



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 230B OF 2015

KENBRO INDUSTRIES LIMITED.....APPELLANT

- V E R S U S -

JOHN MUSYOKA MUTUA.....RESPONDENT

(Being an appeal from the judgement and order of Hon. R. A. Oganyo (Mrs),

the Chief Magistrates at Nairobi in CMCC no. 2125 of 2012

delivered on 22nd April, 2015)

JUDGEMENT

1) John Musyoka Mutua, the respondent herein, filed a compensatory suit against Kenbro Industries Ltd, the appellant herein, before the Chief Magistrate's Court, Nairobi for the injuries he sustained while working for the appellant on 10.3.2010. The appellant filed a defence to deny the respondents' claim.

2) On 4th March 2015, the parties record a consent order on apportionment of liability in the ratio of 80:20 in favour of the respondent and against the appellant. The parties also agreed to have the medical report prepared by Dr. R. P. Shah and that of Dr. Cyprianus Okere together with the discharge summary from Nairobi West Hospital to be produced in evidence as exhibits without calling the makers to testify. In the same breadth the parties also recorded a consent order that special damage be admitted at ksh.2,000/=. The case therefore proceeded for assessment of damages. Hon. R. A. Oganyo learned Chief Magistrate, assessed damages at ksh.550,000/=. The appellant being dissatisfied with the aforesaid assessment filed this appeal.

3) On appeal, the appellant put forward the following grounds:

i. THAT the learned magistrate erred in failing to consider the medical report of Dr. R. P. Shah and thereby arrived at an excessive and erroneous award.

ii. THAT the learned trial magistrate erred in failing to scrutinize/evaluate the medical evidence tendered in relation to the injuries suffered by the respondent and to correctly relate them to case law and thereby failed to arrive at a fair and reasonable compensation to the respondent for his injuries.

iii. THAT the learned magistrate erred in law and in fact in failing to find that the nature of injuries suffered by the respondent did not warrant an award of kshs.550,000/=.

iv. THAT the learned magistrate erred in law in failing to uphold the doctrine of precedent.

v. THAT the learned trial magistrate erred in law and in fact in failing to consider that the respondent suffered purely soft tissue injuries which have healed without leaving any permanent incapacity.

vi. THAT the learned trial magistrate erred in awarding such an inordinately high award of damages for such injuries that have healed and that the said award can only be adjudged to be an entirely erroneous estimate of the correct damages awardable to the respondent.

4) When the appeal came up for hearing, learned counsels recorded a consent order to have the appeal disposed of by written submissions.

The appellant is the only party who filed its submissions. Though the appellant put forward a total of six (6) grounds, those grounds are interrelated therefore the same may be determined together.

- 5) It is the submission of the appellant that the injuries suffered by the respondent did not warrant the award of ksh.550,000/= for damages.
- 6) It was pointed out that the trial court erred when it failed to consider that the respondent had actually suffered soft tissue injuries which had healed contrary to the assertion that the respondent suffered a fracture.
- 7) The appellant proposed that an award of ksh.50,000/= was sufficient award for soft tissue injuries
- 8) I have re-evaluated the evidence that were presented before the trial court. I have also taken into account the submissions and the authorities cited. The main issues in contention relate to the nature of injuries the respondent sustained and the amount of damages given. The learned Chief Magistrate was convinced that the respondent sustained a fracture of the right tibia.
- 9) I have re-evaluated the evidence produced to establish the sort of injuries sustained and I am too, satisfied that the respondent presented medical reports showing that he suffered a fracture of the right tibia. The medical report prepared by Dr. Cyprianus Okere which was produced by consent indicate that the doctor looked at the discharge summary given by Nairobi West Hospital and the x-ray film and formed the opinion that the respondent suffered a fracture.
- 10) It is noted in the discharge summary that the respondent had a swelling and painful right leg and that the x-ray showed a fracture. Dr. Okero also examined the x-ray and confirmed that the respondent suffered a fracture.

11) On quantum, the respondent beseeched the trial court to award him ksh.1,000,000/= as general damages. He cited the following cases:

- i. **Charles Mathenge Wahome =vs= Mark Mboya Likanga & 2 others (2014) eKLR** in which this court awarded the claimant a sum of ksh.1,500,000/= for a fracture of the femur.
- ii. **Charles Mwanja & Another =vs= Safina Aly Singila (2014) eKLR** where this court awarded ksh.800,000/= for a fracture of the right tibia and fibula.
- iii. **Joseph Musee Mua =vs= Julius Mbogo Mugi & 3 others (2013) eKLR** in which this court awarded the claimant kssh.1,300,000/= for a fracture of the right tibia and fibula.

12) The appellant cited the last authority relied upon by the respondent i.e no. (iii) above and asked the trial court award ksh.100,000/=.

13) The trial magistrate considered and stated that she compared the injuries obtained in this case and those obtaining in the cited cases, the passage of time and the inflationary trends and formed the opinion that a sum of ksh.550,000/= was sufficient. She further added that the cited cases are in respect of more serious as compared to those obtaining in this case. With respect, I agree with the manner the learned Chief Magistrate determined the issue. I find no reason to fault her.

14) In the end, I find no merit in this appeal.

The same is dismissed with costs to the respondent.

Dated, Signed and Delivered in open court this 7th day of December, 2018.

J. K. SERGON

JUDGE

In the presence of:

.....for the Appellant

.....for the Respondents