



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

CIVIL APPEAL NO. 31 OF 2015

YUSUF M. HAMZA.....1ST APPELLANT

HANAFI ABDI SHUGHULI.....2ND APPELLANT

VERSUS

FARIDA PENDO KAPUMU aka PENDO GEORGE aka FRIDA PENDO....RESPONDENT

(Being an appeal from the judgement of the honorable A.M. Obura (Mrs.) Principal Magistrate delivered on 11th June, 2015 at Kilifi)

JUDGEMENT

The respondent was involved in a road traffic accident on 8th August, 2010 while travelling in motor vehicle registration number KBG 956M along the Mombasa Malindi road. She filed civil suit No. 124 of 2011 before the Kilifi Court. On 25th November, 2014, counsel for both parties filed a consent on liability and the same was adopted as an order of the trial court. The appellant was to take 90% blame while the respondent accepted 10% liability.

The trial court awarded the respondent Kshs.180,000/= as general damages. That award is the subject of this appeal. There are five grounds of appeal. The main ground being raised in the appeal is that the award is excessive. There is the ground that the trial court did not consider the defendant's evidence (ground 3). That ground is misplaced as no evidence was adduced by the defence. There is also the ground that the appellant's submissions were disregarded (ground 4). The judgement of the trial court took into account the submissions of the appellant and considered the proposals on quantum offered by the appellant. These two grounds of appeal must fail.

Basically, the appeal is on quantum. The only relevant evidence to be considered should be that involving the amount of quantum awarded. In their submissions dated 21st April, 2006, counsels for the appellant submit that the respondent suffered mere soft tissue injuries. She sustained bruises and cuts on the left forearm. The wounds healed completely by the time the respondent was testifying. Counsels contend that the award is excessive and rely on the case of **PETER KAHUNGU & KENTMERE FLORA LTD V SARAH NORAH OONGARO; NRB No. HCA 676 of 2000**. In that case Kshs.80,000/= was awarded for soft tissue injuries.

The respondent maintains that the award by the trial court is reasonable. Counsel for the respondent

relies on the case of **ELDORET STEEL MILLS LTD V GILBERT NGANYI NEHEMIAH (2000) eKLR** where Kshs.200,000/= was awarded for soft tissue injuries. According to the respondent, that award was made over ten (10) years ago.

The appeal herein is only on the amount of damages awarded to the respondent by the trial court. Before the trial court, the respondent testified that she got multiple glass cuts on her left forearm. She still has scars. She was treated at Kilifi and Malindi District hospitals. She has been on treatment. PW2 GIBSON NGOME produced the treatment notes from Kilifi District Hospital. PW4 DR. AJONI ADEDE examined the respondent on 8th August, 2014. The accident occurred on 8th August, 2010. This was a period of over four (4) years. According to PW4, the respondent had multiple keloid scars measuring 3 cm on the left forearm. He noted that the scars were causing grave cosmetic disfiguring.

The record of the trial court shows that a medical report by Dr. S.K. Ndegwa dated 10th May 2011 was produced. The report itemizes the respondent's injuries as 3 x 4 cm lacerations on the dorsum of the left hand and general lacerations on the left forearm. The doctor observed that the respondent had several scars with early keloid formation on the left hand.

It is a well settled principal of practice that a court sitting on appeal will only interfere with the assessment of damages awarded by the awarding court if the damages are excessively too low or too high in the circumstances, that the awarding court applied the wrong legal principles in awarding the damages and finally, that awarded damages should be in comparison to what has been awarded in recent comparative injuries or cases.

The judgement of the trial court evaluated the rival proposals of the respective parties as supported by the cited authorities. Counsels for the respondent relied on the case of **DOUGLAS MWIRIGI FRANCIS & 2 OTHERS V ANDREW MIRITI High Court Civil Appeal No. 34 of 2005**. Kshs.150,000/= was awarded for cut wounds on the face, head, hands and lower limbs. The wounds healed with resultant unsightly scar on the left forehead. The case of **JAREDI UKILU V GEOWAVE SHIP CONTRACTORS LTD MSA HCA NO. 49 of 2013** was also cited by the respondent's counsel. Kshs.180,000/= was awarded for soft tissue injuries on the head on 20th November, 2014. On their part, counsel for the appellant cited the case of **SAMUEL MBURU NGAARI & 4 OTHERS V WANGARE Nrb Civil Suit No. 173 of 2008** where Kshs.50,000/= was awarded for minor injuries, abrasions and bleeding.

In the appeal, counsel for the appellants relies on the case of **PETER KAHUNGA (supra) where Kshs.80,000/=** was awarded for soft tissue injuries. This is a moderate shift from the earlier authority of Kshs.50,000/=. Counsel for the respondent relies on the case of **ELDORET STEEL MILLS LTD (supra)** where Kshs.200,000/= was awarded for soft tissue injuries on 3rd May, 2015.

The medical evidence shows that the respondent suffered soft tissue injuries on her left hand. These injuries healed leaving permanent keloid scars. Dr. Adede opined that the scars are causing grave cosmetic disfiguring. These scars are permanent remnants of the healing process. They are visible and therefore the respondent did not recover 100% after the accident. She has now been left with permanent scars on her left hand. I do find that these injuries cannot be treated as so minor that they cannot attract an award of Kshs.180,000/=. The injuries are not mere soft tissue injuries. They have left permanent scars on the respondent. With the current inflationary trends, an award of Kshs.180,000/= for such soft tissue injuries which have left permanent scars should not be considered as excessive.

I have read the judgement of the trial court. The trial court evaluated the rival submissions and held that an award of Kshs.180,000/= was adequate compensation for the respondent. I do agree with that finding. It is not based on the wrong principles of law relating to assessment of damages and it is also

not excessive. The medical report by Dr. Ndegwa seems to have been produced by the appellant. The doctor assessed permanent incapacity at 4%. The respondent will have to permanently live with the scars.

In the end, I am in agreement with the assessment of damages by the trial court. The appeal lacks merit and is hereby dismissed with costs to the respondent.

Dated and delivered in Malindi this 30th day of November, 2016.

S.J. CHITEMBWE

JUDGE



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