



**Karanja v Wattanga (Civil Appeal E144 of 2021)
[2024] KEHC 16424 (KLR) (23 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16424 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E144 OF 2021
RN NYAKUNDI, J
DECEMBER 23, 2024**

BETWEEN

JAMES NJOROGE KARANJA APPELLANT

AND

JECTONE JUMA WATTANGA RESPONDENT

JUDGMENT

1. The appeal is both on quantum and liability. In the trial Court the Respondent had sued the Appellant claiming general damages, special damages plus costs and interest of the suit arising from road accident that occurred on 28th September, 2020, wherein it is alleged that the Respondent was a lawful rider of his motor cycle registration No. KMDM 467P along Eldoret-Kapsoya road when the Defendant, his driver, agent and or servant so negligently, carelessly and recklessly drove, managed and or controlled the said motor vehicle registration Number KCG 492T Mistubishi Canter causing it to hit the Respondent thereby causing him severe injuries, loss and damage.
2. In a response to the Plaintiff dated 30th October, 2020, the Appellant blamed the Respondent for contributing to the accident. The Appellant denied that the respondent suffered injuries and incurred expenses as pleaded. He also denied the ownership of the subject motor vehicle.
3. After trial Judgment was delivered on 3rd November, 2021 and the Appellant was found 80% liable and damages assessed as hereunder: -
 - a. General Damages Kshs. 350,000/=
 - b. Special Damages Kshs. 15,470/=
 - c. Total Kshs. 365,470/=
 - d. Less 20% Kshs. 73,094/=



- e. Sum Kshs. 292,376/=
 - f. Plus, costs and interests
4. The Appellant is aggrieved by the decision of the trial Magistrate and has preferred the present appeal on (6) grounds: -
- a. The learned trial magistrate erred in law and fact in holding the Appellant 80% liable without any basis and contrary to the evidence on record.
 - b. The learned trial magistrate erred in law and fact in failing to find that the Respondent was solely to blame for the accident.
 - c. The learned trial magistrate erred in law and fact in failing to find that the Respondent had not proved his case on a balance of probabilities.
 - d. The learned trial magistrate erred in law and fact in awarding general damages that were inordinately high.
 - e. The learned trial magistrate erred in law and fact in using wrong principles in assessing damages.
 - f. The learned trial magistrate erred in law and fact in failing to consider the Appellant's submissions.
5. The appeal was canvassed vide written submissions. Both parties filed their submissions and I have carefully gone through the same. They are summarised as follows:

The Appellant's Submissions

- 6. The appellant began by reminding this court of its duty as a first appellate court, citing Section 78 of the *Civil Procedure Act* that requires it to re-evaluate, reassess and reanalyse the extracts of the record and draw its own conclusions. On this, they cited Peter M. Kariuki v Attorney General [2014] eKLR.
- 7. On liability, it was submitted that the magistrate erred in law and fact in finding the appellant 80% liable without basis and contrary to evidence. The appellant submitted that the respondent called two witnesses, the police officer (PW4) who only testified about the occurrence of the accident but did not witness it or produce a sketch plan to show the point of impact. The police officer confirmed she was not the investigating officer and never visited the scene of the accident involving motor vehicle registration number KCG 492T and motorcycle KMDM 467P. On cross-examination, she confirmed that investigations were still pending and therefore she did not have any return report/results of investigations in respect to the accident.
- 8. The defense called Abraham Lodi (DW1), the appellant's driver, who testified that on 28th September 2020, he was driving motor vehicle registration number KCG 492T from Eldoret towards Timboroa along Eldoret-Kapsoya road when the plaintiff who was riding motorcycle registration number KMDM 467P swerved into his lane abruptly causing the accident. DW1 stated he swerved to the extreme left to avoid a head-on collision but unfortunately the motorcycle rammed into the front right side of his vehicle. He produced his driving license as DEXH1 and confirmed reporting the accident at Eldoret Central Police Station.
- 9. On quantum, counsel submitted that Dr. Sokobe who examined the respondent confirmed the following injuries: head injury with brief loss of consciousness, deep cut on the parietal scalp and left face, lacerations on the occipital scalp, blunt injury to the chest, bruises on both hands, and deep cut



wound on the left knee. However, on cross-examination, Dr. Sokobe confirmed these were only soft tissue injuries with no dislocation and expected the respondent to have fully recovered. Although the respondent alleged he still had chest pain and was on medication, he produced no prescription or treatment notes to prove ongoing treatment.

10. The appellant argued the award of Kshs. 350,000 for general damages was inordinately high citing comparable cases: Kipkebe Ltd Versus Peterson Ondieki Tai (2016) eKLR where Kshs. 90,000 was reduced to Kshs. 30,000 for similar injuries and Eva Karemi & 5 Others V Koskei Kieng & Another (2020) eKLR where Kshs. 60,000 was awarded for soft tissue injuries including a 2cm cut on the forehead, cut wound on right elbow and limb.
11. To this end, counsel urged the court to set aside the trial court's judgment and substitute it with an award of Kshs. 50,000 as general damages, arguing this would sufficiently compensate the respondent based on comparable authorities.

The Respondent's Submissions

12. Learned Counsel for the Respondent submitted on both liability and quantum citing numerous decisions in support of his arguments. On the question of liability, it was submitted for the Respondent that PW4 PC Sitty Mohammed testified that the appellant's motor vehicle swerved and moved to the Respondent's lane and hit him. That the point of impact was on the Respondent's lane. Learned counsel maintained that this was also reiterated on her cross examination. This evidence was corroborated by the Respondent (PW1). He testified that the motor vehicle which was coming from the opposite direction left its lane and moved to his lane and hit him. On cross examination, he reiterated his evidence in chief that the point of impact was on his lawful lane.
13. It was submitted for the Respondent that the appellant's driver testified in the Appellant's defence as the sole witness. He admitted that his Driving licence was obscure. The expiry date could not be seen. His advocate avoided this issue in re-examination. He had also not filed inspection report before the trial court. He admitted that he was blamed for the accident and he even deposited Kshs. 10,000/ = cash bail. He admitted that he was to be charged for the accident. He was issued with a Notice of Intended prosecution.
14. According to counsel, the trial court was generous for the appellant herein. That the evidence in totality pointed to the Appellant being blamed wholly. The evidence of the Appellant's driver that the accident occurred on his lane is not corroborated. He is only trying to avoid liability. That he has admitted to paying cash bail, to being issued with Notice of Intended Prosecution. He appreciates that he was to be charged. He has not produced a valid driving licence. He has not produced Inspection Report to confirm the roadworthiness of the Motor vehicle. His defence is that he was not charged with a traffic offence. It is clear from the text of Art. 157(6) of *the Constitution* that the state powers of prosecution lie with the DPP who may institute and undertake criminal proceedings against any person before any court, take over and continue any criminal proceedings commenced in any court, and, with leave of court, discontinue at any stage before judgment any criminal proceedings. In support of his arguments, counsel relied on the following authorities:
 - a. Mary Njeri Murigi v. Peter Macharia & Another (2016) eKLR
 - b. Nester Shikuri v. Ibrahim Okwiri Matanji (2012) eKLR
 - c. Jackson Kaio Kivuva v. Penina Wanjiru Muchene (2019) eKLR
 - d. Gitobu Imanyara & 2 other v. Attorney General (2016) eKLR



- e. Peters v. Sunday post Ltd (1958) EA 424
 - f. Abok James Odera t/a A.J Odera & Associates
15. Learned Counsel submitted that in the case of Isabela w. Karanja v. Malele (1982-88) KLR, the court held that where the accident involved the pedal cyclist and a motor vehicle, the latter was driving a lethal machine hence he had a greater duty of care. That there is no reason therefore to fault the trial court for its judgment on liability and thus ground 1-3 must fail and be dismissed with costs to the Respondents.
 16. On quantum, the Respondent relied on four authorities before the trial court. In the case of Catherine Wanjiru Kingori & 3 others v. Gibson Theuri Gichubi (2005) eKLR the 3rd Plaintiff suffered multiple soft injuries, injury on the left elbow joint and injuries on both ankles. She was awarded Kshs. 350,000/= as general damages.
 17. The respondent also relied on the case of Vincent Cheruiyot Rono v. Mombasa Maize Millers, Nakuru HCCC No. 109 of 2005, the court awarded Kshs. 400,000/= as general damages in the year 2006 for various soft tissue injuries without any fractures.
 18. Reliance was also placed on the case of Francis Ochieng and Another v. Alice Kajimba (2015) eKLR Justice Majanja awarded Kshs. 350,000/= for multiple soft tissue injuries without fractures, in addition to head injuries which aggravated the injuries.
 19. Learned counsel concluded by submitting that the trial court did not err in awarding general damages of Kshs. 350,000/=. That the award was not so inordinately high. He urged the court to dismiss the appeal with costs.

Analysis & Determination

20. As this is being heard as a first appeal, the appellate court has the responsibility to examine and assess all evidence and facts that were presented in the trial court. While conducting this evaluation, the court must remain mindful that the trial judge had the unique advantage of directly observing and assessing witness behaviour and credibility. This review process is guided by several established principles outlined in the case of *Selle and Another V. Associated Motor Boat Company Ltd & Others* [1968] 1EA 123:

“...this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this Court is not bound necessarily to follow the trial Judge’s findings of fact if it appears either that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence.”
21. In this judgment, I will address the two key issues on appeal: liability and quantum of damages. Beginning with liability, the central question is whether the trial court erred in its decision to apportion 80% of the liability to the Appellant. The Appellant contends that this apportionment is inconsistent with both the documentary evidence and testimony presented during trial.
22. The determination of liability in road traffic accidents requires a thorough assessment of causation and contributory factors. The central inquiry focuses on identifying which party's actions or omissions directly led to the incident. This analysis demands a careful examination of each party's conduct to establish both legal responsibility and the degree of fault.



23. The provisions of section 107,109 and 112 of the *Evidence Act* were extensively dealt with in *Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334, in which the Court of Appeal held that:

“As a general proposition under Section 107(1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that places upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.”

24. The Court of Appeal in *Micheal Hubert Kloss & Another vs. David Seroney & 5 Others* [2009] eKLR held:

“The determination of liability in a road traffic case is not a scientific affair. Lord Reid put it more graphically in *Stapley vs. Gypsum Mines Ltd (2)* (1953) A.C. 663 at p. 681 as follows:

“To determine what caused an accident from the point of view of legal liability is a most difficult task. If there is any valid logical or scientific theory of causation it is quite irrelevant in this connection. In a court of law this question must be decided as a properly instructed and reasonable jury would decide it... The question must be determined by applying common sense to the facts of each particular case. One may find that as a matter of history several people have been at fault and that if any one of them had acted properly the accident would not have happened, but that does not mean that the accident must be regarded as having been caused by the faults of all of them. One must discriminate between those faults which must be discarded as being too remote and those which must not. Sometimes it is proper to discard all but one and to regard that one as the sole cause, but in other cases it is proper to regard two or more as having jointly caused the accident. I doubt whether any test can be applied generally...”

25. It is evident that indeed an accident occurred on 28th September, 2020, along Eldoret-Kapsoya road involving the Respondent who was riding motorcycle registration No. KMDM 467P and the Appellant's motor vehicle registration No. KCG 492T which was being driven by the Appellant's driver.

26. The central question regarding liability is whether the trial court erred in its apportionment of 80% liability against the Appellant. To determine this, it is necessary to carefully examine the evidence adduced by both parties during the trial.

27. The Respondent's case was supported by his own testimony as PW1 and that of PC Sitty Mohammed (PW4). While PW4 did not witness the accident, her testimony corroborated the Respondent's account that the Appellant's vehicle swerved into the Respondent's lane, causing the collision. The Respondent maintained consistently, even under cross-examination, that he was in his proper lane when the Appellant's vehicle encroached and struck him.

28. The Appellant's defense rested primarily on the testimony of their driver, Abraham Lodi (DW1). However, DW1's testimony contained significant admissions that weaken the Appellant's position. Most notably, under cross-examination, DW1 admitted that the accident occurred while he was attempting to overtake and that he struck the Respondent while returning to his lane.



29. When evaluating evidence in road traffic accidents, the court must apply the principle established in *Chao vs. Dhanjal Brothers Ltd & 4 Others* [1990] KLR 482, which places the evidential burden on the defendant to demonstrate absence of negligence where circumstances suggest otherwise. In this case, the Appellant has failed to discharge this burden. The admission by DW1 regarding the overtaking maneuver that led to the collision strongly indicates negligent driving.
30. In *Chao vs. Dhanjal Brothers Ltd & 4 Others* (Supra) the court held that:
- “Where the circumstances of the accident give rise to the inference of negligence, then the defendant, in order to escape liability, has to show that there was a probable cause of the accident which does not connote negligence or that the accident was consistent only with the absence of negligence. Where the defendant relies on a latent defect, the evidential onus shifts to the defendant to show that the latent defect occurred in spite of the defendant having taken all reasonable care to prevent it. The defendant is not required to prove how and why the accident occurred, but in case of tyre burst (similar to pipe burst in this case) the defendant must prove or evidence must show that the burst was due to a specific cause which does not connote negligence but points to its absence or if the defendant cannot point out such cause, then show that he used all reasonable care in and about the management of the tyre and that the accident may be inexplicable and yet if the court is satisfied that the defendant was not negligent, the plaintiff’s case must fail.”
31. Therefore, it is upon the Appellant to prove that indeed there was no negligence on its part. Placing the evidence on a legal scale of probabilities, it is more probable that not that the Appellant’s driver was not careful enough when he was overtaking because evidently, the accident occurred on the Respondent’s Lane while the Appellant was overtaking.
32. In *Khambi and Another vs. Mahithi and Another* [1968] EA 70, 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 cases, 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.”
33. I have evaluated the evidence at the trial court and I find no reason to fault the trial court’s decision on liability. Accordingly, the trial Court did not err in apportioning liability at 80% against the Appellant.

Quantum

34. As regards quantum, in *Woodruff vs. Dupont* [1964] EA 404 it was held by the East African court of appeal that:
- “The question as to quantum of damage is one of fact for the trial Judge and the principles of law enunciated in the decided case are only guides. When those rules or principles are applied, however, it is essential to remember that in the end what has to be decided is a question of fact. Circumstances are so infinitely various that, however carefully general rules are framed, they must be construed with some liberality and too rigidly applied. The court must be careful to see that the principles laid down are never so narrowly interpreted as to prevent a judge of fact from doing justice between the parties. So to use them would be to misuse them...The quantum of damages being a question of fact for the trial Judge the sole



question for determination in this appeal is not whether he followed any particular rules or the orthodox method in computing the damage claimed by the plaintiff, but whether the damages awarded are “such as may fairly and reasonable be considered as a rising according to the usual course of things, from the breach of the contract itself.” The plaintiff is not entitled to be compensated to such an extent as to place him in a better position than that in which he would have found himself had the contract been performed by the defendant.”

35. The Court of Appeal in *Catholic Diocese of Kisumu vs. Sophia Achieng Tete* Civil Appeal No. 284 of 2001 [2004] 2 KLR 55 set out the circumstances under which an appellate court can interfere with an award of damages in the following terms:

“It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court is not justified in substituting a figure of its own for that awarded by the Court below simply because it would have awarded a different figure if it had tried the case at first instance. The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles, (as by taking into account some irrelevant factor leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.”

36. I am to determine whether the award of general damages of Kshs. 350,000/= in light of the injuries stated above is inordinately high to persuade this court to interfere with it. The Court of Appeal in *Odinga Jacktone Ouma V Moureen Achieng Odera* [2016] eKLR stated that “comparable injuries should attract comparable awards”.

37. It has long been held that an appellate Court should not interfere with exercise of discretion by a trial court unless it acted on a wrong principle, took into account irrelevant factors or failed to take into account relevant factors.

38. In *Kemfro Africa Limited t/a Meru Express Service Gathogo Kanini v A.m. Lubia and Olive Lubia* [1985] Kneller. J.A, stated:

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either that the judge, in assessing the damages, took into account an irrelevant factor, or left out of account a relevant one, or that; short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage. See *ILANGO V. MANYOKA* [1961] E.A. 705, 709, 713; *LUKENYA RANCHING AND FARMING CO-OPERATIVES SOCIETY LTD V. KAVOLOTO* [1970] E.A., 414, 418, 419. This Court follows the same principles.”

39. The question is whether this court should interfere with the damages awarded by the trial Court. As stated above, the discretion in assessing general damages payable will only be disturbed if the trial court took into account an irrelevant fact or failed to take into account a relevant factor or that the award is so inordinately high that it must be wholly erroneous estimate of the damages or that it was inordinately low.

40. The injuries suffered by the Respondent were enlisted in the pleadings as:

Head injury with brief loss of consciousness



Deep cut on the parietal scalp and left face

Lacerations on the occipital scalp

Blunt injury to the chest

Bruises on both hands

Deep cut wound on the left knee

41. While acknowledging that financial compensation cannot fully restore the physical integrity lost through injury, the court must strive to award damages that are both fair to the injured party and consistent with established precedent for similar injuries. This balance ensures equitable treatment across cases while recognizing the individual circumstances of each matter before the court.
42. In *Ndungu Dennis v Ann Wangari & Another*, Kiambu HCCA 54/2016 decided in February 2018, the High Court awarded KShs. 100,000/= general damages to the plaintiff who sustained injuries involving a blunt head injury, head concussion (brief consciousness), blunt injuries to the chest and both hands.
43. In *Mumias Sugar Company Limited v Julius Abuko Shibia* [2015] eKLR Kakamega HCCA 112/2011, an award of KShs.100,000 was made in favour of the plaintiff who suffered blunt injury to the neck, blunt injury to the occipital region of the head, blunt injury to the right shoulder, complaints of neck pain on and off with backache.
44. In the case of *Baloch Faisal & another v Elloy Kawira Nthiiri* [2019] eKLR the Court made an award of Kshs. 200, 000/- for injuries which included soft tissue injuries to the head, both knees, chest, back and injury to upper incisor teeth.
45. In *Kenya Power & Lighting Co. Ltd v Mary Akinyi*, HCCA No. 72 of 2007, Korir J. as he then was) upheld an award of Kshs. 350,000/- as general damages for deep cut wound on the calf muscles of the left leg, laceration on the right knee and right shoulder and contusion on the chest.
46. A thorough review of recent case law demonstrates that finding cases with precisely matching injuries is virtually impossible. Therefore, the court must undertake a careful analysis of cases featuring comparable injuries and similar circumstances to establish appropriate compensation levels. This methodology allows the court to maintain consistency in its awards while ensuring each case receives individualized consideration based on its specific circumstances.
47. The principle of consistent compensation for comparable injuries remains a cornerstone of damages assessment. Yet the court must exercise careful judgment in applying this principle, recognizing that each case presents distinct characteristics in terms of injury patterns, severity, and individual impact. This balanced approach ensures both fairness to the injured party and consistency within our judicial framework. The Court of Appeal in *Stanley Maore vs Geoffrey Mwenda* [2004] eKLR stated as follows-

“Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases.”
48. I am of the view that a sum of Kshs. 300, 000/= is adequate compensation for soft tissue injuries sustained by the respondent.



49. The result of the appeal is that the finding on liability by the trial court is upheld but the award of Kshs. 350,000/= made by the trial court is set aside and substituted with an award of Kshs. 300,000/=. The award on special damages is also upheld.
50. There was nothing to suggest that the learned trial magistrate exercise of her discretion was based on a misunderstanding of the law or the evidence or that a decision was so aberrant that no reasonable magistrate regardful of his/her duty could have reached it. Neither did she fail to take account of relevant considerations save for a minor overreach on assessment of damages which I hereby exercise discretion and substitute as hereinabove state. I would therefore dismiss the appeal on other limbs affirm the impugned judgment with variations with costs of the appeal to be shared equally
51. It is so ordered.
52. Stay of 30 days is granted.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 23RD DAY OF DECEMBER, 2024.

.....

R. NYAKUNDI

JUDGE

In the Presence of:

Ms. Chepkowny for the Appellant

