



REPUBLIC OF KENYA

HIGH COURT OF KENYA

AT KISII

CORAM: A.K NDUNG'U J

CIVIL APPEAL NO. 46 OF 2019

VERONICAH MKANJALA MNYAPARA.....APPELLANT

VERSUS

CHARLES KINANGA BABU.....RESPONDENT

(Being an appeal from the judgment and decree of Hon. S.K. Onjoro (SRM)

dated 15th day of March 2019 in CMCC No. 539 of 2017 Kisii)

JUDGEMENT

1. This court is called upon to interfere with the trial court's net award of Kshs. 221,620/= as damages for injuries sustained following a road traffic accident.

2. In determining this matter, I am mindful that an appellate court will not disturb the trial court's discretion in making an award of damages, unless it is shown that the award was based on a wrong principle or is so manifestly excessive or inadequate that a wrong principle may be inferred. (see *Kemfro Africa Limited t/a "Meru Express Services (1976)" & Another v Lubia & Another (No 2) Civil Appeal No 21 of 1984 [1985] eKLR*)

3. The respondent's case before the trial court was that he was riding motor cycle registration number KMDU 287 S along Kisii- Keroka road when at Bobaracho area, the appellant's driver negligently drove motor vehicle registration number KBL 547J and collided with his said motorcycle and as a result he sustained injuries. The parties entered consent on liability in the ratio of 70:30 in favour of the respondent.

4. In written submissions canvassing the appeal, the appellant complains that the trial court's award was inordinately high and inconsistent with awards involving similar injuries. Conversely, the respondent maintains that the award made by the trial court was commensurate with the injuries sustained.

5. The injuries suffered by the respondent are not contested. The respondent listed the particulars of injuries in his plaint as follows;

- a. Deep cut wound on the forehead
- b. Chest contusion
- c. Bruises on the face
- d. Bruises on both hands
- e. Dislocation of the left wrist joint
- f. Bruises on both ankle joints
- g. Dislocation of the left ankle joint

6. He produced treatment charts from Kisii Teaching and Referral Hospital and a medical report prepared by Dr. Morebu supporting his claim. He cited the case of **Kenya Power & Lighting Co. Ltd v Mary Akinyi Civil Appeal No. 72 of 2007** in support of the proposition that he was entitled to an award of Kshs. 500,000/= in general damages. The plaintiff in that case had suffered a deep cut wound on the calf muscles of the left leg, laceration on the right knee, right shoulder and contusion on the chest.

7. For the appellant, a proposal of an award of Kshs. 90,000/= was made before the trial court. To support this, the appellant cited the cases of **Eastern Produce (K) Ltd (Savani Estate) vs Gilbert Muhunzi Makotsi Civil Appeal No. 76 of 2012 [2013]eKLR** and **Godwin Ireri v Franklin Gitonga Civil Appeal No. 47 of 2015 [2018]eKLR**. In **Eastern Produce (K) Ltd (supra)** the appellate court reduced an award of Kshs. 130,000/= to Kshs. 70,000/=. The claimant in that case had suffered a prick wound on the left foot which was tender. In the case of **Godwin Ireri (supra)**, where the plaintiff had sustained two cuts on the forehead, cuts on the scalp to the occipital region, bruises on the left ankle and bruises on the right knee, the appellate court substituted an award of Kshs. 300,000/= with an award of Kshs. 90,000/=.

8. The appellant has also relied on the case of **Ndungu Dennis v Ann Wangari Ndirangu & Another Civil Appeal No. 54 of 2016[2018]eKLR** where the court reduced an award of Kshs. 300,000/= to Kshs. 100,000/= for soft tissue injuries to the lower right leg and the back.

9. The appellant argues that the injuries suffered by the respondent were multiple soft tissue injuries and multiple dislocations which were in the process of healing well. She contends that no permanent disability was anticipated, therefore the award was excessive.

10. I agree with the appellant's argument that there must be uniformity in awards in cases involving similar injuries. Elucidating this principle, the Court of Appeal in **Sheikh Mushtaq Hassan v Nathan Mwangi Kamau Transporters & 5 others Civil Appeal No. 123 of 1985 [1986] eKLR** held;

"... a member of an appellate court when he naturally and reasonably says to himself 'what award would I have made?' and reaches his own figure must recall that it should be in line with recent ones in cases with similar circumstances and that other judges are entitled to their views of opinions so that their figures are not necessarily wrong if they are not the same as his own. West (H) & Son v Shephard Ltd [1964] AC 326, Lord Morris of Borth -Y-Gest.

And the judges of both courts should recall that inordinately high awards in such cases will lead to monstrously high premiums for insurance of all sorts and that is to be avoided for the sake of everyone in the country . Lord Denning MR in Lim Poh Choo v Chamden and Islington Area Authority [1979] 2 All ER 910 (CA); Hancox JA Mariga v Musila (ibid).

11. Having analyzed the authorities cited by the appellant in light of the principles set out above, I found that the injuries suffered by the claimants in those cases were less severe as compared to those suffered by the respondent in the present case. The injuries suffered by the claimants in those cases were only soft tissue injuries whereas the respondent in this case had multiple dislocations in addition to soft tissue injuries. The degree of injury was assessed as grievous harm, in the report prepared by Dr. Morebu.

12. In **Patrick Kinoti Miguna v Peter Mburunga Muthama Civil Appeal No. 92 of 2012 [2014] eKLR** the court upheld the trial court's award of Kshs.300,000/= as general damages for a bruise on the right parietal region, two loose lower incisors, dislocation of the right shoulder cut on the left leg and bruises on the leg and dorsum of the right hand.

13. The court in **Carolyn Indasi Mwonyonyo v Kenya Bus Service Ltd Civil Appeal 17 of 2007 [2012]eKLR** substituted the award of the trial court with an award of KShs.350,000/= where the appellant's injuries were in the nature of soft tissues and a dislocation of the knee joint.

14. The trial court quantified general damages as Kshs. 300,000/=. This, to me is reasonable. The appellant appears to have abandoned his appeal against the award of special damages. Rightly so, since the claim was pleaded and proved to the requisite standard.

15. I therefore find no merit in this appeal and dismiss it with costs to the respondent

Dated, Signed and Delivered at Kisii this 20th day of February, 2020.

A. K. NDUNG'U

JUDGE

Gichana holding brief Mose and Mose Millimo, Advocate for the appellant