



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

Civil Appeal 102 of 2008

SAMUEL MUTHAMA.....APPELLANT

VERSUS

KENNETH MAUNDU MUINDIRESPONDENT

JUDGMENT

1. This Appeal is limited to the issue of quantum only. The background thereof is as follows;
2. The Respondent, Kenneth Maundu Muindi was a fare-paying passenger in motor vehicle registration number KAP 193Q on 5.2.2007 when an accident occurred and he sustained the following injuries as per paragraph 5 his Complaint dated 4.6.2007;

“a. Blunt injury to the head with loss of consciousness

for about four hours.

b. Blunt injury to the neck

c. Cut on the scalp.

d. Injury to the right eye with periorbital oedema.

e. Blunt injury to the chest and back.

f. Blunt injury to the low back with spondylolisthesis L2 (compression of the L2 vertebra).

g. Small cuts on the dorsum of the right hand.”

3. On 6.3.2008 parties recorded a consent in the following terms;

“i. Judgment on liability be entered for the plaintiff

against the defendant at 90%

ii. The medical reports prepared by M.N. Kuria dated 5th April, 2007 and Dr. Wambugu P.M.

dated 1st October be admitted in court without calling the makers.

iii. Parties to file written submissions on quantum attaching the 2 medical reports and the court to proceed with assessment of damages payable.

iv. The matter be mentioned on 10th April 2008 for parties to hand in written submissions and get a judgment date.”

4. Dr. M.N. Kuria in his Report dated 5.4.2007 found that the Respondent sustained the following injuries:-

“i.) Blunt injury to the head with loss of

consciousness for about 4 hours.

ii. Blunt injury to the neck

iii. Cut on the scalp.

iv. Injury to the right eye with periorbital oedema.

v. Blunt injury to the chest and back.

vi. Blunt injury to the low back with spondylolisthesis L2 (compression of the L2 vertebra).

vii. Small cuts on the dorsum of the right hand.”

5. He then concluded as follows;

“This man sustained severe soft tissue and ligament injuries in the Road Traffic Accident. The injuries to the low back have far reaching effects and could lead to chronic back pain and osteoarthritis. He still needs follow up for the injured eye and back.”

6. Dr. P.M. Wambugu stated that the injuries sustained were;

“a) Blunt back trauma

b) Cut wound left hand

c) Sub-conjunctival haemorrhage right eye.”

7. He then formed an opinion as follows;

“Maundu’s injuries are consistent with those due to blunt trauma as may have occurred during the said accident. He suffered injuries mainly involving the skeletal and soft tissues which occasioned him pains and ongoing morbidity. The residual back pains and stiffness are expected to subside with time, physiotherapy and intermittent medications. He is however predisposed to early onset spondylosis and I do not hesitate to award him 4% as the degree of partial permanent incapacitation.”

8. In his Judgment Hon S.A. Okato, SRM concluded as follows;

“I have considered the proposals above and compared the injuries the Plaintiff herein sustained and the injuries the plaintiffs in the cited cases suffered and the awards given. I have take into account the age of the authorities cited and the current rate of inflation and I award the plaintiff Kshs. 380,000/= as general

damages. No receipts for special damages were attached to the submissions and I make nil awards for specials.”

9. Having deducted 10% contribution from the said sum, he finally entered judgment against the Appellant in the sum of Kshs. 342,000/ plus costs and interest at court rates from the date of judgment.

10. The Appellant’s complaint is that the amount awarded in general damages “was high and manifestly excessive considering the injuries sustained by the Respondent.”

11. I have taken into account the submissions placed before me and I have read the authorities cited in this court and before the subordinate court. As I understand it, this court sitting on appeal can only interfere with the award in damages if the same is either so manifestly high or low as to cause injustice – see Shabani vs City Council of Nairobi [1986] KLR 567. In the instance case, the Respondent suffered soft tissue injuries to the head, neck, chest, back and right hand. The more serious injuries would however seem to be the ones to the right eye and the back coupled with the fact that he suffered 4% partial permanent incapacity.

12. I have read to the following decisions;

i. Esther Nyambura Munyiri vs Christopher Muteti & 2 others Nairobi HCCC 1780/1990.

ii. Francis Muiruri vs Samuel Njoroge Kamingi & another Nairobi HCCC 1313/1987

In both cases Kshs. 50,000/= was awarded to the Plaintiffs for soft tissue injuries.

iii. Catherine Wanjiru King’ori & others vs Gibson Gichumbi Nyeri HCCC 320/1998 where the 1st Plaintiff was awarded Kshs. 300,000/= for injuries to the ankle, legs and chest. Other Plaintiffs suffered smaller injuries and were awarded Kshs. 100,000/=.

iv. Habiba Mohamed vs Peter Maleve Nairobi HCCC 950/1998 where for severe injuries to the left arm and face, the plaintiff was awarded Kshs. 600,270/=.

v. Beatrice Onwong’a vs Attorney General Nairobi HCCC 88/2003 where the Plaintiff was awarded Kshs. 606,900/= for fractures, contusions and bruises.

13. In his judgment and taking into account the injuries suffered by the Respondent, the learned magistrate awarded Kshs. 380,000/= as general damages. Is this sum manifestly excessive? The advocate for the Appellant argues that it is and that Kshs.70,000/= would be reasonable compensation. The advocate for the Respondent thinks otherwise. In my view, taking into account the authorities cited above, the 4% permanent incapacity suffered by the Respondent, the element of inflation and the age of the authorities cited, and in fairness to all parties, Kshs. 380,000/= is both reasonable and proper in the circumstances of this case and I see no need to interfere with the said sum.

14. That being the case, I see no merit in the Appeal which is dismissed with costs to the Respondent.

15. Orders accordingly.

Dated and delivered at Machakos this 1st day of July 2009

Isaac Lenaola

Judge

In the presence of; Mr. Mungatta for Respondent

No appearance for Appellant

Isaac Lenaola

Judge