



**Pandhal v Nyandegge (Civil Appeal E046 of 2021)  
[2022] KEHC 16964 (KLR) (30 December 2022) (Judgment)**

Neutral citation: [2022] KEHC 16964 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E046 OF 2021  
RE ABURILI, J  
DECEMBER 30, 2022**

**BETWEEN**

**HS PANDHAL ..... APPELLANT**

**AND**

**FANUEL OPIYO NYANDEGE ..... RESPONDENT**

*(An appeal from the judgement and decree of Hon P.K Rugut. P.M  
in Tamu PMCC No. 13 of 2019 delivered on 15th April, 2021)*

**JUDGMENT**

1. By a plaint dated March 11, 2019, the respondent sued the appellant for damages arising from injuries sustained in a road traffic accident in which the appellant's tractor hit the tractor which the respondent was driving. As a result, thereof, the respondent sustained injuries and therefore blamed the appellant and or his driver for being negligent.
2. The appellant filed his statement of defence denying the negligence attributed to him and instead attributed the occurrence of the accident to the respondent's negligence.
3. The matter proceeded to hearing. The respondent testified as PW-1 by stating that he was driving tractor registration number KTX XXXX along the Kopere-Nandi Hills Road when the appellant's tractor which was trailing him hit his tractor causing him to fall on the side and he sustained injuries to which he was treated at Jaramogi Oginga Odinga Teaching and Referral Hospital.
4. PW-2 CPL Paul Kiambati confirmed the accident and stated that the driver who hit the respondent's tractor was charged with careless driving and fined.
5. PW-3 Geye Mwita a clinical officer from Ahero County Hospital confirmed the injuries sustained by the respondent herein as he the witness examined him after the discharge from Jaramogi Oginga Odinga Hospital. He produced in evidence the P3 form that he authored.



6. The respondent closed his case without calling any witness to testify on his behalf.
7. By the impugned judgment, the respondent was awarded Kshs 800,000/- general damages triggering the present appeal which is premised on the following grounds:
  - i. The learned magistrate erred in law and misdirected herself to the extent and value of the respondent's injuries and thereby erred in law in her assessment of damages which was manifestly excessive.
  - ii. The learned magistrate erred in law in assessing damages and failed to apply the trite principles in awarding damages and especially on general damages and comparable awards for analogous injuries.
  - iii. The learned trial magistrate erred in law and fact in failing to consider the appellant's submissions and more specifically on the quantum by completely disregarding the submissions and authorities of the appellant's and as result arrived in unjustified decisions on quantum.
8. The appeal was canvassed by way of written submissions. Both parties complied.
9. On behalf of the appellant, it was submitted that given the injuries allegedly sustained and the respondent's evidence and testimony of PW-3, the trial court erred in relying on the doctor's evidence in the absence of treatment notes because there was no evidence that the respondent was subjected to X-ray procedure and or radiology report detailing the nature of the fracture. To buttress this assertion, the cases of *Timsales Limited v Wilson Lubuywa-Nakuru HCCA 135 of 2006* and *Samuel Karani Muriithi v Eutychus Wanjohi & 2 others [2019]eKLR* were relied on. It was submitted that the trial court acted in the absence of evidence supporting the injuries sustained.
10. Further, that the trial court failed to properly analyze the injuries pleaded and contrast with the oral testimony in court as well as the medical evidence. It was further submitted that the trial court failed to take into account the authorities cited by the parties in assessing the quantum of damages awardable and therefore fell into error.
11. That from the evidence adduced before the trial court, the respondent sustained soft tissue injuries and the sum of Kshs 200,000/- was adequate in the circumstances.
12. On the respondent's part, it was submitted that given the injuries sustained, the respondent was admitted at Jaramogi Oginga Odinga Teaching and Referral Hospital for one and half months and that therefore the award of Kshs 800,000/- was justified. That the injuries sustained were serious and hence, the trial court's assessment was in tandem with the authorities cited, the evidence and the submissions filed by the parties.
13. In support of his arguments, the case of *Joseph Jumba Egala v Meshack Omurunga Sande (suing as legal administrator of the estate of Sarah Makonjio Sande) (2015) eKLR* was cited.

#### **Analysis and determination.**

14. This being a first appeal, this court must adhere to the principles set out in section 78 of the *Civil Procedure Act* As interpreted in various decisions among them the case of *Gitobu Imanyara & 2 others v Attorney General (2016) eKLR*, that:

' An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put, they are that 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 allowances in this respect'

15. A review of the grounds of appeal as well as the submissions in this appeal shows that the issue coming for determination herein is that of quantum of damages awarded by the trial court. There is no dispute over liability.
16. Under paragraph 4 of the plaint, the respondent pleaded that he sustained the following injuries; loss of frontal upper incisor and loose teeth, stitched cut wound on the side of the head, multiple bruises on the frontal head, chest tenderness, backache with lacerations, tender and bruised right shoulder joint, degloved right pelvic region, fracture of the right pelvic region, fracture of the right ischami and cut wounds on the right leg (degloved).
17. The P3 form and the discharge summary confirm these injuries. PW-3 Geye Mwita examined the respondent after the accident and filled the form which he produced in evidence as an exhibit. He made the same observations save for the missing tooth which was not captured in the discharge summary. The respondent's testimony was that he was admitted in hospital from February 20, 2018 to April 4, 2018 and at the time of discharge, he could walk with difficulties but due to insufficiency of funds, he was to look for money for plates to be fixed. He had similarly undergone a surgical procedure to repair the fractured pelvic bone.
18. From the evidence tendered, I find that the respondent suffered both soft tissue and bone injuries. There was no contrary evidence and non-production of treatment notes and X-ray films is not fatal and neither does it weigh down the injuries sustained by the respondent as contained in the medical report and P3 form. Furthermore, the report from Ritri Medical Imaging Clinic dated July 5, 2018 shows that there were fractures of the right ilium bilateral superior and inferior pubic ramii but hip joints were normal. That report was produced in evidence without any objection. In addition, the respondent produced as exhibits his hospital discharge summary notes showing date of admission as February 20, 2018 and discharged on February 4, 2018 and the type of treatment he received for the specified injuries which included fractures.
19. The court's duty in this appeal is to ascertain whether the sum of Kshs 800,000/- awarded by the trial court was commensurate with the injuries sustained. In awarding the sum, the trial court relied on the authority in [\*Joseph Njeru Luke & 3 others v Stellab Muki Kioko \(2020\) eKLR\*](#) where the claimant had been awarded Kshs 750,000/=.
20. In the trial court, the respondent had proposed Kshs 1,300,000/- While the appellant had proposed Kshs 200,000/- on the strength of various authorities cited therein which authorities have been considered by this court.
21. The principle to be adopted in assessment of damages was stated in [\*Rabima Tayab & others v Anna Mary Kinanu \(1983\) KLR\*](#) it was held:

' Money cannot renew a physical frame that has been battered and shattered. All the judges and courts can do is to award sums, which must be regarded as giving reasonable compensation. In the process, there must be the endeavor to secure some uniformity in the general method of approach. Furthermore, it is eminently desirable that so far as possible, comparable injuries should be compensated by comparable awards. When all this is said it must still be that amounts which are awarded are to be to a considerable extent conventional.'



22. I find the injuries to have been proved to the required standard. I have also compared authorities where awards were made for comparable injuries bearing in mind that no two cases are exactly the same.
23. I have compared and contrasted the authority in Joseph Njeru Luke (supra) relied upon by the learned trial magistrate with that of *John Kaindo ngugi & another v Alice Wanjiku Njoroge (2020) eKLR* cited by the respondent. In the former, the respondent sustained a blunt injury on the scalp, head concussion, blunt injuries on the chest, back and left buttock, bruises on the left knee and fracture of the pelvis.
24. In the latter case, the respondent suffered soft tissue injuries, two fractures on the humerus which failed to unite conservatively which necessitated a surgical operation. Plates were affixed at the fracture sites; that the muscles of the left shoulder joint were adversely affected as the respondent is unable to abduct the shoulder while other movements are severely limited. Permanent disability was assessed at 25%.
25. In the former, the court awarded Kshs 750,000/= and in the latter case, the respondent was awarded Kshs 700,000/-. I find semblance in the said authorities save that the degree of disability has not been assessed in the instant case.
26. I am also guided by the High Court's decision in *Ali Malik Brothers Motor (K) Limited and Another v Emmanuel Oduor Onyango NRB HCCA No. 252 of 2016 [2018] eKLR*, where the plaintiff sustained a fracture of the pelvic sprain hymen and cuts of the right knee was awarded Kshs 700,000/-.
27. From a reading of the authorities cited in the trial court, my finding is that the authorities cited by the appellant are on the lower side while those cited by the respondent are on the higher side.
28. In sum total, I find the trial court's award of Kshs 800,000/- was within the limits and accords with case law and the serious injuries sustained by the respondent. I hereby sustain and affirm the award made by the lower court with the consequent order that the instant appeal is found to be devoid of merit and is hereby dismissed with and order that each party do bear their own costs of the appeal.
29. This file is closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 30<sup>TH</sup> DAY OF DECEMBER, 2022.**

**RE ABURILI**

**JUDGE**

