



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Civil Appeal 114 of 2007

M.A. BAYUSUF & SONS LTD. APPELLANT

- Versus -

GRACE ADHIAMBO OPONDO RESPONDENT

JUDGMENT

The Respondent, who was the Plaintiff in the lower court, filed a civil suit against the Appellant on 3rd March, 1999, for the recovery of damages arising out of injuries sustained in a road traffic accident. She prayed for judgment against the Appellant for general damages, special damages, costs of the suit, and interest at court rates on each of those three items. She also sought any other or further relief as the Honourable Court may deem fit to grant.

By a consent recorded in the lower court on 28th June, 2007, liability was apportioned at 35% against the Respondent and 65% against the Appellant. Taking into account the nature of the injuries and the authorities cited, the court awarded general damages of Kshs. 200,000/=. After deducting a contribution of 35%, the figure came to Kshs. 130,000/=. The court also awarded Kshs. 975/= being 65% of the special damages proved, plus the costs of the suit and interest at court rates. The Appellant thereupon came to this court appealing against the quantum of damages.

Mr. Gor for the Appellant submitted that considering the extent of the injuries sustained and that the Respondent had recovered and had not suffered permanent incapacity, the award of Kshs. 200,000/= on a 100% liability was excessive. He sought to distinguish the authorities relied on by the Respondent and submitted that each one of them was distinguishable. He concluded by praying that the award of Kshs. 200,000/= be set aside and be reduced to about Kshs. 75,000/= to Kshs. 80,000/= on the basis of 100% liability.

On his part, Mr. Khatib for the Respondent opposed the appeal and supported the award made by the lower court. He submitted that counsel for the appellant had neither shown that the learned magistrate considered wrong principles of law or did not consider the correct principles, nor that the award was manifestly excessive so as to occasion an injustice on the part of the Appellant. He referred to the medical report and submitted that even though they were minor, the injuries were of a serious nature and were all over the body. He further argued that the authorities relied on by the Appellant were old and that considering the incidence of inflation, the award made was reasonable. He urged the court to dismiss the appeal with costs.

In his reply, Mr. Gor submitted that a quick glance at the authorities cited by the Respondent demonstrates that the figures for the awards previously given had been multiplied three or four times. Furthermore, the Respondent was hospitalized for one day and recovered fully. He therefore urged the court to set aside the award and award a more reasonable figure.

Arising from these arguments and submissions, the only issue in this appeal is whether the award made by the lower court was excessive. Each case should be determined on its own peculiar facts and circumstances. In order to address the issue before the court, I find it prudent to start with the nature and extent of the injuries sustained by the Respondent herein, and then compare these with those in the previously decided cases in the hope that the latter will shed some light on whether the figure awarded by the trial court in this matter was reasonable or excessive.

The medical report in this case shows that the Respondent was involved in the road traffic accident on 24th July, 1998. According to the medical report, she sustained the following injuries –

- (a) Head injury - concussion
- (b) Laceration left side forehead x 2"
- (c) Cuts and abrasions right forearm and both legs.
- (d) Contusion chest and neck (no fracture).

She was admitted at Coast General Hospital for one day and discharged to attend as an out patient. She was out of work for two months. Upon examination nearly three months later, the scars had healed and movements of the neck were nearly full range. There was mild pain in final range, but the Respondent had suffered no permanent incapacity.

Of all the authorities cited by counsel, it seems to me that the only case which comes closest to this one is CHARLES MWIKAMBA SOLIA v. SALI MAHRUS, HCCC No. 256 of 1987, Mombasa. In that case, the plaintiff was involved in an accident. He sustained a head injury concussion, lacerations on the forehead and right side nose and face, multiple bruises both limbs, chest and back, and one upper incisor tooth. He was hospitalized for 16 days and remained off work for a further 6 weeks. The injury healed with an ugly scar on the right side nose and loss of one tooth. General damages for pain, suffering and loss of amenities were assessed at Kshs. 50,000/=. The judgment in that case was delivered on 31st May, 1990, which was 18 years ago today. Even as at that date, I think that this award was on the lower side taking into account the severity of the injuries. The country has undergone a lot of change since that time, and if a similar accident were to occur today, the courts would in all probability award a much higher figure.

Ten years later, in CYPRIAN KINYUA NKANATA v. PHINEAS KIMATHI MURIITHI & ANOR, HCCC No. 1989 of Mombasa, the plaintiff was involved in a road traffic accident. He suffered multiple soft tissue injuries of bruises over the abdomen, chest and right thigh. The injuries healed without any permanent injury, and general damages for pain, suffering and loss of amenities were assessed at Kshs. 90,000/=. The point to note here is that even though the injuries suffered by the plaintiff in that case were nowhere as nearly serious as those sustained by the plaintiff in CHARLES MWIKAMBA's CASE (supra) ten years before, the award in damages was almost doubled. This is a demonstration of the change in times, and that the incidence of inflation is reality and it cannot be wished away. Similarly, in EMMANUEL OCHIENG v. C.C.L. LTD. & ANOR, HCCC No. 309 of 1998, the plaintiff was yet another victim of a road traffic accident. He sustained bruises on the face, chest and right leg. The injuries healed without any permanent incapacity, and the general damages for pain, suffering and loss of amenities were assessed at Kshs. 80,000/= in a judgment delivered on 31st March, 2000. Ten years before that, in the case of ELIAS MUNIOKI v. SAID JUMA CHITI & ANOR, HCCC No. 53 of 1990, Mombasa, the plaintiff was a businessman. He sustained multiple soft tissue injuries to the neck, left side of the face, left arm and shoulder. He also suffered laceration and abrasions. He was treated as an out patient and discharged. The injuries healed without leaving any permanent incapacity. In a judgment

delivered on 9th October, 1990, general damages for pain, suffering and loss of amenities were assessed at Kshs. 15,000/=. And yet, in my view, the injuries in that case were more serious than those suffered by the plaintiffs in CYPRIAN KINYUA NKANATA's CASE (supra) and EMMANUEL OCHIENG's CASE in which the awards were Kshs. 90,000/= and Kshs. 80,000/=. respectively.

We have broken up with the last century. Kshs. 90,000/= cannot do today what it did eight years ago. On that basis, I am not able to say that an award of Kshs. 200,000/= on a 100% liability is manifestly excessive in the nature and extent of the injuries suffered by the Respondent in this appeal.

For these reasons, this appeal is dismissed with costs to the Respondent.

Orders accordingly.

Dated and delivered at Mombasa this 30th day of May, 2008.

L. NJAGI

JUDGE