



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

HIGH COURT CIVIL APPEAL 19 OF 2017

PF (Suing as next friend and father of SK

(Minor)APPELLANT

V E R S U S

VICTOR .O. KAMADI1ST RESPONDENT

AL HUSNAIN MOTORS LTD2ND RESPONDENT

(From the judgment and decree of M.I. Shimenga, R.M, in Butere SPMC civil case No. 45 of 2017 delivered on 2/2/17)

J U D G M E N T

1. The appellant has sued the respondent at the lower court seeking general and special damages after the appellant's minor son was knocked down by the 1st respondent's motor vehicle while he was riding a bicycle along Bungoma- Mumias road. The appellant was injured in the accident. After a full trial the learned trial magistrate found both the cyclist and the driver of the motor vehicle to have been equally to blame for the accident. She apportioned liability on the basis of 50:50 and awarded general damages in the sum of Kshs. 50,000/-.

2. The appellant was aggrieved by the award and filed the instant appeal. The grounds of appeal are that:

1. The learned trial magistrate erred in law and in fact by awarding the appellant Kshs. 50,000/- as general damages which amount was inordinately low.
2. The learned trial magistrate erred in law and in fact by not considering the submissions by the appellant.
3. The learned trial magistrate erred in law and in fact by adopting submissions by the respondent as judgment.
4. The learned trial magistrate erred in law and in fact by not appreciating that the injuries sustained by the appellant were far more serious than the injuries sustained in the authorities cited by the respondent thereby occasioning miscarriage of justice.

3. The appeal was opposed by the respondents through the submissions of their advocates **M/s Mukisu & Co. Advocates**

4. The appeal is on quantum of general damages awarded by the trial court. The appellant had sustained the following injuries:

- Cut wound to the forehead
- Multiple small abrasions to the face
- Blunt injury to the head leading to loss of consciousness for some time
- abrasions to the back
- Abrasion wounds to the dorsum of the right hand.
- Cut wound to the right leg

Dr. Andai who examined the appellant and prepared a medical report described the injuries as moderately serious soft tissue injuries that

were expected to heal completely within one year from the date of examination.

5. The advocates for the appellant submitted that the ward of Kshs. 50,000/- was inordinately low. The advocates relied on the award in **Kitale Hauliers Ltd vs Winston Wanyonyi Lugulu, Bungoma HCCA No. 106 of 2011**, in which the appellant had sustained soft tissue injuries in the form of neck pains, chest contusion, low back pains, painful swelling on the right shoulder, cut wound over the right leg and laceration over the right leg. The injuries had healed with no permanent incapacity. The lower court had awarded Kshs. 600,000/=. On the High Court reduced the award to Kshs. 300,000/=.

6. In the lower court the advocates had relied on the award in the case of **Anas Baraza Vs Jesca Olala Kanani & Another Bungoma HCCA No. 62 of 2008** where the 1st respondent had sustained painful shoulder joint, painful neck, pain on the chest and right foot. The lower court awarded Kshs. 380,000/= in general damages. On appeal the High court reduced the award to Kshs. 250,000/-.

The advocates urged the court to enhance the award to Kshs. 300,000/-.

7. The advocates for the respondents on the other hand relied on the case of **Eastern Produce Ltd Vs Mamboleo Khamadi (2015) eKLR** where the lower court had awarded Kshs. 120,000/= for cut wound on the right middle finger and severe pains incurred during and after the injury. The High Court reduced the award to 50,000/=.

8. The advocates also cited the case of **Buds and Bloom Ltd Vs Lawrence Emusugut Obwa(2016) eKLR** where the lower court had awarded Kshs. 70,000/= for a deep cut wound on the left leg and soft tissue injuries on the leg. The High court reduced the award to Kshs. 50,000/-.

9. The advocates further cited the case of **Kipkere Limited Vs Peterson Ondieki Tai (2016) eKLR** where the trial magistrate had awarded Kshs. 100,000/= for deep cut wound on the left leg, chest contusion and bruises on the left shoulder. The High Court reduced the award to Kshs. 30,000/- .

10. It is trite law that an appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low- **Butt Vs Khan(1981) KLR 198**.

11. I have considered the nature of injuries suffered by the appellant vis a vis the authorities tendered by the advocates for the respective parties. It is my considered view that the awards in the authorities cited by the advocates for the appellant for Kshs. 250, 000/- and Kshs. 300,000/- were inordinately high for soft tissue injuries. The respondents in those cases had healed without any permanent disability. I therefore decline to follow those authorities.

12. The awards in the authorities cited by the advocates for the respondents ranged between Kshs. 30,000/- to Kshs. 50,000/=. I have carefully studied the injuries sustained in those cases. The claimants in those cases had suffered less serious injuries than those suffered by the appellant in the present case.

13. I have considered other comparative cases where awards for soft tissues injuries were made. In **George Kinyanjui T/A Climax Coaches & Another Vs Hussein Mahad Kuyale (2016) eKLR** the trial court had awarded Kshs. 650,000/= for tenderness on the posterior neck, chest, lumbo saxral spine, left shoulder and knee. On appeal Kimondo J reduced the award to Kshs. 120,000/=.

14. In **Hantex Garments (Epz) Ltd Vs Haron Mwasala Mwakawa (2017) eKLR**, Njoki Mwangi J upheld an award of Kshs. 100,000/= in a case where the respondent had sustained bruises, blunt trauma, swelling and tenderness on the right leg.

15. In **Simon Muchemi Atako & Another vs Gordon Osore (2013) eKLR** the Court of Appeal awarded the 1st appellant a sum of Kshs. 120,000/= for injury to the nose with nose bleeding, blunt injury to the chest, blunt injury to the right hip, cut wound on the base of the left thumb with partial loss of the nail and bruise wound on the right knee.

16. The appellant in the instant case sustained cut wounds, abrasions and blunt injury. He had lost consciousness for some time due to head injury. It is my considered view that the award of Kshs. 50,000/= was inordinately low for the kind of injuries sustained by the appellants. I consider that an award of Kshs. 100,000/= is adequate compensation for the injuries sustained.

17. In the foregoing the award of Kshs. 50,000/= in general damages is set aside and substituted with an award of Kshs. 100,000/=.

Costs follow the event. The appeal has succeeded. The respondents to bear the costs of the appeal.

Delivered, dated and signed in open court at Kakamega this 7th day of November, 2018.

J.NJAGI

JUDGE

In the presence of:

.....for appellant

.....for respondents

Court Assistant

Parties:

Appellant

Respondent

30 days right of appeal.