



REPUBLIC OF KENYA

IN THE HIGH COURT

AT ELDORET

CIVIL APPEAL NO. 2 OF 2020

LAWRENCE WAIRIMU WAINYOIKE.....1ST APPELLANT

LAKELAND CARGO LOGISTICS.....2ND APPELLANT

VERSUS

JOSEPH LETTING.....RESPONDENT

(Being an appeal arising from the judgment of the Hon. R. Odenyo in Eldoret CMCC No.1024 of 2016)

JUGMENT

BRIEF FACTS

1. What is before the court is an appeal against the judgment/decree of Hon R.O. Odenyo, SPM, dated and delivered on 19th December, 2019, in Eldoret CMCC No. 1024 of 2016. The Respondent herein had sued the Appellants for injuries sustained in a road traffic accident. Liability was agreed between the Appellants and Respondent to be 80:20. Judgment on quantum was thus entered in favour of the Respondent, which is subject of this Appeal.

APPELLANT’S CASE

2. The Appellant filed submissions on 27th May 2021. The Appellant submitted that as a general rule, an appellate court should not interfere with the findings or decision of a lower court unless it is demonstrated that in reaching its decision, the lower court made an error of law or took into account irrelevant considerations or that the court based its decision on no evidence or a misrepresentation of the evidence.

3. The Appellant cited **Eastern Produce (K) Ltd (Savani Estate) v Gilbert Muhunzi Makoisi [2013] eKLR** and submitted that an appellate court has jurisdiction and obligation to assess whether the lower court put into account relevant principles before rendering a determination with regard to quantum of damages. The Appellant’s case is that in the present appeal, the Respondent suffered no permanent disability as confirmed by both medical reports prepared by Dr. J.C Sokobe and Dr. V.V Lodhia (pages 14 and 41 respectively of the Record of Appeal.) As per Dr. J.C Sokobe, the Respondent sustained the following injuries:

- a) Deep cut wound on the forehead,
- b) Fracture left clavicle,
- c) Blunt injury to the chest,

d) Blunt injury to the shoulder.

4. On the other hand, Dr. V.V Lodhia found out the Respondent sustained the following injuries;

a) Injury left upper chest,

b) Injury to scalp

The conclusion was that the Respondent sustained a fracture left clavicle and other soft tissue injuries with no permanent disability.

5. The Appellant cited **Joseph Muscc Mua v Julius Mbogo Mugi & 3 others (2013) eKLR**, and submitted that from the reading of the judgment of the trial court, it was clear that the learned magistrate failed to take into account their submissions. The learned magistrate relied only on the Respondent's submissions and the single authority cited therein. In the said authority, being **Anthony Kariuki Njenga v Shreeji Enterprise (K) Limited (2017) eKLR**, it was submitted that the learned magistrate failed to distinguish the same from the current suit. In the said authority, the Plaintiff therein had sustained severe injuries with a permanent disability of 10% and in fact was hospitalized for 37 days. In the present suit however, the Respondent was only treated as an outpatient and in fact was confirmed by Dr. V.V. Lodhia (page 41 of the record of appeal) to have fully healed at the time of the examination without any post injury functional deficit.

6. The Appellant cited **JaldEssa Diba t/a Dikes Transporters & Another v Joseph Mbithi Isika (2013) eKLR** where the court awarded Kshs. 350,000/- for fractured and dislocated right clavicle among other soft tissue injuries. He also cited **Gogni Construction Company Limited v Francis Ojuok Olewe (2015) eKLR**, where the claimant was awarded Kshs. 350,000/= as general damages having sustained a fracture of the left distal radius and ulna and dislocation of the left elbow and was hospitalized for 6 weeks.

7. It was submitted for the Appellant that injuries in the above decisions compare well with the ones in the present case save that others have a bit more injuries. In the present case herein, after considering the level of injuries sustained by the Respondent, an award of Kshs. 350,000/- would have been sufficient compensation.

8. On special damages, the Appellant submitted that the award made by the trial court was proved and as such the same can be maintained. They ask that the appeal be allowed.

RESPONDENT'S CASE

9. The Respondent filed submissions on 24th May 2021. The Respondent cited **Catholic Diocese of Kisumu vs. Sophia Achieng Tete Civil Appeal No. 284 of 2001 (2004) 2 KLR 55** as quoted by Justice G.V. Odunga in **Joseph Kimathi Nzau vs. Johnson Macharia-(2019) eKLR** - on matters regarding quantum. He submitted that it is necessary to ensure that facts of one case bear comparison with the case at hand. Further, that cases should at least bear a reasonable measure of similarity for it to be possible to form a general consensus on the most appropriate judicial opinion.

10. The Respondent cited the cases of **Judy Ngochi vs. Kamakia Ele Selelo Ledamoi (2019) eKLR** and **Joseph Kimathi Nzau vs. Johnson Macharia (2019) eKLR** where the Respondents were awarded kshs. 1,000,000/- and kshs. 800,000/- respectively for similar injuries.

11. The Respondent submitted that the trial court did not award the Respondent future medical expenses that were specifically pleaded by the Respondent in his Plaint dated 19th September 2015. The award of Kshs. 800,000 does suffice in the circumstances. A reduction of the same would be detrimental to the Respondent, who to date complains of persistent pains and has to consume medication to deal with it. He further has to undergo open reduction and fixation of the clavicle as per Dr. Sokobe's report (Pexh5a).

12. The Respondent concluded by submitting that costs follow the event. The Appellant's appeal lacks merit and should be dismissed with costs to the Respondent.

ISSUES FOR DETERMINATION

1. Whether the trial court erred in determining the quantum for damages.

WHETHER THE TRIAL COURT ERRED IN DETERMINING THE QUANTUM OF DAMAGES

13. The Court of Appeal in **Gitobu Imanyara & 2 Others vs. Attorney General [2016] eKLR** held that –

“...it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. This is the principle enunciated in *Rook v Rairrie [1941] 1 All ER 297*. It was echoed with approval by this Court in *Butt v. Khan [1981] KLR 349* when it held as per Law, J.A that:

‘An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the 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.’

14. The Court of Appeal in **Odinga Jacktone Ouma V Moureen Achieng Odera [2016] eKLR** stated that

“comparable injuries should attract comparable awards”.

The Respondent suffered the following injuries as per the medical reports;

a) Deep cut wound on the forehead,

b) Fracture left clavicle,

c) Blunt injury to the chest,

d) Blunt injury to the shoulder.

15. The guiding principle in the award of damages is that whereas no two injuries are exactly alike, comparable injuries should, as far as possible, be compensated by comparable awards.

16. In **Joseph Kimanathi Nzau v Johnson Macharia [2019] eKLR** the Respondent sustained head injuries, chest injuries and lower limb injuries. He had a hematoma of the scalp and severe tenderness in the same region while the x-ray showed fracture of the skull bone at the surgical suture region. He further had tenderness of severe degree in the right chest anteriorly with haematoma formation in the same region while x-ray showed fractures of the 1st and 2nd ribs and fracture of the clavicle bone. He also had tenderness of severe degree in the right hip. The court of appeal reduced the award by the trial court from kshs. 1,000,000/- to kshs. 800,000/-.

17. In **H. Young & Company E. A Limited vs Edward Yumatsi (2013) eKLR** the High Court on appeal upheld an award of Kshs. 500,000/- as general damages where the claimant sustained inter alia deep cut wound on the head and fracture of the right clavicle bone.

18. It is to be noted that the Respondent was not awarded future medical expenses despite the same being pleaded and confirmed by Dr. Sokobe to be kshs. 150,000/-. However, since there was no cross appeal on the issue, it shall rest.

19. The Appellant has not shown how the trial magistrate acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very low as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the Respondent was entitled.

20. In the premises, I opine that the amount awarded by the trial court was sufficient and reaffirm the same. The appeal is dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 20TH DAY OF DECEMBER 2021

E. O. OGOLA

JUDGE



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