



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCA NO. 66(B) OF 2017

WERE RODAH1ST APPELLANT

DANIEL MWALILI MUTUA.....2ND APPELLANT

-VERSUS-

M M M A.K.A

M M (*minor suing through her uncle and next friend*)

S M MRESPONDENT

(Being an Appeal from the Judgment of Hon. P.M. Wambugu (SRM) in Senior

Resident Magistrates Court at Kilungu Civil Case No.155 of 2015)

JUDGMENT

INTRODUCTION

1. The Appeal herein arises from a verdict of the court in Kilungu CC No. 155 of 2015 in which the Respondent was awarded Kshs. 1,300,000/= as General Damages and Special Damages Kshs. 62,149/=.
2. The claim was lodged via plaint dated 07/09/2015 where it was claimed that on 30/05/2018 along Salama Nunguni road at Enzai area whilst the Respondent was walking as a pedestrian off the road the second Defendant/Appellant being the driver motor vehicle KBJ 162H negligently drove, managed and or controlled the same that it lost control, veered off the road and hit her as a result of which she sustained severe injuries.
3. Thus the Respondent claimed General and Special damages for the injuries sustained.
4. The liability was agreed by consent at the ratio of 85% to 15% in favour of the Respondent. Thus the court was only left to determine the issue on Quantum.
5. Being aggrieved by the award by the Trial Magistrate, the Appellant lodged instant appeal and set out the following grounds:-
 - i. ***The learned trial Magistrate erred in law and fact and misdirected himself by awarding a manifestly excessive quantum.***
 - ii. ***The learned trial magistrate disregarded Appellant submissions.***
 - iii. ***The learned trial magistrate failed to consider applicable case law availed by the Appellant.***
 - iv. ***The learned trial Magistrate made award not based on any award for comparable injuries.***
6. When the matter came for hearing the parties agreed to canvass the same via written submissions which they filed and exchanged.
7. The Appellant submitted relying on the case of **H. West & Sanos Ltd –Vs- Shepherd (1964) AC. 326** that so far as it is possible comparable injuries should be compensated by comparable awards. The award must be that amount which is awarded to a considerable extent conventional.

8. The Appellant proposed an award of Kshs. 200,000/= as General Damages and relied on the case of **Isaac Mwenda Micheni –Vs- Mutegi Murango (2004) eKLR** in which the claimant sustained;

- ***Wound on scalp;***
- ***Fracture of left tibia and fibula;***
- ***Cut wound on the knee.***

9. The Appellant submitted that none of the authorities cited by the Respondent (which were of awards ranging from Kshs. 800,000/= - 1 Million) related to the injuries to those sustained by the Respondent as they reflected more severe injuries.

10. The Appellants urged court to set aside the award of the trial court on General Damages as being inordinately high and substitute same with award of Kshs. 200,000/=.

11. He relied on the case of **Kemfro Africa Ltd T/A Meru EXPRESS Service –Vs- Lubia & Anor 1998 eKLR** and also **Bashir A. Bhutt –Vs- Uais Ahmed Khan (1982-88) KARS** which sets the principles that;

“The Appellate court can disturb a trial court award i.e. it must be shown to be so inordinately high or low as to represent an entirely erroneous estimate.....or court proceeded on wrong principles or misapprehended the evidence in same material respect and arrived at a figure which was either inordinately high or low.....”

12. On Respondent side, it is submitted that, the injuries show by produced medical reports were:- blunt injury to abdomen, back, right limb, hands, hips, chest, face (bruises, tear of bladder, fracture tibia shaft, blunt knee injuries.

13. It was submitted on Quantum relying on the case of Catholic Diocese of **Meru -Vs- Regina M. Mutinda CA 18/03** on a court making award for injuries similar to those sustained by claimant. Also various other authorities were cited such as **Mary W. E. Mwangi –Vs- KTDA** where an award of Kshs. 800,000/= was made for injuries in inguinal groin area.

14. In case of **Mutinda Mathera –Vs- G. Yusuf** claimant sustained rupture of urethra, fracture tibia, right leg wound in pelvic area and left leg and was awarded Kshs. 1 million.

15. Thus the Respondent supports the award by the trial court as proper.

16. In the case of **Easy Coach Limited –Vs- Emily Nyangasi Supra** the court held that in the principles upon which this court should proceed are those of **KEMFRO** where it was held;

“It must be satisfied that either the judge in assessing damages took into account an irrelevant factor or left out of account a relevant one or that short of this, the amount is so inordinately low or high that it must be wholly erroneous estimate of the damages.”

17. The court has looked at the injuries sustained by the Respondent and save for fracture of right leg tibia shaft and tear of the bladder the others are in the realm of multiple soft tissue injuries. Comparing to the authorities cited by the Respondent in the subordinate court, such as Catholic Diocese of Meru Supra with award of Kshs.962,320/=, Mary Mwangi supra Kshs.800,000/=.

18. They are less severe to attract the award of Kshs.1,300,000/=. Thus inordinately high on the other hand comparing the authority cited by Appellant Issac Mwenda case supra where the award was Kshs.100,000/= for wounds on scalp wound on the knee and fracture tibia and fibula. The Appellant proposal of an award of Kshs. 200,000/= is inordinately low.

19. The court doing the best it can in the circumstance of the case and taking to account the cited authorities are of distant past, makes an award in General Damages which is reasonable assessed at Kshs.600,000/=.

20. Thus the court makes the following orders:

1) Appeal is allowed party as follows;

a) The award is adjusted to Kshs.600,000/=.

Less 15% liability = Kshs.90,000/=.

Balance = Kshs.510,000/=.

b) Plus Special Damages Kshs.62,149/=.

c) 50% cost to the Appellant as the appeal is partly successive.

SIGNED AND DATED THIS 11TH DAY OF JULY 2018, IN OPEN COURT.

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C KARIUKI

JUDGE