



**Great Rift Express Shuttle v Mwangi (Civil Appeal E086 of 2022)
[2023] KEHC 27069 (KLR) (20 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 27069 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E086 OF 2022
RN NYAKUNDI, J
DECEMBER 20, 2023**

BETWEEN

GREAT RIFT EXPRESS SHUTTLE APPELLANT

AND

CHARLES MWANGI RESPONDENT

(Being an Appeal arising from the Judgement and Decree of Honourable N Wairimu delivered on 10th June 2022 in Eldoret CMCC No. 230 of 2019)

JUDGMENT

1. The appeal herein arises from the judgement and decree of Honourable N Wairimu delivered on 10th June 2022 in Eldoret CMCC No. 230 of 2019. The cause of action arose from an accident that occurred in 30th March 2019 where the respondent was a pillion passenger on motorcycle registration number KMCG 922D which was involved in an accident with motor vehicle KCB 819G along Eldoret-Webuye Road. According to the plaint dated 20th March 2019, as a result of the accident, the Respondent sustained the following injuries;
 - a. Blunt injury to the face
 - b. Blunt injury to the neck
 - c. Bruises and blunt injury to the left hand
 - d. Bruises and blunt injury to both legs
2. Upon considering the pleadings, testimonies and evidence produced in court, the trial court found the Appellant liable and judgment entered in favour of the respondent herein for Kshs. 300,000.00 awarded as general damages. Being aggrieved with the judgement and decree of the trial court, the



appellant instituted the [present appeal vide a Memorandum of Appeal dated 22nd June 2022 premised on the following grounds;

1. That the learned magistrate's decision was unjust, against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.
 2. That the learned magistrate erred in law and misdirected himself when he failed to consider the provisions set out in The *Insurance (Motor Vehicle Third Party Risks) (Amendment) Act, 2013, CAP 405.*
 3. The Learned magistrate erred in law and in fact in awarding quantum of damages inconsistent with injuries pleaded and proved , to have been, sustained by the Respondent.
 4. The Learned magistrate having misapprehended and misunderstood the extent and severity of the injuries erred in law and fact by failing to rely on any authority to justify her award and thus arrived at an award that is so manifestly high as to be erroneous.
 5. The Learned magistrate erred in law and fact by disregarding the recent comparative authorities cited by the Appellants herein hence arriving at a manifestly high award.
 6. The Learned magistrate erred in assessing an award hereunder, which was inordinately high and wholly erroneous estimate of the loss and damages suffered by Respondent.
 - a. Liability 100% in favour of the Respondent as against the Appellants
 - b. General Damages - Kshs. 300,000/=
 - c. Special Damages - Kshs. 6000/=Net Award Kshs. 306,000/- plus costs and interest
 7. That the learned magistrate's decision was unjust/ against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.
3. The parties prosecuted the appeal by filing written submissions.

Appellant's Case

4. Learned counsel for the appellant filed submissions dated 14th October 2022. It is the appellant's case that the P3 form dated 4/3/2019 and medical report from Dr. J. Sokobe list the injuries as those that are in the Plaintiff. As per the medical report of Dr Sokobe, the injuries sustained by the Respondent were soft tissue injuries. The lower court awarded Kshs. 6,000.00 as special damages and Kshs. 300,000.00 as general damages. This was inordinately high considering the injuries sustained by the Respondent were soft tissue injuries. The appellants submitted that the sum of Kshs. 100,000.00 would be reasonable and sufficient compensation. They relied on the cases of *Power Lighting Company Limited v Zakayo Saitoti Naingola & another* (2008) eKLR, *Ndungu Dennis v Ann Wangari Ndirangu & another* [2018] eKLR and *HB (Minor suing through mother & next friend DKM) v Tasper Nchonga Magari & another* [2021] eKLR in support of these submissions.
5. The appellant urged the court substitute the award with one of Kshs. 100,000/- and costs be awarded to the appellant.



Respondent's Case

7. Learned counsel for the respondent filed submissions in opposition to the appeal. Counsel urged that it was not in dispute that the alleged accident occurred. Further, that he supported the trial magistrate on the decision of liability. The evidence of the Respondent and the Police Officer was key in determining the issue of liability in the suit. The Appellant did not tender any evidence on liability to challenge the Testimony of the Respondent and his witnesses. From the circumstances of the accident by the Respondent was lawfully being carried as a Pillion Passenger on Motorcycle Registration KMDG 922 D along the Eldoret - Webuye Road from Eldoret headed towards Webuye direction when the Appellant and or their driver, servant, agent and or employee abruptly came from the opposite Webuye Direction towards Eldoret and without notice abruptly turned and joined the feeder Road and knocked down Motorcycle Registration KMCG 922 D. The Motorcycle KMCG 922 D and Motor Vehicle Registration KCB 819 G were coming from opposite directions. The Respondent stated that he was lawfully being carried as a Pillion Passenger on Motorcycle KMCG 922 D when the Appellant and or their agent, driver, servant and or employee negligently and or recklessly joined the feeder road in an attempt to join that road and which resulted in the accident.
8. The Appellant's driver, servant, agent and or employee knocked down Motorcycle Registration KMCG 922 D which was lawfully on its lane heading towards the Webuye Direction. Motorcycle Registration KMCG 922 D which was oncoming towards Webuye Direction from the Eldoret Direction had a right of way and was on its lawful lane. The Appellants and or their driver, agent, servant and or employee ought to have ensured that it was clear before joining the feeder road. Had the Appellant not abruptly entered the feeder road the accident would not have occurred. The lane which the accident occurred was the rightful lane of Motorcycle KMCG 922D.
9. The version of the Respondent on the circumstances of the accident was confirmed and corroborated by the Police Officer who stated that Motor Vehicle KCB 819 G carelessly, negligently and recklessly abruptly and suddenly entered the feeder road in front of the Motorcycle Registration KMCG 922 D thus knocking down the same. The Policer Officer stated that had Motor Vehicle KCB 819 G not suddenly entered the road the accident would not have occurred. The Appellants did not call any evidence in this case and the Respondent's version as to the circumstances of the accident thus remained unchallenged and or uncontroverted.
10. The respondent urged the court to find the Appellant and or their driver, agent, servant and or employee 100% liable for the accident. Further, that from the foregoing it is quite evident as to why the Appellant was found 100% liable for the accident. The trial magistrate's finding on liability was supported by the evidence of the Respondent and his witnesses which supported the conclusion and finding reached by the Trial Magistrate with regard as to who is to blame for the accident. Counsel urged the court to dismiss the Appeal on Liability
11. The respondent supported the subordinate courts finding on the issue of quantum of Damages. The Trial court's finding on quantum is not inordinately too low or so high so as to amount to a wholly erroneous estimate and the Appellate court should not therefore disturb this award. The Trial magistrate followed the proper principles in making the award. Counsel urged that from the medical documents the plaintiff sustained the following injuries:-
 - (a) Blunt injury to the face.
 - (b) Blunt injury to the neck.
 - (c) Bruises and blunt injury to the left hand.



- (d) Bruises and blunt injury to both legs.
21. In view of the injuries sustained the award of Kshs 300,000 as General Damages made by the trial court sufficed as just and adequate compensation to the Respondent for the injuries sustained. Counsel relied on the following authorities on his submissions on quantum.; Nyeri HCCC NO. 320 OF 1998 - *Catherine W. Kingori v Gibson T. Gichubi*, Nairobi HCCA NO. 791 of 1999 *Martin M. Mugi v Attorney General*, Eldoret HCCA NO. 32 of 2017 *Jyoti Structures Limited & Anor v Charles Ogada Ochola*, Eldoret HCCA NO. 51A of 2018 *Epson Convertors & Anor v Robert Khaemba Khamala* and Bungoma HCCA No. 17 of 2019 *Poa Link Services Co. Ltd & Anor v Sindani Boaz Bonzemo*
13. Counsel prayed the court dismiss the application with costs to the respondent.

Analysis & Determination

14. The duty of an appellate court was laid out in *Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR, the court stated as follows-

“This being a first Appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”

15. Upon considering the Memorandum of Appeal, the record of Appeal and submissions on record, the following issues arise for determination;
1. Whether the trial court erred in its finding on liability
 2. Whether the trial court erred in its award of damages

Whether The Trial Court Erred In Its Finding On Liability

16. PW1, the respondent, testified that on 3rd March 2019 he was a pillion passenger on motor cycle reg. no. KNCG 922D when the defendant’s motor vehicle reg. no, KCB 819 G knocked the said motor cycle causing him various injuries. PW4, P.C Elishba Mweru produced an abstract for the accident and confirmed the sequence of events that led to the accident resulting in the injuries. Notably, he was not the investigating officer as the said officer had been transferred. The circumstances that led to the accident were in the occurrence book.
17. I have considered the fact that the defendant did not call any witnesses and further, that he failed to include the motorcycle rider as a third party despite inferring liability on his part. In the premises, I am in agreement with the finding of the trial court on liability.

Whether The Trial Court Erred In Its Award Of Damages

18. The burden of proof is upon the claimant to show the extent of his or her injuries. If his or her arm has been impaired or completely amputated the task is simple. He can present himself or herself in court. However, if it is a question of impaired mental faculties, ill health due to the injury and especially some nervous disorder his or her problem of prove is more difficult. The problem with assessment of damages in personal injury claims is majorly on evaluating the injury which the claimant has demonstrated during the hearing. Some of the key factors which tend to be ignored on a assessment of damages include the value of the time one has lost by reason of the injury, the expenses, he or she has been put to in effecting a cure, the physical disability he has suffered, either temporary or permanent, the



impairment of his or her earning capacity, the inconvenience and humiliation he or she may have undergone and would continue to undergo as a result of injuries suffered due to a breach of duty of care by the defendant. These dominant factors with which courts expressed their objective in compensation sometimes is lost and the method of assessment is leading. It is therefore the function of the trial judge to translate all this factors which seem largely subjective to enable the claimant be compensated for the loss within the framework of past awards without taking into account the inventory of the various losses incurred. The specific combination of facts in each case is unique and from the circumstances of the case one can arrive at a just, fair and proportionate assessment of damages. Look at pain and suffering as an item, there is no formula which the trial judge can use to assess damages under this head to satisfy himself or herself that the quantum was not too high to be punitive or too low to be a mockery of the physical injuries and the measure of anguish suffered during and after the accident. That is what the appellant is inviting this court to do in this appeal. In such cases the materiality of such facts as to the loss is illustrated by the court's decisions which had the advantage of listening to the witnesses in the manner the loss was experienced and from that evidence an estimate of the award is then arrived at by the trial court. That opportunity which is not accorded an appellate court sometimes leaves it in a dilemma in these cases. It is difficult for an appellate court to give trial court any formula for computing the present value. It is argued that that is the jurisdiction which this court must exercise from the objection made by the appellant. In the 1st instance it is to scrutinise and examine the evidence on record and whether the verdict was out of touch with the principles in *Abok James Odera* case.

19. PW2, Doctor Rono, produced evidence of the injuries sustained and stated that the plaintiff suffered soft tissue injuries. PW3, Dr. Joseph Sokobe, conducted a medical exam on the plaintiff and produced the medical report as exh4, confirming that the injuries sustained were soft tissue injuries.
20. The principles guiding an appellate court in determining whether to interfere with an award for damages were set out in the celebrated case of *Butt v Khan* {1981} KLR 470 where the court pronounced itself as follows;
21. An appellate court will not disturb an award for damages unless it is inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low”.
22. The Court of Appeal in *Odinga Jacktone Ouma v Moureen Achieng Odera* [2016] eKLR stated that comparable injuries should attract comparable awards.”
23. In *Shabani v City Council of Nairobi* (1985) KLR 516 the Court of Appeal had the following to say regarding the paramount need for Courts to attempt to give comparable awards in like cases:
24. There is no doubt that, some degree of uniformity must be sought in the award of damages and the best guide in this respect is...to have regard to recent award in comparable cases in the local courts.
25. The injuries sustained by the respondent were;
 - a. Blunt injury to the face
 - b. Blunt injury to the neck
 - c. Bruises and blunt injury to the left hand
 - d. Bruises and blunt injury to both legs
26. In *Kenya Power & Lighting Co. Ltd v Mary Akinyi*, HCCA No. 72 of 2007, Korir J upheld the award of Kshs. 350,000/- as general damages for the following injuries: -



- a. Deep cut wound on the calf muscles of the left leg;
- b. Laceration on the right knee and right shoulder;
- c. Contusion on the chest.

in the case of *Poa Link Services Co. Ltd & Another v Sindano Boaz Bonzemo*, HCCA NO. 17 OF 2019, Riechi J upheld the general damages of Kshs. 350,000/- for the plaintiff, who had sustained the following injuries: -

- a. Blunt injury to the chest.
 - b. Bruises to lower abdomen.
 - c. Bruises of the right hip joint.
 - d. Bruises of the thigh; and
 - e. Bruises on the knee.
27. Having considered the comparable awards for similar injuries, it is my considered view that the award for damages was commensurate to the injuries sustained and in tandem with comparable awards.
28. The upshot of the foregoing is that the appeal is dismissed with costs to the respondent.

It is so ordered.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 20TH DAY OF DECEMBER 2023

R. NYAKUNDI

JUDGE

