



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**CIVIL APPEAL NO. 42 OF 2010**

**YUSUF ABDALA SAID.....1<sup>ST</sup> APPELLANT**

**STRABAG INTERNATIONAL (K) BRANCH.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**ANTHONY SUTER CHEPKONGA.....RESPONDENT**

*(Being an appeal from the Judgment of the Senior Principal Magistrate at Machakos Mr. Mungai delivered on 9-3-2010 in Machakos CMCC No. 288 of 2007).*

**J U D G M E N T**

- 1). In the suit before the lower court the respondent, Antony Suter Chepkonga had sued the appellant claiming damages arising out of road traffic accident that occurred on 3-9-2004 involving motor vehicle registration no. KAP 495B and the appellant's motor vehicle EL 014K.
- 2). The claim was denied vide the statement of defence filed. However, during the trial, the parties agreed on liability at 85% against the appellant and 15% against the respondent. The case proceeded on assessment of damages.
- 3). The respondent, Anthony Suter Chepkonga (PW1) gave evidence and described his injuries. Among the documents produced as an exhibit was a medical report dated 7-2-2005 prepared by Dr. Sirma and a medical report dated 17-2-2007 prepared by Dr. Kubisu. The injuries were reflected in the said medical reports are as follows:
  - i. **Loss of incisor and canine.**
  - ii. **Fracture of the mandible.**
  - iii. **Fracture of the ethmoid bone of the nose.**
  - iv. **Multiple facial lacerations.**
  - v. **Blunt chest injury.**
  - vi. **Dislocation of the 5<sup>th</sup> left finger.**
- 4). The teeth required replacement with artificial ones at a cost of Kshs. 100,000/= to Kshs. 150,000/=. A further medical report prepared by Dr. Yusuf Kandwalula dated 17-12-2007 reflected more or less the same injuries. This medical report gave the costs of the dentures at a maximum of Kshs. 100,000/=. The rest of the injuries were described as temporary disability.
- 5). The trial magistrate assessed general damages at Kshs.500,000/=. The appellant was dissatisfied with the said quantum and appealed to this court on grounds that the amount awarded as general damages was

an erroneous estimate of the damages payable.

6).The appeal was canvassed by way of written submissions which I have duly considered.

7). This being the first appellate court, the court is duty bound to reevaluate the evidence on record and come to its own ***findings (See Selle –VS- Associated Boat Company Limited [1968] EA 123).***

8). I have considered the authorities cited by the appellant in the submissions. The award of general damages range between Kshs. 150,000/= to Kshs. 200,000/= for loss of teeth and a multiple cuts. The respondent’s counsel relied on authorities that reflect an assessment for about Kshs. 250,000/= for the loss of teeth and fracture of the mandible. The element of inflammation and the escalating cost of living must however be taken into account. Some of the authorities cited are over 20 years old. The respondent herein also sustained a fracture of the ethmoid bone of the nose. He was admitted in hospital for ten (10) days and treatment included fixing of a 8 holes plate on the fractured mandible. The respondent was readmitted for one day later for the removal of the plate.

9). Having re-evaluated the evidence, my humble view is that the amount of general damages awarded is not manifestly excessive. As stated by the court appeal in the case of ***Kemfro Africa Ltd t/a Meru Express Services & Another –VS- A.M. Lubia & Another (No. 2) [1982-88] L KAR 727 at page 703*** that:

**“It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court it is not justified in substituting a figure of its own for that awarded by the court below, simply because it would have awarded a different figure if it had tried the case at the first instance.**

**The appellate court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles (as by taking into account some relevant factor or leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or so low as to represent an entirely erroneous estimate”**

10). With the foregoing, I find no merit in the appeal and dismiss it with costs.

**Dated, signed and delivered at Machakos this 21<sup>st</sup> day of December, 2015.**

**B. THURANIRA JADEN**

**JUDGE**