



**Bii v Kirui (Civil Appeal 42 of 2017)  
[2024] KEHC 11219 (KLR) (27 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11219 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CIVIL APPEAL 42 OF 2017  
JR KARANJA, J  
SEPTEMBER 27, 2024**

**BETWEEN**

**SAMWEL BII ..... APPELLANT**

**AND**

**ROBERT KIBET KIRUI ..... RESPONDENT**

**JUDGMENT**

1. This appeal arises from the decision of the Senior Resident Magistrate delivered on 8<sup>th</sup> November 2017 in Kericho CMCC No. 300 of 2015, in which the Defendant/Appellant Samwel Bii was sued by the Plaintiff/Respondent, Robert Kibet Kirui for loss and damages incurred by the Respondent as a result of a road traffic accident which occurred on the 8<sup>th</sup> December, 2014 along the Brooke- Kapros Road at the Toror Road Junction
2. In the plaint dated 4<sup>th</sup> August, 2015, it was pleaded that the Appellant was at the material time the owner of a motor vehicle Registration No. KAP 076Z Isuzu Canter and on the 8<sup>th</sup> December, 2014 the said vehicle was so negligently driven , managed and/or controlled such that it lost control and knocked down the Respondent who was walking on the verge of the road thereby causing him to suffer bodily injury, loss and damage.
3. The Respondent therefore filed the material suit against the Appellant and prayed for judgement in his favour for both general and special damages as well as costs of the suit with interest.

The Appellant denied the claim and contended it his statement of defence dated 8<sup>th</sup> September, 2015, that if the alleged accident occurred, then it was solely caused or contributed to by the Respondent's negligence.

The Appellant therefore prayed for the dismissal of the claim with costs.



4. At the hearing of the suit, the parties entered a consent on the liability at the ratio of 70:30 in favour of the Respondents/Plaintiff. The matter thereafter proceeded to hearing on quantum of damages and this resulted in the impugned judgment in which the Trial Court awarded the Respondent's general damages in the sum of Ksh. 1 (one ) million and special damages in the sum of Ksh. 3000/= less the Respondent, contributory negligence.
5. Being dissatisfied, the Appellant preferred the present appeal on the basis of the grounds set out in the memorandum of appeal dated 5<sup>th</sup> December, 2017 in which the Appellant generally complains that the Trial Court erred both in law and fact by awarding the sum of one Million Kenya Shillings which was excessive in the circumstances of the case.

The Appellant therefore urged this court to allow the appeal and set aside the impugned judgement.

6. The hearing of the appeal was by way of written submissions. These were filed by Moronge & Advocates on behalf of the Appellant and by Meroka & co. Advocates on behalf of the Respondent. This court having considered the appeal and the rival submission's by the parties had a duty to revisit the evidence and draw its own conclusions bearing in mind that the Trial Court had the advantage of seeing and hearing the witness ( see *Selle & Another Vs Associated Motor Boat Company Ltd* [1968]EA 123.
7. In that regard, the evidence led by the Plaintiff(PW1) was considered along with that of a traffic police officer, PC Wario Hussein (PW2). Apparently, the Defendant/Appellant did not testify perhaps due to the fact that the parties agreed that he was largely to blame for the accident at a ratio of 70% as compared to the Respondent who took 30% of the blame.

The question of liability having been settled, what was required was evidence to establish the extent of the Respondent's injuries and the resultant effect(if any) so as to guide the Trial Court on the question of damages awardable to the Respondent as general damages for pain, suffering and loss of amenities.

8. Accordingly, two medical reports were tendered in court i.e the report dated 19<sup>th</sup> May, 2015 by Dr. Kibos Ezekiel and the report dated 26<sup>th</sup> August, 2016 by Dr. M.S Malik.

Both reports indicated that the Respondent suffered a head injury, loss of two upper incisors teeth and minor injuries to the chest, abdomen and left knee.

9. The head injury was serious to the extent that it caused total and partial incapacity of a temporary nature for a period of one month and two weeks respectively as per the report by Dr. Malik which was the latest and most appropriate to rely on for purposes of quantifying general damages and which significantly agreed with the report by Dr. Kibos, save the aspect of permanent physical or mental disability.
10. The Trial Court considered both reports and concluded that a sum of Kenya Shillings One Million was reasonable and adequate compensation for the pain and suffering underwent by the Respondent as a result of the accident was largely attributable to the Appellant.
11. This court agrees with that conclusion of the Trial Court in as much as it does not find that the Trial Court in assessing the award took into account irrelevant factors or left out of account relevant factors. In the circumstances, it may safely be stated that the award did not amount to an erroneous estimate as it was neither excessive nor unreasonable.
12. It is trite law that the assessment of damages is always at the discretion of the Trial Court and an Appellate court such as the present one cannot interfere with exercise of such discretion without good



cause. Herein, no such good cause has been shown by the Appellant for this court to exercise discretion in his favour and interfere with the award of general damages made to the Respondent.

13. In sum, this appeal is wanting on merit and is hereby dismissed with costs to the Respondent.

14. Ordered accordingly.

**J.R. KARANJAH**

**JUDGE.**

**DATED AND DELIVERED ON 27<sup>TH</sup> DAY OF SEPTEMBER, 2024**

**JR. KARANJAH**

**JUDGE.**

In presence of:-

Mr. Meroka Defendant/Appellant

M/s Ogwacho Plaintiff/Respondent

Mr. Kibet/Simon court clerk

