



**ChinaRoad and Bridge Corporation v Nyamu (Appeal 1 of 2021)
[2024] KEELRC 2589 (KLR) (24 October 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2589 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
APPEAL 1 OF 2021
MA ONYANGO, J
OCTOBER 24, 2024**

**BETWEEN
CHINA ROAD AND BRIDGE CORPORATION APPELLANT
AND
SAMUEL MWANGI NYAMU RESPONDENT**

(Being an Appeal from the decree and judgment of the L. Kassan Senior Principal Magistrate (SPM) delivered on the 31st day of October 2017 in CMCC No. 1140 of 2006 at Mavoko)

JUDGMENT

1. The Appeal herein arises from the decision of Hon. L. Kassan, Senior Principal Magistrate in Mavoko PMCC No. 1140 of 2016 delivered on 31st October, 2017. In the plaint dated 25th September, 2016, the Respondent herein (Plaintiff in the lower Court suit) sought general damages for injuries he had sustained as a result of an industrial accident that allegedly occurred in the course of his employment with the Appellant.
2. The Respondent attributed the accident to negligence, breach of statutory duty and/or carelessness on the part of the Appellant and/or its agents. The Respondent claimed for general damages, special damages and costs of the suit together with interest at Court rates.
3. The Appellant filed a defence denying any liability as alleged and in fact attributed the accident (if at all) to negligence on the part of the Respondent.
4. In his judgment delivered on 31st October, 2017 the Trial Magistrate found in favour of the Respondent, found the Appellant 100% liable for the accident and proceeded to award the Respondent Kshs.600,000/- as general damages, special damages of Kshs.3,000/- plus costs and interest.



5. The Appellant being dissatisfied with the Judgment of the Trial Magistrate on the issue of quantum filed the instant Appeal vide its Memorandum of Appeal dated 13th November, 2017 in which it raised the following grounds THAT:
 - i. The Learned trial Magistrate erred in law and fact in making an award which was excessive and not commensurate with the nature of injuries sustained by the Respondent.
 - ii. The Learned trial Magistrate erred in law and fact by ignoring the medical report presented which clearly showed the Respondent sustained soft tissue injuries.
 - iii. The Learned Trial Magistrate erred in law and fact by not taking into account the fact that the Respondent did not suffer any residual disability.
 - iv. The Trial Magistrate misdirected himself by failing to consider the past authorities of comparable injuries and the law.
 - v. The Learned Trial Magistrate misdirected himself by failing to consider the submissions made by the Appellant and authorities cited.
 - vi. The Learned Trial Magistrate misdirected himself on all points of law.
6. The Appellant prayed for the following Orders: -
 - a. That the Judgement of the Trial Court delivered on 21/10/2017 and all consequential orders arising therefrom be set aside.
 - b. That this Appeal be allowed and the Orders of the Lower Court be reversed.
 - c. That the Respondent to pay costs of this Appeal and the costs of the lower Court.
7. The Appeal was originally filed in the Civil Division of the High Court at Machakos as High Court Civil Appeal No. 154 of 2017. Directions were made that the appeal be transferred to this court and that the same proceeds by way of written submissions.

Appellant's Submissions

8. The Appellant submits that the Trial Magistrate failed to follow the general principles for awarding general damages for personal injuries as set out in the case of *Boniface Waiti & Another v Michael Kariuki Kamau* (2007) eKLR when it awarded the Respondent Kshs.600,000/- as general damages for soft tissue injuries, which award the Appellant maintained was inordinately high given the nature of injuries sustained by the Respondent herein.
9. The Appellant further submits that the Trial Court erred in failing to be guided by laid down principals for assessment of damages as was enumerated in the case of *Denshire Muteti Wambua v Kenya Power & Lighting Co. Ltd* (2013) eKLR where the Court held that:

“The general method of assessment of damages is that comparable injuries should as far as possible be compensated by comparable awards keeping in mind the correct level of awards in similar cases.”
10. The Appellant further submitted that the Trial Magistrate failed to correctly analyse the nature of injuries suffered by the Respondent and as a result caused a miscarriage to justice.
11. The Appellant submits that the Learned Magistrate's award was inordinately high and an erroneous estimate given that the Respondent suffered soft tissue injuries. Further, that the Respondent



- confirmed at the hearing that there was no residual of disability and in his own evidence confirmed that he had fully recovered from the injuries.
12. It was the Appellants view that an award of Kshs.150,000/- was commensurate general damages for the Respondent based on the injuries sustained and comparable awards for similar injuries.
 13. The Appellant relied on the following decisions:
 - a. Purity Wambui Muriithi v Highlands Mineral Water Company Limited (2015) eKLR where the Court awarded a Claimant the sum of Kshs.150,000/- as general damages for injuries to the left elbow, pelvic region, lower back and left knee.
 - b. Ndungu Dennis Vs Ann Wangari Ndirangu & Another (2018) eKLR Where the Court awarded a Plaintiff Kshs.100,000/- for soft tissue injuries suffered to the lower right leg and the back.
 - c. *Simon Muchemi and Peter Ambani & Another Vs Gordon Osore Civil Appeal No. 180 of 2005* Where the Court of Appeal awarded Kshs.120,000/- to a Plaintiff who had suffered soft tissue injuries that had healed and left no permanent or residue disability.
 14. In conclusion the Appellant urged this Court to find merit in its Appeal and allow the Appeal as prayed.

Respondent's Submissions

15. The Respondent on the other hand submitted that his evidence at the Trial Court as to the nature and extent of his injuries was unchallenged and uncontroverted as the Appellant did not call any witness or produce any document to rebut his case. He further submitted that his evidence was corroborated by treatment notes and medical reports produced as exhibits in the lower Court matter.
16. The Respondent further submitted that he suffered the following injuries:
 - i. Multiple soft tissue injuries
 - ii. Blunt trauma including myofascial spasm L4/L5 & L5/S1 broad based discs bulges causing compression of the S1 nerve roots bilaterally at L5/S1 level
 - iii. Pain on the lumbar region
 - iv. Tenderness on the lumbo-sacral region.
17. The Respondent submitted that he suffered severe soft tissue injuries and as a result the Trial Magistrate did not make an error in awarding him damages. The Respondent urged this court to uphold the award.
18. In conclusion the Respondent submitted that the instant Appeal has no merit and therefore urged this Court to dismiss the same with costs to the Respondent.

Analysis and Determination

19. I have carefully considered the grounds of appeal, the record of appeal and the submissions of the parties. The only issue raised in all the six grounds of appeal is that the award of Ksh.600,000/- as general damages was inordinately high considering the nature of injury, comparable awards, evidence before the Trial Court and relevant principles of law.



20. Being a first appeal, this Court has a singular duty to re-evaluate the entire case and come up with its own findings in the matter. This is as was set out in the case of *Selle v Assorted Motor Boat Company* 1968 EA Company 1968 EA 123-126 where the Court stated as follows:

“Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this Court is not bound necessarily to follow the trial. Judge’s findings of fact appear earlier that he has clearly failed on some part to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”

21. The award of general damages is discretionary and an appellate Court will only interfere with quantum where the Trial Court arrived at the quantum after taking into account irrelevant factors, or failing to take into account relevant factors or where the quantum is inordinately low or inordinately high as to amount to an erroneous estimate of damages. Refer to the case of *Bashir Ahmed Butt v Uwais Ahmed Khan* (1977) 1 KAR where the Court held as follows:

“An Appellant Court will not disturb an award for damages unless it is inordinately high or low as to represent an entirely erroneous estimate. It must be shown that 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.”

22. The duty of this Court is thus to consider whether the award of the lower Court was inordinately high as to warrant interference by this Court.

23. The Appellant maintains that the Trial Magistrate erred in law and fact by failing to be guided by the principles of law in awarding general damages. It further submitted that the award was inordinately high considering the injuries suffered by the Respondent which were soft tissue injuries.

24. The Respondent on the other hand submitted that the Trial Magistrate exercised his discretion judiciously and that the award was fair and commensurate with the injuries sustained.

25. He further argued that the authorities relied upon by the Appellant at the Trial Court were fairly old and did not therefore give a correct assessment of awards for similar injuries.

26. I have considered the injuries in question and the authorities cited by the parties both at the lower Court and at this stage. I have also in mind previous awards by the superior Courts for comparable injuries. I note that the Appellant relied upon fairly old authorities while those relied upon by the Respondent were for more severe injuries than those that he suffered.

27. I find that in the circumstances the award of Kshs.600,000/- as general damages for multiple soft tissue injuries was indeed inordinately high as to justify interference by this Court.

28. In the case of *Francis Ochieng & Another v Alice Kajimba* (2015) eKLR Respondent sustained multiple soft tissue injuries in January 2012. The Trial Court’s judgment was rendered in February 2014. The High Court reduced the award from Kshs.500,000/- to Kshs.350,000/- for multiple soft tissue injuries. It is my view that an award of Kshs.350,000/- would be reasonable in the instant suit taking into account the injuries suffered by the Respondent and I accordingly award the same.



Conclusion

29. In conclusion, the appeal succeeds partially. This Court thus makes the following orders –
- a. The Court allows the appeal to the extent above.
 - b. The award of Kshs.600, 000/- for general damages is set aside and in its place this Court substitutes the same with an award of Kshs.300,000/-.
 - c. The rest of the judgment of the subordinate Court is undisturbed.
 - d. The costs of the appeal will be borne by each party while the order for costs in the lower Court shall remain undisturbed.

DATED, SIGNED AND VIRTUALLY AT ELDORET ON THIS 24TH DAY OF OCTOBER 2024

MAUREEN ONYANGO

JUDGE

