Fitsum v Irungu (Civil Appeal E587 of 2023)
[2024] KEHC 11515 (KLR) (Civ) (30 September 2024) (Judgment)

Neutral citation: [2024] KEHC 11515 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E587 OF 2023

RC RUTTO, J

SEPTEMBER 30, 2024

BETWEEN

WOLDELIBANOS BERHE FITSUM ..... APPELLANT

AND

ROBIN IRUNGU ..... RESPONDENT

(An Appeal from the Judgment of the Chief Magistrate, Honourable S.A Opande in Nairobi Civil No. 2479 of 2020, delivered on 6th June, 2023)

JUDGMENT

1. The Appellant aggrieved by the decision of the trial court in Nairobi Civil Case No. 2479 of 2020 lodged this appeal. The Respondent also being aggrieved by the decision filed a cross appeal.

2. The facts of the case are that the Respondent filed a claim before the trial court seeking general damages for pain and suffering, loss of amenities, and special damages of Kshs 3,550/= arising out of personal injuries sustained in a road traffic accident. The accident occurred on or about 18/12/2019, involving the Appellant's motor vehicle, Registration No. KCJ 410N, along the Nyari-Waiyaki Way bypass.

3. The Respondent's case was that he was a pillion on a motorcycle KMER 680F when the Appellant, by himself or through his authorized agent, controlled, and drove Motor Vehicle Registration Number KCJ 410N so carelessly and negligently at a very high speed that he lost control, causing the said motor vehicle to collide with the motorcycle, thereby causing the Respondent serious bodily injuries namely, a fracture on the left tibia and swelling and laceration on the left knee.

4. The Appellant, in his statement of defence dated 21/12/2020, denied each and every allegation made against him by the Respondent. On a without prejudice basis, he contended that if the accident occurred, it was caused solely by the negligence of the Respondent.

5. During the hearing, the Respondent called two witnesses, while the Appellant relied on his evidence.

6. Upon taking evidence, the trial magistrate came to the conclusion that: -

    a. Liability be apportioned 20% in favour of the Plaintiff as against the Defendant.

    b. General damages of Kshs 500, 000/=.

    c. Special damages of Kshs 3550/=

    d. Costs and interests of the suit from the date of judgment till payment in full.

The Appeal

7. Being aggrieved by the said decision, the Appellant filed a memorandum of appeal dated 4/7/2023 seeking that the appeal be allowed, the entire judgment of the lower court be set aside, the Respondent's suit be dismissed with costs, and that the Appellant be granted the costs of the appeal. The Appeal is premised on five (5) grounds as follows: -

    a. That the Learned Magistrate erred in law and in fact in apportioning liability at 80:20% in favour of the Respondent against the Appellant in total disregard of the evidence adduced and the exhibits produced and the finding in item No. 9 of his judgment wherein apportionment of liability was indeed in favour of the Defendant as against the Plaintiff in the ration of 80:20%.

    b. That the Learned Magistrate erred in law and in fact in awarding general damages at Kshs 500, 000/= which award was excessive and unwarranted in light of the evidence adduced.

    c. That the Learned Magistrate erred in law and in fact in awarding special damages at Kshs 3550/ = which claim was not proved and was excessive and unwarranted in light of the evidence adduced.

    d. That the Learned Magistrate erred in law in not taking into account entirely the written submissions of the Appellant.

    e. That the Learned Magistrate's finding and decision were against the weight of the evidence adduced.

8. The Respondent being equally dissatisfied with the Court's judgment and decree, filed a Cross Appeal dated 30th November 2023, seeking that the cross appeal be allowed, the trial court's judgment on quantum set aside and costs of the appeal. The cross-appeal is premised on four grounds, namely: -

    a. That the trial judge erred in law and in fact by failing to appreciate the relevant principles and case law in assessing damages for pain and suffering and thereby arrived at a very low award on general damages.

    b. That the trial Magistrate erred in law and in fact in failing to properly evaluate the evidence on record in particular the evidence on permanent incapacity of the respondent and thereby erroneously failed to award him future medical expenses.

    c. That the Learned Magistrate erred in law and fact in failing to consider the Respondent's oral and documentary evidence as a whole.

    d. That the trial Magistrate misdirected himself and failed to give any due and proper consideration to the pleadings and evidence on record and submissions of the respondent hence making a very low award and which did not have any legal or evidential justification.

9. As follow up to the Appeal and Cross Appeal, the Appellant filed his submissions dated 5th June, 2024 in support of his appeal and opposing the cross appeal while the respondent filed theirs dated 8th May, 2024 in support of the cross appeal and opposing the appeal.

Appellant's submissions

10. On ground 1 of the appeal the Appellant submits that the Respondent, failed to prove the appellant's alleged negligence as particularised in the plaint. That while testifying on oath, the respondent confirmed that the motorcycle, registration number KMER 680F, on which he was a pillion passenger, rammed into the rear side of motor vehicle registration number KCJ 410N, which was stationary and parked off the road. Furthermore, PW2, who produced the police abstract, did not provide an excerpt from the occurrence book to show the results of the investigation, he did not visit the scene, he did not investigate or bring the police file hence he urged the court to consider his evidence as hearsay.

11. The appellant urges the Court to find that the Respondent was negligent and thus blamed for the occurrence of the subject matter because the Respondent did not discharge his burden of proof as per sections 107, 108, and 109 of the *Evidence Act* and that the evidentiary burden never shifted. Reliance was placed in the High Court case of Quest Resources Limited v Japana Port Consultants Limited [2015] and the Supreme Court decision in Raila Odinga v IEBC & 3 others [2013] eKLR.

12. The Appellant urge that the Respondent failed to sued the proper party who is the rider of the motor cycle registration no KMER 680F KMER 680F who was blamed by the police for ramming into the rear of the Appellant vehicle hence he urges the court to hold that the Respondent failed to prove negligence against the Appellant.

13. On Ground 2 the Appellant submits that the Respondent is entitled to a sum not exceeding Kshs 200, 000/= but considering the injuries sustained as per the medical report of Dr. G.K. Mwaura and Dr. Nathan Wafula as well as the following m S.D.V Transami K. Ltd v Scholastica Nyambura (2012) eKLR and Kemfro Africa Limited t/a Meru Express Service, Gathogo Kanini v A.M Lubia & Olive Lubia [1982-88] 1 KAR 727 the Respondent should be awarded kshs 300,000.

14. On Ground 3, it is submitted that the Respondent failed to prove the case with the requisite level of detail for special damages. The Appellant relied on his submissions and addressed the cross-appeal by stating that Ground 2 of the Cross Appeal, which pertains to the estimated future medical costs of Kshs 200,000/=, was not supported by an explanation of how the figure was determined. Therefore, the Appellant argues that this amount cannot be awarded.

15. The Appellant urges the court to allow the appeal and dismiss the cross appeal.

Respondent's submissions

16. The Respondent sets out four issues for determination as follows

    i. Whether the trial court erred in his finding on liability

    ii. Whether the award on general damages for pain, suffering and loss of amenities as awarded by the trial court was too low or too high to warrant interference by this court

    iii. Whether trial court erred in law for not making an award for future medical expenses.

    iv. Whether the trial magistrate erred in law in awarding kshs 3,550 for special damages expenses.

17. On liability, the Respondent submited that he provided direct evidence proving the Appellant's liability. He further contends that since the Appellant blames the owner of the motorcycle for the

accident rather than the Respondent himself, the Appellant should have joined the motorcycle's owner as a party to the suit in the trial court. The Respondent argues that, due to this failure, the Appellant should bear 100% of the liability. Reliance was placed in the case of Pauline Wangare Mburu v Benedict Raymond Kutondo & Another [2005] eKLR, the Court of Appeal decision in Margaret Waithera Maina v Michael K. Kimaru [2017] eKLR among others.

18. As to whether the general damages for pain and suffering was too high or too low, the Respondent submitted that, the damages awarded amounting to Kshs 500,000/= were inordinately low. He argues that the trial court failed to apply the correct legal principles in assessing the quantum of damages. The Respondent proposes that an award of Kshs 1,200,000/= would adequately reflect the severity of his injuries. He relied on the case of Patrick Kinyanjui Njama v Evans Jume Mukweyi and Kimathi Muturi Donald v Kelvin Ochieng Aseso [2021] eKLR among others.

19. The Respondent submits that future medical expenses were pleaded and affirmed by both parties' doctors. Dr. Mwaura's medical report estimated the cost at Kshs 200,000/=, which was not rebutted. The Respondent therefore argues that, based on the evidence and Court of Appeal decisions, this amount should have been awarded as pleaded. The Respondent contends that the court erred by not providing any reason for the award.

20. The Respondent finally submits that the special damages were pleaded and proved; therefore, there is no sufficient reason for the court to interfere with the award.

Analysis and Determination

21. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence firsthand.

22. The duty of the first appellate Court was settled long ago in the locus Classicus case of Selle and another Vs Associated Motor Board Company and Others [1968]EA 123, where the court, held as follows;-

> " ... this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of re-trial and the Court of Appeal is not bound to follow the trial Court's finding of fact if it appears either that he failed to take account of particular circumstances or probabilities or if the impression of demeanour of a witness is inconsistent with the evidence generally."

23. Having said this, I have carefully considered this Appeal and the Cross Appeal in its entirety and the two key issues that emerge for my determination are;

    i. Whether the trial magistrate erred in the finding on liability.

    ii. Whether the trial magistrate erred in arriving at his decision on quantum of damages.

    Thus, as I address the issues here under, for ease of following, the cross appeal and the submissions therein will be taken as the response to the Appellants appeal;

Whether the learned trial magistrate erred in her finding on liability.

24. Section 107 (1)of the *Evidence Act*, Cap 80 Laws of Kenya outlines the burden of proof as follows;

> " Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."

25. It then follows that, the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of the fact shall lie on any particular person.

26. It must be recalled that the duty to discharge the burden of proof in respect of negligence rests with the plaintiff. In Henderson v Harry E. Jenkins {1969} 3 A.E.R. 756, the court reasoned that:

> " In an action for negligence, the plaintiff must allege, and has the burden of proving that the accident was caused by negligence on the part of the defendants. That is the issue throughout the trial, and in giving Judgment at the end of the trial, the Judge has to decide whether he is satisfied on a balance of probabilities that the accident was caused by negligence on the part of the defendants and if he is not satisfied the plaintiff action fails." (See also Veronica Kanorio Sabari v Chinese Technical Team for Kenya & 2 others HCCC No. 376 of 1989 Henry Mwobobia v Muthaira Karauri & Another HCCC No. 104 of 1991)
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> "The onus is on the plaintiff to prove this case on the legal standard necessary. In a civil case the standard is on a balance of probability."

27. As discerned above, this appeal, is on re-assessment, re-evaluation and determination on whether the trial court erred in apportioning liability, simply put, it is a reevaluation of who was to blame for the accident. The scope and extent of the fundamental legal principles on this subject are settled. In the cases of Nandwa v Kenya Kazi Ltd [1988] KLR 488 and Regina Wangechi v Eldoret Express Co. Ltd [2008] eKLR the Court on this issue held that:

> " In an action for negligence, the burden is always on the plaintiff to prove that the accident was caused by the negligence of the defendant. However, if in the course of the trial there is proved a set of facts which raises a prima facie case inference that the accident was caused by negligence on the part of the defendant, the issue will be decided in the plaintiff's favour unless the defendant provides same answer adequate to displace that inference."

28. It is now necessary, in light of these principles, to reassess the evidence presented before the trial court. The evidence on record clearly establishes that an accident occurred on 18/12/ 2019, involving the Respondent, who was a pillion passenger, resulting in injuries. This incident involved a collision between the Appellant's motor vehicle, Registration Number KCJ 410N, and the motorcycle, Registration Number KMER 680F.

29. The Appellant contends that the Respondent failed to explain why he did not sue the motorcycle rider, whom the Appellant claim caused the accident. He further argues that the evidence produced by PW2 was inadmissible as it constitutes hearsay. He notes that PW2 was not the investigating officer, did not produce a sketch plan of the accident, nor an occurrence book from which the details of the police abstract were extracted.

30. On the other hand, the Respondent asserts that he provided direct and unequivocal evidence establishing the Appellant's liability. The Respondent further argued that since the Appellant blames

the rider of the motorcycle for the accident, the Appellant should have initiated third-party proceedings failure to do so should result in the court holding him fully liable.

31. In rendering its decision on liability, the trial court held as follows:

> "
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> "7. The court has considered the evidence brought forward by the Plaintiff and finds that indeed the Defendant's Motor Vehicle was stationary and parked off the road with the hazard lights on when motor cycle Registration Number KMER 680F rammed into it. The court chooses to believe the Defendant because he was the driver of the above-mentioned motor vehicle. On the contrary, the rider in charge of the aforementioned motor cycle that rammed into the car did not adduce evidence to corroborate the evidence by the Plaintiff who was a pillion passenger and may not have had the opportunity to see the motor Vehicle at the time of the accident.
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> Additionally, the Plaintiff's second witness testimony is disapproved as the court rightfully considers it as hearsay. On this position, the court quotes the case of Subramanian v Public Prosecutor (1956) 1 WLR 965 wherein the court held that evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement.
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> 8. Moreover, it is evident that no blame was ever apportioned to the defendant after the occurrence of the accident. However, this is not to say that the Defendant is wholly discharged of any liability that may be owed to him. The Defendant admits to parking his car off the road when the motorcycle rammed into it. It is also important to note that the Plaintiff was simply a pillion passenger and his decision not to include the rider of the motorcycle in the case is questionable as the court anticipates that a suit needs to have all necessary parties in it.
>
> The court relies on the case of *Vyas Industries v Diocese of Nyeri Civil Appeal No. 23 of 1976* wherein the court held the plaintiff' driver 75% to blame for ramming into a unit lorry which was stationary on the road. The case is important to our current case in that the court apportions liability in favour of the Defendant as against the Plaintiff in the ration of 80:20 and the court reiterates its position that the Plaintiff should have enjoined his rider to the suit."

32. In sum, the trial court in apportioning liability was guided by the finding that the Appellant had discharged evidence because he was the driver of the above-mentioned motor vehicle; the evidence by the Respondent who was a pillion passenger was not corroborated and he may not have had the opportunity to see the motor vehicle at the time of the accident; and that blame was ever apportioned to the appellant after the occurrence of the accident.

33. The trial court was also minded not to discharge the appellant off liability since he admitted to parking his car off the road when the motorcycle rammed into it. Further, the trial court faulted the Respondent for failing to include the rider of the motorcycle in the case and find this questionable.

34. Was the trial court right in arriving at this decision? In the case of Khambi & Another vs Mahithi & Another [1968] EA 70 where it was held that: -

> "It is well settled that where a trial Judge has apportioned liability according to the fault of the parties, his apportionment should not be interfered with on appeal, save in exceptional circumstances, as where there is some error in principle or the apportionment is manifestly erroneous and an appellate court will not consider itself free to substitute its own apportionment for that made by the trial Judge."

35. In my appraisal of the evidence, PW1, in his statement dated 27th May 2020 and adopted by the trial court stated that he was a pillion passenger when the driver of motor vehicle KCJ 410 N so negligently drove the motor vehicle at a very high speed that he lost control of the motor vehicle allowing the same to collide with the motor cycle causing him serious injuries. On cross examination, the respondent stated that the motor vehicle moved from the road side and hit the motor bike. That the motor vehicle was in front and they were behind the motor vehicle. The vehicle did not warn on coming on the road motor cycle was about 50-60Km/Hr. He also stated that he did not bring the sketch plans of the scene of the accident. The second witness, PW2, produced a police abstract. However, the abstract did not apportion blame to any party as the investigations were still ongoing.

36. The Appellant submission was contained in the defendant witness statement dated 1st September 2021. He stated that he parked his motor vehicle No KCJ 410 N off Nyari-Waiyaki way with hazard lights on when the rider of motor cycle registration KMER 680 F who had been riding negligently and recklessly at very high speed rammed into the rear right side of the stationary motor vehicle. That the police blamed the rider of the motor cycle for the accident, he referred to paragraph 7 of the police abstract dated 19th December 2019 in his bundle of documents. On cross examination he stated that his car had parked for more than 1 minute before it was hit and that he had not been called to testify against the rider.

37. The above evidence of the parties gives two possible scenarios of how the accident occurred. The appellant asserts that the motor vehicle was stationary with hazard lights on when it was hit at the rear. The respondent on one hand states that the motor vehicle was at a very high speed that he lost control and collided with the motor cycle, on the other he states that the vehicle moved from the road side and hit the motor bike.

38. Guided by the principles already discussed earlier in this decision, it is the duty of the Plaintiff, now Respondent, to prove negligence on the part of the Defendant, the Appellant herein. Based on the evidence presented, it is clear that the Respondent was a pillion passenger who was injured as a result of the collision.

39. The motorcycle rider was not a party to the suit, as he had neither been sued by the Respondent nor joined as a third party by the Appellant. In their evidence, DW1 faulted the motorcycle rider for the accident, claiming that he rode negligently and recklessly at a very high speed and collided with the rear right side of his motor vehicle. If this was the Appellant's position, I then agree with the respondent's position that the Appellant ought to have been guided by the provisions of Order 1, Rule 15 of the Civil Procedure Rules 2020 and joined the rider as a third party, so that the trial court could determine the liability among the Appellant and the rider.

40. This was buttressed on the case of Benson Charles Ochieng & Another v Patricia Atieno (2013) eKLR where the court held that;

> The trial court could not have apportioned liability between the Appellants and a person who was not even a party to the suit. This court is unable to agree with the thrust of the Appellants' argument which was to the effect that the Respondent ought to be blamed for not enjoining the third-party into the proceedings. This cannot be because it is the Appellants who will bear the consequences of any failure to include the third-party into the proceedings. The decision of Oluoch -Vs- Robinson [1971] E.A. 376 is not therefore of help to the Appellants where they did not plead contributory negligence and where they failed to enjoin the owners of the third-party motor vehicle as a party to the suit. The appeal against the finding by the trial court on liability therefore lacks merit and is hereby dismissed.

41. Therefore, failure to take-out third-party proceedings by the Appellant resulted in the learned trial magistrate erroneously attributing liability to the Respondent, who was merely a pillion passenger and had no control over the motorcycle. Thus, it was a misdirection on the trial court's part to assign any blame to the Respondent for the accident. I find that the Appellant is wholly to blame for the accident.

42. Consequently, I set aside the finding on liability and substitute it with a finding in favor of the Respondent, holding the Appellant liable for 100% of the liability.

Whether the trial magistrate erred in arriving at his decision on quantum of damages.

43. On quantum, the approach of the Courts to such a situation like in the instant appeal is exemplified by the case of *Mohammed Mahmoud Jabane v Highstone Butty Tongoi Olenja CA No. 2 of 1986* KLR 730 wherein Nyarangi J.A stated that:

> "an appellate Court does not interfere with quantum of damages simply because in its opinion the damages awarded is excessive, it only interferes if there is evidence. That the damages have been assessed on wrong grounds or are unreasonable."

44. According to Dr. G.K. Mwaura, the Respondent sustained swelling and lacerations on the left knee and leg, as well as a fracture on the middle one-third of the left tibia/fibula. The report dated 15/5/2020, which was not contested, indicated that healing was not complete as the Respondent was still undergoing treatment. In contrast, Dr. W.N. Khamala's report dated 28/5/2021 stated that the Respondent was not on any active treatment and had resumed normal activities. The investigations showed that the tibia fracture had healed well with normal bone anatomy, and the metal plate was in good condition.

45. The Appellant contends that the general damages awarded were excessive and that the special damages were neither pleaded nor proved. The Respondent argues that the award of Kshs 500,000/= for general damages was inordinately low compared to the severity of the injuries sustained and has proposed that an award of Kshs 1,200,000/= would be more appropriate.

46. I wish to state at the outset that the award of general damages is always at the discretion of the trial court. However, this discretion must be exercised judiciously and in accordance with the law. The mandate of an appellate court to interfere with damages awarded by a trial court is limited; it is confined to specific circumstances which include that the award was either inordinately high or low, such that it reflects an erroneous estimate of the damage suffered; or if the trial court took into account irrelevant factors, omitted relevant ones, or applied incorrect legal principles in arriving at the award.

47. I have reviewed the authorities provided by both parties to the trial court in support of their respective proposals on quantum. I find that the injuries sustained by the plaintiffs in those authorities were different and more severe than the injuries sustained by the Respondent in this case.

48. Given the evidence on record, I am unable to fault the learned trial magistrate's award of Kshs 500,000/= as general damages for pain and suffering, considering the injuries sustained by the Respondent. In my view, the award was reasonable. There is no indication that the trial court considered any irrelevant factors or applied incorrect legal principles in arriving at its decision. The award is therefore upheld, except that it shall not be subject to the 20% contribution by the Respondent as determined by the trial court, since the Appellant has now been held fully liable.

49. Regarding the award of special damages, the Appellant contends that these damages were neither pleaded nor proved by the Respondent. However, upon reviewing the pleadings, I disagree with the Appellant's submissions. The Respondent had pleaded particulars of special damages in the plaint, and these were substantiated through the production of receipts.

50. As regard to future medical expenses, the pleadings confirm that the Respondent pleaded future medical expenses of kshs. 200,000/=. Guided by the case of *Mburu & another v Kinge (Civil Appeal 277 of 2023*) [2024] KEHC 1889 (KLR) (29 February 2024) (Judgment) while quoting the Court of Appeal in the case of Tracom Limited & Another vs Hassan Mohammed Adan [2009] eKLR it was stated:-

> We readily agree that the claim for future medical expenses is a special claim though within general damages and needs to be specifically pleaded and proved before a court of law can award it. In the case of Kenya Bus Services Ltd vs Gituma (2004) 1 EA 91, this Court stated:-And as regards future medication (physiotherapy) the law is also well established that although an award of damages to meet the cost thereof is made under the rubric of general damages, the need for future medical care is itself special damage and is a fact that must be pleaded if evidence thereof is to be led and the court is to make an award in respect thereof. That follows from the general principle that all losses other than those which the law does contemplate as raising naturally from infringement of a person's legal right should be pleaded.
>
> We understand that to mean that once the plaintiff pleads that there would need for further medication and hence future medical expenses will be necessary, the plaintiff may not need to specially state what amount it will be as indeed the exact amount of that future expenses will depend on several other matters such as the place where treatment is undertaken, and if overseas, the strength of the currency particularly Kenya currency at the time treatment is undertaken and of course the turn that the injury will have taken at the time of the treatment. We think that will be necessary to plead (if it has to be pleaded at all) is the approximate sum of money that the future medical expenses will require.(emphasis added)

51. It is noted that the medical report contained in the Appellant list of Authorities by Dr. Nathan Wafula Khamala opined that the metal plate was in good position and may be removed if the patient wishes. Further, the Respondent medical report by Dr. G.K Mwaura provided for future medical expense removal of implants (Admission, surgery, anaesthesia, nursing care, medication and physiotherapy) at kshs. 200,000/=. The two medical reports speak to each other that they may be need for the removal of the implants hence corroborating each other. Thus, it is my considered view that the trial court ought to have awarded future medical expenses.

52. To this end, I find that the trial court erred in failing to award future medical expenses and as such I will award future medical expense of Kshs. 200,000/- as prayed in the cross-appeal.

53. For the foregoing reasons, I find no merit in the Appellant's appeal, and proceed to dismissed it with no orders as to costs. I find merit in the cross-appeal, to the extent that the Appellants are held 100% liable for the accident and Future Medical expenses of Kshs 200,000/- is awarded. The cross-appeal on the quantum of damages fails.

54. In the result, I set aside the judgment of the trial court and substitute it with the following:

    a. judgment in favour of the respondent against the appellant in the total sum of Kshs.500,000 as general damages for pain and suffering.

    b. Kshs 3, 550 as special damages.

    c. Kshs 200,000/- as Future Medical Expenses

    d. The appellants shall bear the respondent's costs in the lower court suit while each party shall bear its own costs of this appeal

    e. The amount shall attract interest at court rates from date of judgment of the lower court until full payment.

    Orders accordingly

RHODA RUTTO

JUDGE

DELIVERED, DATED AND SIGNED THIS 30TH DAY OF SEPT 2024.

For Appellant:

For Respondent:

Court Assistant: