



REPUBLIC OF KENYA



**Automax Limited & another v Githige (Civil Appeal 104 of 2014)  
[2023] KEHC 25620 (KLR) (23 November 2023) (Judgment)**

Neutral citation: [2023] KEHC 25620 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CIVIL APPEAL 104 OF 2014  
J WAKIAGA, J  
NOVEMBER 23, 2023**

**BETWEEN**

**AUTOMAX LIMITED ..... 1<sup>ST</sup> APPELLANT**

**DANIEL GIHARU KARANJA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**JAMES MBURU GITHIGE ..... RESPONDENT**

*(Being an Appeal from the whole of the Judgement delivered on 29th  
October 2014 by Hon C. Kithinji SRM in Kandara SPM CC No 75 of 2014)*

**JUDGMENT**

1. By a plaint dated 12<sup>th</sup> February 2014, the Respondent sued the Appellants for general damages for pain and suffering , special damages , loss of future earning and earning capacity and cost arising from a road traffic accident on 1<sup>st</sup> December 2012 involving motor vehicle registration number KBB 257 Z in which the Respondent was travelling as a passenger along Kandara Road at Kaguthi bridge, which accident was allegedly caused by the negligence of the 2<sup>nd</sup> Appellant as an authorized driver of the 1<sup>st</sup> Appellant who was the registered owner thereof.
2. By a defence thereof dated 1<sup>st</sup> April 2014, the Appellants denied that the Respondent was an authorized passenger therein and further denied the particulars of negligence, injuries loss and damages contained therein.
3. On 25<sup>th</sup> day of July 2014 consent judgement was entered on liability in favour of the Respondent at 10%: 90% against the Appellant and the cause proceeded for assessment of damages through the testimony of the Respondent.
4. By a judgement dated 29<sup>th</sup> October 2014, the Court awarded the Respondent the following:



- a. General damages ..... Kshs 650,000
- b. Special damages .....Kshs 18,000
- c. Less 10% contribution
- d. Cost and interest.

Being dissatisfied by the said award, the Appellants filed this appeal and raised the following grounds of appeal:

- a) The learned Magistrate erred in fact and in law in finding that the Respondent was entitled to general damages that were too high and without considering the Provision of Cap 405 (Amended) which gives a guideline on how compensation ought to be compensated and the available authorities on similar cases.
- b) The learned Magistrate erred in law and in fact in reaching a finding that the deceased aged 16 years could have completed education and gotten employed at age 25 years and thereafter use 2/3 of his salary to maintain his parents.
- c) The learned Magistrate erred in law and in fact in failing to apply the correct principles in the assessment of damages of particulars on the question of multiplier and dependency ration and therefore reached a wrong finding an award on general damages.
- d) The learned Magistrate erred in law and in fact in awarding damages under *Law Reform Act* being i.e Pain and suffering and Loss of Expectation of life and at the same time awarded General Damages for Loss of Dependency under *Fatal Accident Act* yet it was clear in the facts of the case the beneficiaries under both Acts were the same.
- e) The learned Magistrate erred in law and in fact in failing to consider conventional awards for general damages in similar cases.
- f) The learned Magistrate erred in law and in fact in holding the Appellant 100% liable for the accident yet the facts and circumstances of the case did not support such a finding.

### Submissions

6. Directions on the disposal of the appeal were issued to be by way of written submissions. On behalf of the Appellant it was submitted the award was too high considering that the Respondent sustained only a fracture and that in arriving at the award herein, the Court took into account irrelevant factors outside the comparable awards for similar injuries as was stated in the case of *Denshire Muteti Wambua v Kenya Power & Lighting Co Ltd* [2013] eKLR and *Godfrey Wamalwa Wamba & Another v Kyalo Wambua* [2018] eKLR
7. It was contended that the Respondent suffered majorly soft tissue injuries which should have attracted an award of Kshs.450,000 in support of which the following cases were tendered;
  - a. *Jitan Nagara v Abidnego Nyandusi Oigo* [2018] eKLR where the Respondent suffered lacerations on the occipital area, deep cut wound on the back, right knees and lateral lane bruises at the back, compound fracture of the right tibia/fibula, segmental distal fracture of the right femur, had an award reduced to Kshs.450,000.
  - b. *Zacharia Mwangi Njeru v Joseph Wachira Kanoga* award of Kshs.800,000 was reduced to Kshs.400,000 in respect of comminute fracture of tibia and fibula among others.



8. The Respondent though served did not file any submissions.

### **Determination**

9. The principles upon which an Appellate Court may interfere with the award of damages were stated in *Kemfro Africa Limited v AM Lubia* (1982-88) 1 KAR 727 and the same has been applied by Superior Courts in this Republic of Kenya with modification but in summary it remains that only and if the Court took into account irrelevant factors or failed to do so thereby reaching into an award which is either excessively low or high.
10. In this matter the only issue for the Court's determination is whether the award in general damages herein was excessive so as to be interfered with by this Court on Appeal?
11. The Respondent testified that his right hand was fractured, half of his ear was off and had to be stitched back, he produced the medical report which confirmed the said injuries as comminute fracture of the lower 1/3 of the left radius, deep cut on the right ear lobe deep cut on the scalp and chin.
12. What are the comparable awards for similar injuries so as to enable the Court decide on whether to interfere with the award herein? In *Joseph Njuguna Gachie v Jacinta Kavuu Kyengo* [2019] eKLR the Court reduced the award to Kshs.600,000.
13. I have noted that the cases submitted by the Appellants were in respect of minors and might not be comparable awards to the Respondent herein. I am therefore not persuaded by the Appellants' submissions that in reaching the award herein the Court was not guided by the right principles and is therefore not persuaded that I ought to interfere with the award herein.
14. It follows that the appeal herein fails and is dismissed with cost to the Respondent.

**DATED SIGNED AND DELIVERED AT MURANGA THIS 23<sup>RD</sup> DAY OF NOVEMBER 2023**

**J. WAKIAGA**

**JUDGE**

In the presence of:

Mr. Kiptanui for Waiganjo for Respondent

Ms Mugo the Appellant

Jackline – Court Assistant

