



Integra Supply Chain Solutions Limited & another v Tanyai (Civil Appeal E006 of 2023) [2025] KEHC 1415 (KLR) (22 January 2025) (Judgment)

Neutral citation: [2025] KEHC 1415 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CIVIL APPEAL E006 OF 2023
F GIKONYO, J
JANUARY 22, 2025**

BETWEEN

INTEGRA SUPPLY CHAIN SOLUTIONS LIMITED 1ST APPELLANT

JOHN GATHURA 2ND APPELLANT

AND

SAYIEL TANYAI RESPONDENT

*(Being an appeal from the judgment of Hon. D. Ngayo (R.M)
delivered on 5.04.2023 in Narok CMCC No. 288 of 2022)*

JUDGMENT

Appeal on liability and damages for material damage

1. This appeal is on liability and general damages awarded for material damage to a motor vehicle. See Memorandum of Appeal dated 17th April, 2023.
2. The trial court found the appellants to be 100% liable for the accident and awarded: -
 - a. General damages for loss of motor vehicleKshs. 1,550,000
 - b. Special damages.....Kshs. 25,500
3. The appeal was canvassed by way of written submissions.

Appellant's submissions

4. The appellant has set out two issues for determination in his submissions to be: -
 - a. Whether the learned magistrate erred and misdirected himself in fact and law by awarding damages to the respondent that were not pleaded; and



- b. Whether the learned magistrate erred and misdirected himself in fact and law in finding the appellants 100% liable.
5. The appellant argued that, special damages should be specifically pleaded and strictly proved. Hahn vs. Singh [1995] KLR 716.
6. But, faulted the trial court for awarding general damages based on the pre-accident value less salvage value of the vehicle which the appellants say was not pleaded in the plaint. Caltex (Oil) Kenya vs. Rono Ltd [2016] eKLR; IEBC & Another vs. Stephen Mutinda Mule & 3 Others [2014] eKLR; Galaxy Paints Co. Ltd vs. Falcon Guards Ltd (2000) EA 885.
7. On that basis, the appellants are of the view that the trial court erred in awarding a sum of Kshs. 1,550,000 as pre-accident value of the vehicle.
8. The appellant urged that, whoever alleges must prove. S.107(1) of the *Evidence Act*; Treadsetters Tyres Ltd vs. John Wekesa Wepukhulu [2010] eKLR; Jamal Ramadhan Yusuf & Another vs. Ruth Achieng Onditi & Another [2010] eKLR;
9. According to the appellants; burden of proof never shifts from the plaintiff. They accused the trial court of shifting the burden of proof; in holding that the mere fact that the appellants did not adduce evidence ipso facto the respondent's case was proved. They argued that, this was an error. Charterhouse Bank Ltd (under statutory management) vs. Frank N. Kamau [2016] eKLR.
10. The appellants are convinced that, because the appellant had not been charged with any traffic offence is indicative that there was no conclusive evidence that the appellant caused the accident. They, therefore, beseeched the court to dismiss the respondent's suit or at the very least, apportion contributory negligence on a 50:50% basis.

Respondent's submissions

11. The respondent also set out issues for determination in the submissions which are around; a) liability; b) special damages- pleading and proof thereof; c) the basis for award of general damages in a claim on material damage; and d) costs.
12. According to the respondent, the evidence adduced show that the appellants were 100% liable for the accident.
13. The respondent also submitted that, special damages were specifically pleaded in paragraph 8 of the plaint in the sum of Kshs. 26,050. The trial court awarded a sum of Kshs. 25,500 of special damages that was strictly proved. Therefore, the trial court acted in accordance with the evidence and the law.
14. The respondent further argued that they pleaded the loss of the vehicle-a write off- thereby properly framing compensation on the basis of the pre-accident value less salvage value of the vehicle.
15. The respondent urged the court to dismiss the appeal with costs.

Analysis And Determination

Duty of court

16. As first appellate court, will re-evaluate evidence herein and come to own conclusions. Except, bearing in mind that the trial court had the advantage of observing the demeanor of witnesses. Selle vs. Associated Motors Boat Company Ltd.



Issues

17. Three issues arise from the appeal and submissions by the parties; which are: -
 - a. Who is to blame for the accident?
 - b. Whether special damages were specifically pleaded and proved.
 - c. Whether the respondent was entitled to general damages for the pre-accident market value less salvage value of the vehicle.

Liability

18. Liability in road traffic accidents is determined upon assessment and evaluation of the circumstances of the case. Where more than one vehicle is involved, the evidence determines where the blame lies; which is never a mathematical precision exercise but best judgment-value based decision as guided by the facts of the case. And, in appropriate cases, contributory negligence is apportioned. However, it is not always the case that contributory negligence will be apportioned because more than one vehicle is involved. It is not strange that, one of the vehicles may be solely to blame for the accident. It bears repeating, all depends on the circumstances of the accident.
19. The appellant has claimed that the respondent was wholly to blame for the accident. But, in the very least, urged that the respondent should bear contributory negligence at 50%.
20. What does the evidence say?
21. The evidence by PW2, the driver of motor vehicle KCX 164J was that, this vehicle was hit from behind by motor vehicle KBL 208W. He blamed the driver of KBL 208W of being negligent, thus, causing the accident. He stated that, the extent of damage to the vehicle show the negligence.
22. In cross-examination, he stated that both vehicles were moving towards the same direction.
23. PW3, NO. 74595, PC David Koros, provided details of how the accident occurred. He told the court that motor vehicle KCB 525C, Toyota Prado was ahead of motor vehicle KCX 164J, and motor vehicle KBL 208W was following motor vehicle KCX 164J. All the three vehicles were moving towards the same direction; from Maai Mahiu to Narok. Motor vehicle KBL 2028W hit motor vehicle KCX 164J from the rear. He blamed the driver of motor vehicle KBL 208W for causing the accident.
24. PW3 was the investigating officer and he visited the scene of the accident. This fact was not controverted. The details on the manner the accident happened were clear; that the driver of motor vehicle KBL 208W hit motor vehicle KCX 164J from the rear causing extensive damage to the said vehicle which is indicative of speed and negligence. It is the duty of every driver to keep safe distance between the vehicle he is driving and the one in front. The duty is more critical especially in the highways where vehicles are moving fast and would require sufficient space and distance to stop or reduce speed. The safe distance helps the driver behind to stop the vehicle within or slow down maintaining reasonable distance in case of an emergency or need to stop. Failure to keep safe distance leads to such accidents which could have been avoided.
25. The appellants claimed contributory negligence on the part of the driver of motor vehicle registration number KCX 164J. In law, the appellants bear the burden of proof.
26. Within common law tradition, ordinarily, 'contributory negligence' refers to the negligence of the claimant, not that of a third party which contributed to or wholly caused the harm. The latter is a claim between concurrent tortfeasors in form of contribution or indemnity; and is ordinarily done through



special procedure, most common, by way of a notice to co-defendant or third-party notice (see third party proceedings).

27. And, where contributory negligence is apportioned to, the claimant recovers damages less his contribution.
28. Contributory negligence was claimed by the appellant. The appellant bore the burden of proof as will be explained later under 'burden of proof'. But, other than making a general claim thereto, the appellant did not establish any contributory negligence on the part of the driver of motor vehicle registration number KCX 164J.
29. Accordingly, the driver of motor vehicle KBL 208W was negligent as he drove without due care and attention to other road users. He was solely to blame for the accident.

Burden of proof: The Concept, and shifting

30. Before closing this issue, the appellant raised an important matter on burden of proof and shifting of burden of proof.
31. Burden of proof entails two incidents; legal burden of proof and evidential burden. The legal burden of proof never shifts; it remains with the person asserting. Here it is important to note that where the defendant asserts contributory negligence, he bears the burden of proof of contributory negligence.
32. But, upon adducing such prima facie evidence, the evidential burden will shift to the party who would fail without further evidence.
33. The appellants concern was that; the trial court acted on an assumption that, failure by the appellants to call witnesses or adduce evidence, ipso facto means that the respondent's case has been proved.
34. The position of the law is that, the plaintiff's claim succeeds because it has been proved on a balance of probabilities. And, not because the defendant did not adduce evidence.
35. The trial court noted that the appellants did not adduce evidence to rebut the plaintiff's evidence; which is factual. But, the trial court entered judgment on liability against the appellants on the basis of proof by the respondent on a balance of probabilities. Accordingly, the trial court did not shift the burden of proof.

Damages:

special damages and loss of vehicle Of special damages

36. Special damages were specifically pleaded in paragraph 8 of the plaint in the sum of Kshs. 26,050. The trial court awarded a sum of Kshs. 25,500 of special damages that was strictly proved. Therefore, the trial court acted in accordance with the evidence and the law on special damages. Nothing turns on this ground.

General damages for loss of vehicle

37. The idea of compensation in law, is to bring the person who has suffered loss to as near as possible the state he would have been were it not for the accident and loss. In case of material damage to a motor vehicle-where the vehicle has been written off- fair compensation is usually the pre-accident value less salvage value. Such claim is not a claim for money incurred or spent. Therefore, it is sufficient to plead compensation for loss of the vehicle; pre-accident value less salvage value. And, assessment report is sufficient proof thereof. *Permuga Auto Spares & another vs Margaret Korir Tagi* [2015] eKLR.



38. See also the case of Nkuene Dairy Farmers Co-operative Society & Anor v Ngacha Ndeiya (2010) eKLR, where the Court of Appeal held:-

“In our view special damages in a material damage claim need not be shown to have actually been incurred. The claimant is only required to show the extent of the damage and what it would cost to restore the damaged item to as near as possible the condition it was in before the damage complained of. An accident assessor gave details of the parts of the respondent’s vehicle which were damaged. Against each item he assigned a value. We think the particulars of damage and the value of the repairs were given with some degree of certainty.”

39. The record reveals that; the respondent pleaded at paragraph 8 of the plaint that;

‘As a result of the accident aforesaid the plaintiff’s motor vehicle registration number KCX 164J was extensively damaged and declared a write off and has suffered loss and damage’.

40. And, provided under paragraph 8 of the plaint-

Particulars Of Loss: -

a) Motor vehicle registration number KCX 164J extensively damaged and declared a write off. Salvage value assessed at Kshs. 250,000.

41. And in the prayer section, the respondent prayed for judgment against the appellants jointly and severally for: -

a) General damages for the value of Motor Vehicle registration number KCX 164J less salvage value of Kshs. 250,000/

42. By this impleading, compensation for loss of vehicle for being a write off, became one of the issues for determination before the trial court.

43. Evidence in support of this claim was tendered in court in form of assessment report. The report provided for and established the pre-accident value as well as the salvage value of the motor vehicle.

44. Loss of the vehicle and a claim for its pre-accident value less the salvage value was specifically pleaded and proved by evidence in accordance with the law.

45. Therefore, it is incorrect for the appellants to plead in this appeal that loss of the vehicle and pre-accident value of the vehicle were not pleaded. The trial court did not, therefore, err in considering the claim for loss of the vehicle and awarding compensation based on pre-accident value less salvage value.

46. Perhaps the appellant saw incongruence in the prayer; ‘general damages for the value of Motor Vehicle’; without giving much thought on the law on such claim. This ground of the appeal falls into a venial and amusing endeavor. In law, a party may claim and be awarded compensation for the loss of the vehicle on the basis of pre-accident value less the salvage value. There is no such legal restriction or prohibition that the appellants seem to advance.

47. In any event, the value of the vehicle less the salvage value had been pleaded and proved and was lawfully and competently granted.

48. A party has a right of appeal. But, it will profit the cause to expend thoughtful effort in establishing the grounds upon which the appeal is to be founded; as a party appealing will be required in law to substantiate the grounds of appeal cited.



49. In the upshot, the appeal is dismissed with costs to the respondent.

**DATED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE
APPLICATION THIS 22ND DAY OF JANUARY, 2025**

F. GIKONYO M

JUDGE

In the presence of: -

Kiptoo for respondent

Matiri for appellant

Kinyua C/A

