERSUS

KARIUKI JANE.....1ST RESPONDENT

JOSEPH KARIUKI MUKURIA.....2ND RESPONDENT

(Being an appeal from the Judgment delivered on 10th December, 2014 by Hon. Mrs. N. Makau (Resident Magistrate) Senior Principal Milimani at Limuru Courts in SPMCC No.143 of 2014).

JUDGMENT

1. The Respondent's case arose out of a Road Traffic Accident. On 8th October, 2014 the parties herein entered a consent judgment on liability at 30% against the Respondent and 70% against the Applicant. The Respondent's list of documents filed herein was admitted as evidence without calling the makers. The parties then proceeded to file written submissions on quantum.
2. Among the documents filed by the Respondent is a medical report dated 23rd April, 2014 prepared by Dr. Cyprianus Okoth Okere, a P3 form and treatment notes from Kenyatta National Hospital.
3. The victim of the accident, 9 year old I A is reflected in the medical report as having sustained the following injuries:
 - a) **Loss of 2 upper incisors**
 - b) **Degloving injury on the left ankle.**
 - c) **Bruise below the right eye.**
4. The trial magistrate awarded Ksh.400,000/= as general damages, Ksh.142,330/= special damages plus interest and costs.
5. The Appellant was aggrieved by the said judgment and appealed on 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.**
6. The appeal was canvassed by way of written submissions. The Appellant's counsel submitted for an award of Ksh.2,000,000/= as general damages. The Respondent's counsel supported the award made by the trial magistrate.
7. 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)”.

8. 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.

9. The Respondent relied on the cases of **Isaac Gitau Ngugi v Kakuzi Ltd CA 426/2005; Esther Nyambura Munyiri v Christopher M Muteti & 2 others Nbi HCCC 1780/90** and **Francis Muiruri Kariuki v Samuel Njoroge Kimingi & another Nbi HCCC 1313/18** where award of general damages of Ksh.50,000/= to Ksh.70,000/= were made for soft tissue injuries. These authorities are old. The passage of time and inflation must be taken into account. The victim in the instant case sustained loss of two teeth no addition to the soft tissue injuries

10. In addition to the cases referred to by the parties, I have looked at the following other cases:

a) **Francis Ochieng & another v Alice Kajimba [2015] eKLR**, where an award of Ksh.500,000/= was reduced to Ksh.350,000/= in the year 2015 for Loss of five lower teeth and two upper teeth.

11. I have considered the submissions by the counsels for the respective parties. The award of Ksh.400,000/= 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.....”

12. With the foregoing, 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