



**Matunda Fruits Bus Services Ltd v Oiech (Civil Appeal E038 of 2022)  
[2024] KEHC 13505 (KLR) (30 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13505 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CIVIL APPEAL E038 OF 2022  
JR KARANJA, J  
OCTOBER 30, 2024**

**BETWEEN**

**MATUNDA FRUITS BUS SERVICES LTD ..... APPELLANT**

**AND**

**MAURICE RAJORO OIECH ..... RESPONDENT**

**JUDGMENT**

1. This appeal arises from the decision and judgment of the Principal Magistrate in Kericho CMCC No. E404 of 2018 in which the Appellant, Matunda Fruits Bus Service Ltd, was sued by the Respondent, Maurice Rajoro Oliech, for loss and damages arising from a road traffic accident which occurred at Chepsir area along the kericho-Nakuru road on the 27<sup>th</sup> August, 2018.
2. It was pleaded that the Respondent was a lawful passenger travelling on board he Appellant's motor vehicle Registration No. KCL 820M Scania Bus when it was so negligently, recklessly and/or carelessly driven that it lost control and fell down on ditch thereby causing serious bodily injuries to the Plaintiff/ Respondent including multiple cut wounds --to the head, blunt injury to the anterior chest wall, soft tissue injuries of both legs and right hand.
3. The Respondent blamed the Appellant for the accident and prayed for both special and general damages together with costs and interest of the suit as against the Appellant who denied the claim and filed a statement of defence in that regard.
4. At the trial, evidence was led by the Respondent/Plaintiff (PW1) only. The Appellant did not lead any evidence in the defence of its, case and support of its pleadings. The Trial Court ultimately rendered the impugned judgment in favour of the Respondent for the total sum of Ksh 606,123/= being both special and general damages together with costs and interest of the suit.
5. Being aggrieved by the judgement, the Appellant preferred the present appeal on the basis of the grounds set out in the memorandum of appeal dated the 28<sup>th</sup> July, 2022 and filed herein on 2<sup>nd</sup> August,



2022. The hearing of the appeal was by way of written submissions which were duly filed by both the Appellant and the Respondent through their respective Advocates i.e Messrs Kimondo Gachoka & Co. Advocates and Shem Kebongo & Co. Advocates.

6. The appeal and the supporting grounds were given due consideration by this court as against the vival submissions and in keeping with the Principle enunciated in the case of Sielle vs Associated Motor Boat Co. Ltd (1968]EA 123, the evidence adduced at the trial was reconsidered by this court with a view to arriving at its own conclusion bearing in mind that the trial court had the advantage of seeing and hearing the witnesses.
7. In that regard, the evidence led by the Respondent considered along the pleadings by both sides clearly showed that the basic issue for determination was whether the Appellant was by its negligence, recklessness and/or carelessness responsible for the accident and if so, whether the Respondent was entitled to damages from the Appellant and to what extent.
8. Basically, the occurrence of the accident was undisputed and so to, was the fact that the Respondent suffered body injuries as a result of the accident being a lawful passenger in the ill-fated motor vehicle whose ownership was also not disputed. On the question of liability there was no evidence from the Appellant to controvert and/or dispute the Respondent's evidence indicating that the Appellant's driver was wholly to blame for the accident in the negligent and/o r reckless manner of driving the ill-fated motor vehicle on the material date.
9. This court would therefore agree with the finding of the Trial Court in holding that...the Appellant was fully liable for the accident, hence liable to the Respondent in damages. In that regard, the Trial Court rendered itself as follows:

“In his submissions, the Plaintiff on liability. Rightly so, noted that the defendant did not rebut the evidence put on record. The doctrines of “resi psa loquitor” as applied in the case Embu Public Road Services Ltd vs Rimlii EALR [1968] where once the Plaintiff showed that an accident occurred in circumstances that ought not to, the burden shifts to the Defendants in rebutting negligence as alleged, again in favour of the Plaintiff in this case”

10. On the question of quantum of damages, the medical report by Dr. Omuyoma dated 17<sup>th</sup> September, 2018 indicated that the Respondent suffered mostly soft tissues injuries which healed without any residual effect of a permanent nature.
11. The Trial Court made an award of Ksh 500,000/= general damages for pain, suffering and loss of amenities and an award of Ksh 106, 123/= special damages for medical expenses and motor vehicle records. In a personal injury claim such as the present claim, assessment of damages is guided by the principles that award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained, the award should be commensurable with the injuries sustained.
12. Further, previous awards in similar injuries sustained are mere guide but each case be treated on its own facts, previous awards to be taken into account to maintain stability of awards but factors such as inflation should be taken into amount and the awards, should not be inordinately low or high. (see Boniface waiti & Another vs Micheal Kariuki Kamau (2007)eKLR).
13. Indeed, in awarding general damages, the Trial Court stated in its judgment that;-

“,, a court in awarding damages exercises discretion and each case must be looked at in its peculiar circumstances. This is more so in road traffic accident cases where it is near impossible for persons to suffer the same and exact injures in separate accidents...”



The court further stated that;-

“I have considered the submissions tendered and have taken into note the injuries suffered, comparable injuries,... the question of inflation and rising cost of living amongst other peripheral considerations in the present Kenya Economy today and doing the best that I can, Kshs 500,000/= would indeed suffice as fair compensation in the present case.”

14. This court cannot agree more with the aforementioned findings which clearly indicate that the Trial Court did not depart from the aforesaid guidelines or principles respecting awards of damages for personal injuries. The award for special damages was also justified as the amount was fully established and proved by necessary documentary evidence.
15. For all the foregoing reasons, this court would find the present appeal lacking in merit and dismisses it in its entirety with costs to the Respondent.
16. Ordered accordingly.

**J.R KARANJAH**

**JUDGE.**

**DATED AND DELIVERED THIS 30<sup>TH</sup> DAY OF OCTOBER, 2024.**

