



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MURANG'A**  
**CIVIL APPEAL NO 62 OF 2013**  
**(FORMERLY NYERI HCCA 11 OF 2012)**

**(Appeal against Quantum only from the Decree passed on 18/11/2011 in Murang'a CMCC No 374 of 2010 – A K Kaniaru, SPM)**

**1. AMOS NJAGI EMURASI**

**2. MAINA HIRAM.....APPELLANTS**

**VERSUS**

**AUGUSTINE WILLY KARIUKI.....RESPONDENT**

**J U D G M E N T**

**1.** This appeal is against quantum only in respect of general damages awarded by the lower court for pain, suffering and loss of amenities on account of personal injuries sustained in a road traffic accident. Judgment on liability was entered by consent. The lower court awarded general damages of KShs 600,000/00. The Appellants argue that award was too high and manifestly excessive in the circumstances.

**2.** The appeal was canvassed by way of written submissions. I have read the submissions of both sides. I have also perused the record of the trial court.

**3.** It is trite that an appellate court will interfere with an award of damages only if, on the facts of the case, the award is manifestly low or excessive and not a proper representation of the loss suffered. An appellate court will also interfere with an award if it is based on wrong principle, or if, in arriving at it, the trial court considered a matter that it should not have, or failed to consider a matter it should have.

**4.** The award challenged in this appeal was made on 23/01/2012. The Respondent's injuries, as set out in 3 medical reports, were –

- (i) Communited fracture of right distal borne with displacement and intra-articular involvement.
- (ii) Communited fracture of the right femur.
- (iii) Blunt trauma to the mouth.

The trial court noted that the prognosis was good and that the Respondent had a permanent disability of 12% of the total person.

5. The Respondent suggested to the trial court an award of KShs 850,000/00 as general damages. The court thought that sum was too high. The Appellants on the other hand suggested an award of KShs 300,000/00 which the trial court thought was on the lower side. In support of their position they used authorities that were more than ten years old. They have used the same authorities in this court. I have perused them and others.

6. I have carefully read through the judgment of the trial court. The learned trial magistrate properly addressed his mind to all relevant factors when considering what award to make. He did not consider any factor he should not have; nor did he fail to consider anything he should have. He took into account inflation and the prevailing cost of living. He committed no error of principle.

7. It is not enough that that I would probably have made a slightly lower award had I been the trial magistrate. I do not find the award manifestly excessive as submitted by the Appellants.

8. In the event I find no merit in this appeal, and the same is hereby dismissed with costs to the Respondent. It is so ordered.

**DATED AND SIGNED AT MURANG'A THIS 10<sup>TH</sup> DAY OF NOVEMBER 2016**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 11<sup>TH</sup> DAY OF NOVEMBER 2016**