



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYAMIRA**

**CIVIL APPEAL NO. 11 OF 2016**

**G4S SECURITY SERVICES LTD.....APPELLANT**

**=VRS=**

**AYIENDA OGARI RICHARD.....RESPONDENT**

**[Being an Appeal from the Judgement and Decree of Hon. C. Mwaniki – PM delivered on the 14<sup>th</sup> day of June, 2016 in the original Keroka SPMCC No. 45 of 2014]**

**JUDGEMENT**

The respondent in this appeal sued the appellant for compensation for injuries she sustained in a motor collision that occurred on 16<sup>th</sup> November 2013. The collision involving the appellant's motor vehicle Reg. No. KBF 106N and a public service vehicle No. KBK 923V in which the respondent was a passenger occurred along the Sotik - Keroka Road.

The respondent sustained a compound fracture of the right tibia bone involving the ankle and was awarded a sum of Kshs. 500,000/= as general damages for pain, suffering and loss of amenities. He was also awarded Kshs. 5,700/= special damages and Kshs. 75,000/= future medical expenses. The appellant being aggrieved by that award preferred this appeal. The grounds of appeal are: -

- “1. THAT the learned trial magistrate erred in law and in fact in adopting the wrong principles in making an award on the damages payable to the respondent thereby arriving at an erroneous decision.**
- 2. THAT the learned trial magistrate erred in law and fact in awarding damages that are manifestly excessive in the circumstances.**
- 3. THAT the learned trial magistrate erred in law and fact in considering and/or taking into account irrelevant factors in making a determination as to the amounts payable to the respondent.”**

The appellant prays that the appeal be allowed and the award for general damages be reduced to Kshs. 250,000/=. The appeal is not concerned with the magistrate's finding on liability.

The appeal which is vehemently opposed was canvassed by way of written submissions. Counsel for the appellant submitted that given the injuries sustained by the respondent and the prognosis by the doctor that the plaintiff's injuries had healed and there was no degree of permanent disability, the award was excessive. Counsel submitted that the trial magistrate did not give reasons for awarding the respondent Kshs. 500,000/=. Counsel cited the case of **Johnson Mose Nyaundi Vs. Petroleum & Industrial Service Ltd [2014] eKLR** where he submitted a sum of Kshs. 180,000/= was awarded for similar injuries.

On their part, Counsel for the respondent submitted that the appellant did not adduce any evidence to dispute the injuries or their extent. Counsel submitted that in the lower court they had cited three cases where the plaintiffs had suffered similar injuries ten years before. Counsel submitted that this appeal was misconceived and misdirected and cannot stand. Counsel urged this court to enhance the award rather than reduce it taking into account the diminishing value of the Kenya shilling.

The principles which this court must consider in determining this appeal have been well articulated out by Counsels for the parties. First of all, this court must reconsider the evidence, evaluate it and draw its own conclusions but making allowance for the fact that it has not seen or heard the witnesses – **Selle V. Associated Motor Boat Company Ltd, [1968] EA 123**. Secondly, an appellate court can only interfere with a lower court's awards only in the following instances: -

- “(a) If the trial court took into account an irrelevant factor.**

**(b) Left out of a count a relevant factor or**

**(c) The award is so inordinately low or so inordinately high that it must be a wholly or erroneous estimate of the damages – see *Kemfro Africa Ltd t/a Meru Express & Another V. AM Lubia & Another* [1982 – 88] KAR.”**

The principles which a court must consider in awarding damages were restated in the case of **Sosphinaf Company Limited & James Gatitu Ndolo Vs. Daniel Nganga Kanyi** [2006] eKLR where the Court of Appeal held: -

***“The assessment of damages for personal injuries is a difficult task. The court is required to give a reasonable award which is neither extravagant nor oppressive. And while the judge is guided by such factors as the previous awards for similar injuries and the principles developed by the courts, ultimately, what is a reasonable award is an exercise of discretion by the trial judge and will invariably depend on the peculiar facts of each case.”***

I have considered the submissions and cases cited by Counsels and also reconsidered the evidence in the court below while making provision for the fact that I did not see or hear the witnesses. In this case, it is not disputed that the respondent sustained a fracture of the right tibia bone involving the ankle. A report prepared by Dr. Zoga which is dated 24<sup>th</sup> February 2014 opines that the injury was severe and thought it had healed well, post-traumatic arthritis was most likely.

In 2003, the court awarded a similar sum for similar injuries in Veronica **Mwongeli Kilonzo Vs. Robert Karume** [2003] eKLR. The award in this case is therefore by no means unreasonable and there are no good reasons to interfere with it. In the premises, this appeal is dismissed with costs to the respondent.

It is so ordered.

**Signed, dated and delivered at Nyamira this 21<sup>st</sup> day of November 2018.**

**E. N. MAINA**

**JUDGE**