



**Dolphine Freighters Ltd v Shingoli (Civil Appeal E038 of 2024)
[2025] KEHC 5216 (KLR) (20 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 5216 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E038 OF 2024
AN ONGERI, J
MARCH 20, 2025**

BETWEEN

DOLPHINE FREIGHTERS LTD APPELLANT

AND

TEDDY MEJA SHINGOLI RESPONDENT

*(Being an appeal from the Judgment and Decree of Hon. A. M. Obura
(CM) in Voi CMCC No. E052 of 2023 delivered on 17th April 2024)*

JUDGMENT

1. The Respondent sued the Appellant in Voi CMCC No. E052 of 2023 seeking general damages and special damages for injuries which the Respondent sustained on 23rd January 2022 while he was driving motor vehicle registration number KBC 204S when it was involved in a motor vehicle accident with motor vehicle registration number KCQ 907Z/ZF9317 Mercedes Benz belonging to the Appellant.
2. The Appellant denied the Respondent's claim in its defence and in the alternative averred that if the accident did occur it was caused by the Respondent.
3. The Respondent's evidence was that he was driving motor vehicle registration KBC 204S going to Kampala from Mombasa.
4. When he reached Voi at Manga area at 5a.m. he saw a vehicle coming from the opposite direction with its full lights on.
5. The Respondent flashed at it to dim its lights to no avail.
6. He said the vehicle collided with his vehicle on the yellow line. The Respondent sustained serious injuries as a result of which his right leg was amputated and he is not able to work but depends on his wife.



7. The Appellant's witness Daniel Owino testified that he was driving motor vehicle registration number KCQ 707Z/ZF9317 Mercedes Benz to Mombasa from Eldoret.
8. When he got to Voi at Manga area he saw an oncoming vehicle leave its lane and come towards his lane. He said the vehicle kept coming to his lane despite flashing at it. he moved off the road and other vehicles hit the beam of his trailer. He said the Respondent was blamed for the accident because he entered his lane.
9. The trial court apportioned liability at 50:50% and awarded damages as follows:-
General damages for pain and suffering 2,500,000/=
Loss of earning capacity 2,000,000/=
Total 4,500,000/=
Less 50% contribution 2,250,000/=
Add future medical expenses 2,000,000/=
Add special damages 82,330/=
Total 4,332,330/=
10. The Appellant has appealed to this court on the following grounds:-
 - i. That the learned Magistrate erred in law and in fact in apportioning liability at 50% against the Appellant and 50% against the Respondent in total disregard of the evidence adduced.
 - ii. The learned Magistrate erred in not properly considering the Appellant's evidence and more particularly the evidence of the police officer who blamed the Respondent for causing the accident hence arriving at an erroneous decision.
 - iii. With the greatest respect, the learned Magistrate misdirected herself on Judicial Authorities, the principles applicable in determining liability on matters based on negligence, the rules of evidence applicable and the evidence before her which led to an erroneous decision.
 - iv. That the learned Magistrate erred in law and in fact in awarding damages of Kshs. 4,332,330/= which were excessive; without any legal basis and unwarranted in light of the evidence adduced.
 - v. The learned Magistrate erred in awarding claims for loss of earning capacity at Kshs. 2,000,000/= and claim for future medical expenses of Kshs. 2,000,000/= respectively which awards was not specifically pleaded and proved.
 - vi. That the learned Magistrate erred in law and in fact in the claim of liability and quantum without considering the Appellant's submissions and evidence adduced by the Appellant.
 - vii. That the learned Magistrate's findings and decision were against the weight of the evidence adduced.
11. The parties filed written submissions as follows;-
12. That the appeal arises from a judgment in the Chief Magistrate's Court at Voi, where liability was apportioned 50% to each party, and damages of Kshs. 4,332,330 were awarded to the Respondent.
13. The Appellant argued that the magistrate erred in apportioning liability equally, as the evidence (including police testimony) indicated that the Respondent was solely responsible for the accident. The Respondent was allegedly speeding and swerved into the Appellant's lane, causing the collision.



14. The Appellant's driver testified that he was driving within his lane at a safe speed and took evasive actions, but the Respondent still collided with his vehicle.
15. The Appellant contends that the awarded damages (Kshs. 4,332,330) were excessive and lacked legal basis. They argue that the Respondent's injuries (right lower limb crush injury and a cut wound on the forehead) did not justify such a high award.
16. The Appellant cited similar cases where lower amounts were awarded for more severe injuries, suggesting that Kshs. 1,500,000 would be a reasonable amount for general damages.
17. The Appellant claims that the magistrate erred in awarding Kshs. 2,000,000 for loss of earning capacity and Kshs. 2,000,000 for future medical expenses, as these claims were not specifically pleaded or proved.
18. They argued that future medical expenses and loss of earning capacity must be specifically pleaded and proved, which the Respondent failed to do.
19. The Appellant requests that the appeal be upheld, the trial court's judgment set aside, and the Respondent's suit dismissed with costs. They argued that the Respondent failed to prove negligence on the Appellant's part and that the damages awarded were excessive and unwarranted.
20. The Respondent submitted that there is no concrete evidence to determine which driver was at fault for the accident. Therefore, both drivers should be held equally to blame, as per legal precedent.
21. That the Appellant's sketch map of the accident is deemed insufficient and lacks corroboration from police investigations.
22. The Respondent produced a Police Abstract that does not blame the Respondent for the accident, while the Appellant failed to present evidence supporting their claim that the Respondent was at fault.
23. That the police officer (PW2) testified that the accident occurred in the middle of the road, and both drivers were issued notices of intended prosecution, suggesting shared responsibility.
24. The Respondent contends that the trial magistrate correctly apportioned liability and that the Appellant's grounds of appeal on this issue should fail.
25. The respondent submitted that the Appellant claims that the general damages awarded to the Respondent (Kshs 2,500,000) were excessive. However, the Respondent argues that the award was reasonable given the severity of the injuries sustained.
26. That the Respondent suffered life-threatening injuries, including a fractured leg, amputation above the knee, and a 70% permanent disability. These injuries drastically affected his quality of life and ability to work.
27. The Respondent cited several legal precedents where similar injuries resulted in comparable or higher damage awards, supporting the trial magistrate's decision.
28. The Respondent also argues that the award for future medical expenses (Kshs 2,000,000) was properly pleaded and justified, as the Respondent requires a myoelectric prosthesis.
29. On loss of earning capacity, the Respondent, a truck driver, lost his earning capacity due to the amputation of his right leg. He sought compensation for loss of earning capacity, which was awarded at Kshs 2,000,000.
30. The Respondent argues that the award was reasonable, considering his age (37) and the fact that he could no longer work as a driver.



31. The Respondent provided sufficient evidence to support his claim, including medical reports, treatment notes, and police abstracts. The Appellant did not produce any evidence to counter these claims.
32. The Respondent argues that the trial magistrate's decision was based on sound legal principles and precedents, and the appeal challenging the award of damages should be dismissed.
33. The Respondent submitted that the appeal is frivolous and lacks merit. They requested that the appeal be dismissed with costs and that the trial court's decision be upheld.
34. This being a first appeal, the duty of the first appellate court is as stated in the case of *Selle v Associated Motor Boat Co.* [1968] EA 123 where the Court of Appeal held that:

“The first appellate court has a duty to re-evaluate the evidence presented before the trial court and arrive at its own independent conclusion. The appellate court must subject the entire evidence to a fresh scrutiny and draw its own inferences. While the appellate court should consider the trial court's findings, it is not bound by them and must form its own independent judgment”.

35. The issues for determination in this appeal are as follows:-
 - i. Whether the trial court was right in apportioning liability at 50:50.
 - ii. Whether the award of damages was proper.
36. On the issue of liability, the evidence on record amounts to the word of the Respondent against the evidence of the Appellant's driver.
37. The Respondent's evidence was that he was driving motor vehicle registration KBC 204S going to Kampala from Mombasa and when he reached Voi at Manga area at 5a.m. he saw a vehicle coming from the opposite direction with its full lights on.
38. The Respondent flashed at it to dim its lights to no avail and he said the vehicle collided with his vehicle on the yellow line. The Respondent sustained serious injuries as a result of which his right leg was amputated and he is not able to work but depends on his wife.
39. The Appellant's witness Daniel Owino testified that he was driving motor vehicle registration number KCQ 707Z/ZF9317 Mercedes Benz to Mombasa from Eldoret.
40. When he got to Voi at Manga area he saw an oncoming vehicle leave its lane and come towards his lane. He said the vehicle kept coming to his lane despite flashing at it. He said that he moved off the road and other vehicles hit the beam of his trailer. He said the Respondent was blamed for the accident because he entered his lane.
41. I find that each party blamed the other for the accident. None of them was charged in the traffic court. I find that the trial court was right in apportioning liability at 50:50%.
42. In *Khambi and Another v Mahithi and Another* [1968] EA 70, it was held as follows;

“It is well settled that where a trial Judge has apportioned liability according to the fault of the parties, his apportionment should not be interfered with on appeal, save in exceptional cases, as where there is some error in principle or the apportionment is manifestly erroneous,



and an appellate court will not consider itself free to substitute its own apportionment for that made by the trial Judge.”

43. On the award of damages, I find that the Appellant submitted that the general damages awarded to the Respondent (Kshs 2,500,000) were excessive.
44. However, I find that the respondent’s leg was amputated and I find that the award was reasonable given the severity of the injuries sustained.
45. I find that it is not in dispute that the Respondent suffered life-threatening injuries, including a fractured leg, amputation above the knee, and a 70% permanent disability. These injuries drastically affected his quality of life and ability to work.
46. The Respondent cited several legal precedents where similar injuries resulted in comparable or higher damage awards, supporting the trial magistrate’s decision.
47. I also find that the award for future medical expenses (Kshs 2,000,000) was properly pleaded and justified, as the Respondent requires a myoelectric prosthesis.
48. The Respondent, a truck driver, lost his earning capacity due to the amputation of his right leg. He sought compensation for loss of earning capacity, which was awarded at Kshs 2,000,000.
49. I find that the award was reasonable, considering that the respondent was 37 years old and the fact that he can no longer work as a driver.
50. There is no evidence that the trial court did not consider the Appellant’s submissions.
51. The only time the trial court can interfere with the trial court’s discretion is when the trial court relied on the wrong principles or where the award is too high or too low as to warrant interference.
52. In the case of *Kemfro Africa Ltd T/A Meru Express Services, Gathogo Kanini v A M Lubia & Olive Lubia*, the Court of Appeal set the principles to be considered before disturbing an award of damages as follows;

“The principles to be observed by this appellate court, in deciding whether it is justified in disturbing the quantum of damages awarded by a trial judge are, that it must be satisfied that either, the judge is assessing the damages took into account an irrelevant factor, or left out of account a relevant one, or that short of this, the amount is so inordinately high that it must be wholly erroneous estimate of the damages”

53. I find that the appeal lacks in merit and I dismiss it with costs to the Respondent.

DATED, SIGNED AND DELIVERED THIS 20TH DAY OF MARCH 2025 IN OPEN COURT AT VOI.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistants: Maina/Millicent

