



REPUBLIC OF KENYA



KENYA LAW
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**Transport Links Ltd & another v Oduor (Civil Appeal E664 of 2021)
[2023] KEHC 25759 (KLR) (Appeals) (23 November 2023) (Judgment)**

Neutral citation: [2023] KEHC 25759 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

APPEALS

CIVIL APPEAL E664 OF 2021

AN ONGERI, J

NOVEMBER 23, 2023

BETWEEN

TRANSPORT LINKS LTD 1ST APPELLANT

DANIEL WAMBUI 2ND APPELLANT

AND

ALFRED ODUOR RESPONDENT

*(Being an Appeal from the Judgment of Hon. D. O. Mbeja (PM)
in Milimani CMCC No. E5933 of 2020 deliberated on 24/9/2021)*

JUDGMENT

1. The appellants were the defendants in Milimani CMCC No. E5933 of 2020 where they were sued by the respondent for damages for personal injuries the respondent sustained on 15/7/2020 along Ayani in Kibera while travelling as a pillion passenger on a motor cycle when he was knocked down by motor vehicle registration No. KCP 398X which belongs to the 1st appellant and was being driven by the 2nd appellant.
2. The respondent averred in the plaint dated 5/10/2020 that he was riding a motor cycle along Ayani at Kibera Drive when the 2nd defendant drove motor vehicle registration no. KCF 398X negligently and caused it to loss control and to collide with the motor cycle on which the respondent was travelling causing the respondent injuries.
3. The respondent sustained the following injuries
 - i. Swollen, tender right leg
 - ii. Cut wound on the left hand



- iii. Bruises on the right leg
 - iv. Blunt injuries (tender) on the lower back
 - v. Bruises on the left palm
4. The respondent gave evidence in court but the appellants did not call any witnesses.
 5. The trial court found the appellants 100% liable in negligence and assessed general damages at 400,000 and special damages at Ksh.3,550.
 6. The appellants have appealed against the findings of the trial court on the following grounds;
 - i. The learned trial magistrate’s judgment was unjust, against the weight of evidence and was based in misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.
 - ii. The learned trial magistrate erred in law and in fact in awarding under the head “general damages” Kshs.400,000/= the same based on the wrong principles of Law as the same was excessively high and unjust in view of conventional awards in relation to similar claims.
 - iii. The trial magistrate erred in fact and in law in finding the entire defence unconvincing and failing to consider the appellant’s submissions and their cited authorities therein.
 - iv. The learned trial Magistrate erred in awarding an excessive sum for the nature of the matter in the face of the evidence adduced.
 7. The parties filed written submissions as follows; the appellant submitted that the award of Kshs 400,000 as general damages be revised downwards as the same is overly exaggerated because the plaintiff sustained very mild soft tissue injuries and in support cited;
 - a. *George Mugo & Another v AKM (minor suing through next friend and mother of A.N.K* [2018] where Kemei J awarded Kshs. 90,000/ = for soft tissue injuries.
 - b. *George Kinyanjui t/a Climax Coaches & Another vs Hussein Mahad Kuyala* [2016] eKLR where the Respondent sustained injuries on his chest, neck, knees and lost two teeth and the High Court on appeal reduced an award of Kshs. 650,000/ = to Kshs. 109,890/ upon a finding that that the loss of teeth was unrelated to the accident in question, as the Respondent had sustained soft tissue injuries.
 - c. *Ndungu Dennis vs Ann Wangari Ndirangu & Another* [2018] eKLR where Ngugi Joel J reduced general damages for soft tissue injuries from Kshs. 300,000 to Kshs. 100,000.
 8. The respondent submitted on liability that he testified before the trial Court where he produced his statement and list of documents. He confirmed that he was a pillion passenger when the said accident and that he did not in any way contribute to the occurrence of the accident. The Appellants herein on the other hand never called any witness to controvert the evidence that had been tendered by the Respondent.
 9. On general damage the respondent submitted that the trial court was correct in awarding Kshs. 400,000 as the particulars of injuries that had been pleaded by the respondent comprised of; Swollen, tender - right leg, Cut wound-left hand, Bruises-right leg, Blunt injuries (tender)-lower back, Bruises-left palm. In support cited *Carolyn Indasi Mwonyonyo v Kenya Bus Service Ltd* [2012] eKLR where the court awarded the Respondent general damages of Kshs. 350,000/- for comparable injuries in 2012 and *Poa*



- Link Services Co. Ltd & another v Sindani Boaz Bonzemo* [2021] eKLR where the court upheld the trial Court findings on general damages of Ksh. 350,000/= for comparable injuries in 2021.
10. This being a first appeal the duty of the first appellate court is to re-evaluate the evidence adduced before the trial court and to arrive at its own conclusion whether or not to support the finding of the trial court while bearing in mind that the trial court had the opportunity to see the witnesses.
 11. The issues for determination here as follows;
 - i. Whether the trial court was right in holding the appellants 100% liable.
 - ii. Whether the award of damages was erroneous.
 12. On the issue as to whether the trial court was wrong in holding the appellants 100% liable, I find that the respondent gave evidence as PW 1. He adopted his witness statement dated 5/10/2020. The defence did not adduce evidence to rebut the respondent's testimony.
 13. In the circumstances, I find that the trial court was right in relying on the testimony of the respondent
 14. On the issue of assessment of damages, I find that the respondent sustained soft tissue injuries.
 15. I have considered similar cases as follows;
 - a. *Peter Muvake & another v Agnes Nduku Mutie* [2018] eKLR where the Respondent suffered a fractured mandible, blunt chest injury, multiple cut wounds to face, neck and shoulders, deep cut wound on the right elbow and bruises on the right knee and upon examination by Dr. P.N Mutuku was found to be at risk of suffering neurological conditions later in life. The Court made an award of Kshs. 400,000/- in December 2018.
 - b. *BK Suing Thro' His Mother and Next friend EM v Wilson Gitari Mburugu* [2020] eKLR where the Plaintiff suffered multiple injuries to the face; soft tissue injury to the thorax, abdomen as well as on his upper and lower limbs; severe injuries to the maxilla and mandible resulting to loss of five (5) teeth with cut on the lip. The injuries left him with cosmetic damage to the mouth. The Court made an award of Kshs. 400,000/- in February 2020.
 - c. *Moiz Motors Limited & another v Harun Ngethe Wanjiru* [2021] eKLR where the High Court reduced an award of Kshs 700,000 and made an award of Kshs 500,000.00 in general damages to a Respondent who suffered multiple facial lacerations, a depressed skull frontal bone, soft tissue injury right upper chest, multiple bruises both hands dorsal aspect, multiple bruises both hips, swollen toes right leg and bruises of both knees, in February 2021.
 16. I find that the award of the trial court is reasonable in the circumstances.
 17. I find that this appeal lacks in merit and the same is dismissed with costs to the respondents.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 23RD DAY OF NOVEMBER, 2023.

A. N. ONGERI

JUDGE

