



REPUBLIC OF KENYA

THE COURT OF APPEAL
AT NAIROBI

(CORAM: GICHERU, LAKHA, J.J.A. & BOSIRE, Ag. J.A.)

CIVIL APPEAL NO. 34 OF 1996

BETWEEN

BONIFACE MUSYOKA NDOLO APPELLANT

AND

PAULINE KATONGE MUSAU RESPONDENT

(Appeal from the Judgment and Decree of the High Court of
Kenya at Machakos (Justice Osiemo) delivered on 29th
November, 1995

in

H.C.C.C. NO. 494 OF 1994)

JUDGMENT OF THE COURT

This is an appeal against the quantum of damages awarded by the superior court (Osiemo, J.) to the respondent who was the victim of a motor accident. There is no appeal before us against liability as judgment on liability was entered by Consent and the suit proceeded only on assessment of damages.

On or about November 14, 1993 the respondent was travelling as a passenger in a motor vehicle registration No. KAA 183T when it was involved in an accident along Kangundo - Nairobi road. She sustained concussion of the brain, severe burns on the face, neck, trunk, arms and abdomen, severe scarring and formation of hypertrophic scars all over the body; severe contracture of the left side of the neck severely limiting the neck movements and severe contracture of the right elbow severely limiting movements of the right elbow.

The special damages were awarded at Shs.12,100/= against which there is no appeal. The learned judge dealt very briefly with the issue of general damages, i.e. pain and suffering. He stated:-

"Having considered the injuries suffered by the plaintiff in this case and compared them with the injuries sustained by the plaintiff in the cited authorities and the damages awarded I consider a figure of Shs.1,200,000/= to be adequate compensation for the plaintiff."

Nevertheless, as an Appeal Court we are not entitled to review this finding merely because it is probable that had we been sitting in first instance we should have awarded a smaller sum. If we are to review, we must first be satisfied that the trial Judge acted upon a wrong principle of law or that the

amount awarded as damages is so high or so very small as to make it an entirely erroneous estimate of the damages to which the respondent is entitled. Moreover, where an award of general damages differs widely from the awards given in comparable cases it may be right for an appellate court to alter it.

With the above consideration in mind, we considered the awards made in the cited authorities as being those of comparable cases. Of course, each case depends on its facts. But we found that the awards were smaller - even less than half of what the trial Judge awarded. We will not go over in detail the exact nature of the respondent's injuries. It is sufficient to say that the burns were severe and affected about 25% of the total body surface area - almost the same as in the cases cited.

Giving the best consideration to this aspect of the case, we think that the figure of general damages for pain, suffering and loss of amenities should be reduced by one-half to shillings 600,000/=.

As for damages for future operations Dr. Musyoka estimated those costs at Shillings 1.2 million. We have not been persuaded that this was in any way so high or that it was in any way erroneous. We on our part would not disturb this award.

In the result, the appeal is allowed to the extent that the decree issued by the superior court is varied by reducing the same by a sum of Shs.600,000/=. The respondent shall pay to the appellant one-half of the costs of this appeal.

Dated and delivered at Nairobi this 7th day of March, 1997.

J.E. GICHERU

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JUDGE OF APPEAL

A.A. LAKHA

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JUDGE OF APPEAL

S.E.O. BOSIRE

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Ag. JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR