



REPUBLIC OF KENYA



KENYA LAW
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**SBI Construction Limited v Oluochi (Civil Appeal E079 of 2022)
[2023] KEHC 19421 (KLR) (30 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 19421 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E079 OF 2022
MS SHARIFF, J
JUNE 30, 2023**

BETWEEN

SBI CONSTRUCTION LIMITED APPELLANT

AND

SYLVESTER SADIA OLUOCHI RESPONDENT

*(Being an appeal from the judgement and decree of Hon R Sang
S.R.M in Nyando CMCC No. 254 of 2019 delivered on 5/7/2022)*

JUDGMENT

A. Case background

1. The respondent (plaintiff in the subordinate court) sued the appellant claiming general and special damages. His case was that on November 15, 2016 while riding motorcycle off the road at Kisumu-Ahero road, the appellant's driver controlled motor vehicle registration number KBP 971A in a manner so negligent that it lost control and knocked him down.
2. The Respondent pleaded that he sustained a compound fracture of the right tibia and fibula, closed fracture of the right femur and severe soft tissue injuries of the right leg.
3. The appellant duly entered appearance and filed it's defence denying the accident.
4. After the hearing, the trial magistrate entered liability at 50:50 and awarded Kshs 2,000,000/- in general damages and Kshs 8,000/- in special damages. The appellant, being aggrieved, moved this court by way of appeal. In the memorandum of appeal, the following grounds are raised;
 - i. The quantum of general damages for pain and suffering and loss of amenities is inordinately high, erroneous, oppressive and punitive and amounts to miscarriage of justice.



- ii. The learned trial magistrate ignored the appellant's submissions, paid lip-service and made no reference to all precedent on general damages cited before him, thus coming to a wrong decision on the quantum.
 - iii. The learned trial magistrate erred in failing to appreciate the principles governing the award of damages, namely that like cases attract similar awards, and ignoring completely the appellant's .
 - iv. The learned trial magistrate erred in making an award of Kshs 2,000,000/- for general damages without giving any reason for such an award and thus made an award that was arbitrary, capricious and inordinately high, erroneous, and which amounts to a miscarriage of justice.
 - v. The honourable magistrate's decision is plainly wrong and is against the weight of evidence.
5. The evidence at the trial court, was as follows; PW-1, Sylvester Sadia Oluoch stated that the accident occurred as a result of the appellant's driver's attempt to overtake the oil tanker, squeezed the appellant's vehicle between the matatu and the tanker thus causing the accident. The Respondent was treated at Jaramogi Oginga Odinga Teaching and Referral Hospital.
 6. PW-2 PC Titus Emumatsi produced the police abstract which confirmed the accident. He confirmed none was charged over the accident.
 7. The appeal was disposed by way of submissions. The appellant conceded the issue of liability and submitted that on quantum. The evidence on record reveals that the respondent sustained a permanent disability of 30% and the appellant proposed an award of Kshs 700,000/- in damages based on the authorities in *David Kimathi Kaburu vs Dionisius Mburugu Itirai* (2017) eKLR where Kshs 630,000/- was awarded and *Florence Njoki Mwangi vs Peter Chege Mbitiru*(2014) eKLR where Kshs 700,000/- was awarded.
 8. The respondent supported the trial court's award as being commensurate to the injuries that he had sustained.

Analysis and determination.

9. The duty of the first appellate was stated in *Peters v Sunday Post Limited* (1958) EA 424 where Sir Kenneth O'Connor stated as follows:

It is a strong thing for an appellate court to differ from the finding, on a question of fact, of the judge who tried the case, and who has had the advantage of seeing and hearing the witnesses. An appellate court has, indeed, jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon that evidence should stand. But this is a jurisdiction which should be exercised with caution; it is not enough that the appellate court might itself have come to a different conclusion.
10. The appeal herein is on quantum. The general principles on the award of damages for personal injury is based on previous decided cases and the injuries sustained. this principle runs through several



authorities of this court for instance *Charles Oriwo Odeyo vs. Appollo Justus Andabwa & another* [2017] eKLR where the Court of Appeal stated as follows:-

“The assessment of damages in personal injury case by a court is guided by the following principles:

- 1) An award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained.
- 2) The award should be commensurable with the injuries sustained.
- 3) Previous awards in similar injuries sustained are a mere guide but each case be treated on its own facts.
- 4) Previous awards to be taken into account to maintain the stability of awards but factors such as inflation should be taken into account.
- 5) The awards should not be inordinately low or high”

11. The injuries sustained herein according to the medical report by Dr. Omuyoma are; compound fracture of the right tibia and fibula, closed fracture of the right femur and severe soft tissue injuries of the right leg. The second medical opinion by Dr J. Otieno assessed disability at 30%.
12. Taking into account the principles stated above, I have looked up authorities with comparable injuries; in *Achacha v Litunya* (Civil Appeal E044 of 2021) [2022] KEHC 3332 (KLR) (30 June, 2022) (Judgment), the respondent sustained head injury with loss of consciousness for 3 weeks, blunt injury to the left eye, fracture of the right humerus, fracture of the right femur, fracture of the left femur and multiple cut wounds on both lower limbs. The court on appeal awarded Kshs 1,200,000/= where permanent disability had been assessed at 40%.
13. In *Subati Flowers Limited v Walter Wanyonyi Wekesa* (2019) eKLR, Mwongo J. upheld an award of Kshs 1, 600,000/= where permanent disability had been assessed at 40%.
14. In *Benuel Bosire vs Lydia Kemunto Mokora* (2019) eKLR, the court reduced an award of Kshs 2,000,000/=to Kshs 700,000/= where the respondent had a single compound fracture for which disability had been assessed at 40%.
15. In *SBI International Holdings (AG) Kenya vs William Ambunga Ongeri* (2018) eKLR, the respondent sustained 40% permanent disability. The court upheld the trial court’s award of General Damages at Ksh.800,000/=.
16. In *Sophia Wanjiru Njuguna v Kyoga Hauliers Kenya Limited* (2020) eKLR the court awarded Kshs 1,200,000/= where permanent disability was assessed at 40%.
17. Taking cue from the above authorities in addition to the authorities cited by the parties herein and in the trial court, the fact that the injuries in the above cases are more serious than in the instant case, I find that the award of Kshs 2,000,000/- was on a higher side and ought to be interfered with. In its place I substitute it with an award of Kshs 1,200,000/-
18. The amount of Kshs 1,200,000/- and when subjected to 50% contribution, the respondent is entitled to Kshs 600,000/-. The award on special damages remains undisturbed.
19. For the reason that the appeal is partially successful, each party shall bear its own costs of the appeal.
20. Orders accordingly.



DELIVERED, DATED AND SIGNED AT KISUMU THIS 30TH DAY OF JUNE 2023.

MWANAISHA. S. SHARIFF

JUDGE

In the presence of:

Miss Nyangono for the appellant

No attendance by M/S Odhiambo Paul Xistus & Company for the Respondent

