



REPUBLIC OF KENYA



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**Monyincho v Bonyi (Civil Appeal E025 of 2023)
[2025] KEHC 4545 (KLR) (20 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 4545 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CIVIL APPEAL E025 OF 2023
WA OKWANY, J
MARCH 20, 2025**

BETWEEN

LINET NYANCHAMA MONYINCHO APPELLANT

AND

ELIZABETH MONCHARI BONYI RESPONDENT

*(Being an Appeal against the Judgment and Decree delivered in the
Chief Magistrate's Court at Keroka in CMCC No. E018 of 2020
by Hon. C. Ombija, Senior Resident Magistrate on 31st May 2023)*

JUDGMENT

1. The Respondent herein was the Plaintiff before the trial court where she sued the Appellant (Defendant) for damages arising out of a road traffic accident that occurred on 31st day of May 2020. The Respondent's case was that she was on the material date walking off the tarmac along Kebirigo-Keroka road when the Appellant's driver, agent, servant and/or employee negligently drive, controlled and/or managed motor vehicle Registration No. KCW 530S thereby allowing it to veer off the road and knock her down as a result of which she sustained severe bodily injuries.
2. The Appellant filed a Defence dated 16th December 2020 wherein she denied the averments made in the Plaintiff and stated that the accident was solely caused by the Respondent's negligence.
3. In a judgement delivered on 31st May 2023, the trial court found the Appellant 100% liable for the accident and awarded damages in the total sum of Kshs. 510,550/= together with costs of the suit.
4. The Appellant herein was dissatisfied with the trial court's decision on quantum and filed the instant appeal in which she listed the following grounds of appeal: -



1. The Learned Trial Magistrate erred in law and in fact by failing to consider and appreciate the applicable principles in assessment of damages and thereby arrived at an excessive, erroneous and unjustified award.
 2. The Learned Trial Magistrate erred in law and in fact in awarding Kshs. 500,000/= as general damages for pain and suffering, an amount that was inordinately high, unjustified and contrary to the evidence on record.
 3. The Learned Trial Magistrate erred in fact and in law by overlying (sic) on the Respondent's submissions which were not relevant and thereby ignoring and/or failing to independently analyze the evidence on record and arrive at an independent decision.
 4. The Learned Trial Magistrate erred in fact and in law in relying on extraneous circumstances not supported by the evidence on record.
 5. The Learned Trial Magistrate erred in fact and in law in failing to consider conventional awards in cases of a similar nature.
5. Directions were taken for the hearing of the appeal by way of written submissions. I however note that the Appellant did not file any submissions while the Respondent filed submissions dated 27th September 2024.
6. I am alive to the principles laid down, in several authorities, on the duty of a first appellate court. In the case of *Peters v Sunday Posts Ltd* [1958] E.A. thus: -
- “It is a strong thing for an appellate court to differ from the finding, on a question of fact, of the judge who tried the case, and who has had the advantage of seeing and hearing the witnesses. An appellate court has, indeed, jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon that evidence should stand. But this is a jurisdiction which should be exercised with caution; it is not enough that the appellate court might itself have come to a different conclusion.”
7. The main issue for determination is whether the trial court arrived at the right determination on quantum.
8. It is a well-established principle that an appellate court will not ordinarily interfere with the assessment of damages, by a trial court, unless it is shown that the said court acted on wrong principles or made an award that was manifestly low or high or where there was a misapprehension of the law. In *Sheikh Mustag Hassan v Nathan Mwangi Kamau Transporters & 5 Others* [1986] KLR 457, the Court of Appeal held as follows:-

“The Appellate court is only entitled to increase an award of damages by the High court if it is so inordinately low that it represents an entirely erroneous estimate of the party asking for an increase must show that in reaching that inordinately low figure the Judge proceeded on a wrong principle or misapprehended the evidence in some material respect..... A member of an appellate court when naturally and reasonably says to himself “what figure would I have made” and reaches his own figure must recall that it should be in line with recent ones in cases with similar circumstances and that the other judges are entitled to their views or opinions so that their figures are not necessarily wrong if they are not the same as his own..... The judges of both courts should recall that inordinately high awards in such cases will lead



to monstrously high premiums for insurance of all sorts and that is to be avoided for the sake of everyone in the country”.

9. In the present case, the Respondent submitted that the trial court correctly considered the law, the relevant authorities and the Respondent’s injuries when assessing the quantum of damages payable. Reference was made to the decision in Charles Oriwo Odeyo v Apollo Justus Andabwa & Another [2017] eKLR where the Court of Appeal outlined the principles governing the assessment of damages in personal injury cases.
10. Reference was also made to the case of Easy Coach Limited v Emily Nyangasi (2017) eKLR where the court upheld an award of Kshs. 700,000 general damages in respect to a claimant who had sustained similar injuries.
11. The principles governing the assessment of damages were stated in Southern Engineering Company Ltd. v Musingi Mutia [1985] KLR 730 where the Court of Appeal held thus: -

“It is trite law that the measurement of the quantum of damages is a matter for the discretion of the individual Judge, which of course has to be exercised judicially and with regard to the general conditions prevailing in the country generally, and prior decisions which are relevant to the case in question to principles behind the award of general damages enumerated... The difficult task of awarding money compensation in a case of this kind is essentially a matter of opinion judgement and experience. In a sphere in which no one can predicate with complete assurance that the award made by another is wrong the best that can be done is to pay regard to the range and limits of current thought. In a case such as the present it is natural and reasonable for any member of the appellate tribunal to pose for himself the question as to award he, himself would have made. Having done so, and remembering that in this sphere there are invariably differences of view and of opinion, he does not however proceed to dismiss as wrong a figure of an award merely because it does not correspond with the figure of his own assessment...It is inevitable in any system of law that there will be disparity in awards made by different courts for similar injuries since no two cases are precisely the same, either in the nature of the injury or in age, circumstances of, or other conditions relevant to the person injured.”

(See also the Court of Appeal’s decision in Mbaka Nguru and Another v James George Rakwar, NRB C.A. Civil Appeal No. 133 of 1998 [1998] eKLR).

12. I have considered the injuries that the Respondent suffered in the said accident as stated at paragraph 4 of the Plaint as follows: -
 1. Deep cut wound on the right parietal area leading to soft tissue injuries.
 2. Deep cut wound on the right temporal region leading to soft tissue injuries.
 3. Deep cut wound on the left temporal region leading to soft tissue injuries.
 4. Deep cut wound on the left occipital region leading to soft tissue injuries.
 5. Blunt injury to the neck leading to soft tissue injuries.
 6. Dislocation of the right sterno-clavicular joint
 7. Soft tissue injuries of the left hand
 8. Soft tissue injuries of the right hand and elbow joint



9. Soft tissue injuries of the back
10. Soft tissue injuries of both knee joints
11. Soft tissue injuries of the chest
13. PW2, Dr. Obed Omuyoma, testified that he examined the Respondent following the accident and noted that she had suffered a permanent disability of 10%. He produced the medical report as P. Exh2 (a). A perusal of the said medical report reveals that the Respondent sustained the injuries listed in the plaint.
14. I have considered the following authorities where the claimants suffered comparable injuries: -
 - a. In *Elizaphen Mokaya Bogonko v Fredrick Omondi Ouna* [2022] eKLR, Aburili J. reduced an award of Kshs. 850,000 general damages to Kshs. 500,000 where the claimant suffered head injury with loss of consciousness, fracture of the right zygoma (facial bone), multiple facial lacerations and blunt injury to the shoulders and lower limbs and bruises to both lower limbs.
 - b. In *Blue Horizon Travel Co Ltd v Kenneth Njoroge* [2020] eKLR the court awarded Kshs. 400,000/= general damages to the Plaintiff who sustained bruises on the scalp, neck, abdomen and lower back, cut wounds on the left thumb, left palm and subluxation of the left shoulder joint.
 - c. In *Kenya Power & Lighting Co. Ltd v Mary Akinyi*, HCCA No. 72 of 2007 Korir J. upheld an award of Ksh. 350,000/- general damages made to a claimant who sustained a deep cut wound on the calf muscles of the left leg; laceration on the right knee and right shoulder; contusion on the chest.
15. Having regard to the above cited cases, I find that the trial court applied the correct principles when assessing the general damages due to the Respondent. I find no reason to interfere with the trial court's findings.
16. I have also considered the trial court's award for special damages. I note that the Respondent pleaded Kshs. 21,450 under this heading as follows: -
 - a. Medical Report – Kshs. 10,000
 - b. Medical Expenses – Kshs. 10,900
 - c. KRA Search – 550
17. I note that the Respondent produced receipts in respect to medical expenses amounting to Kshs. 11,050 and not Kshs. 10,900 as pleaded. The trial court however awarded Kshs. 10,550 for special damages despite the fact that the Respondent attached receipts in respect to her medical expenses. It is trite that special damages must be specifically pleaded and proved. I find that the Respondent specifically pleaded Kshs. 21,450 as shown in the receipts that she attached for medical treatment and the motor vehicle search. My findings on the variance on actual amount pleaded and proved under special damages notwithstanding, I find that since the Respondent did not file a cross-appeal on the said award, I will not interfere with the same.
18. In the end, I find that the instant appeal is not merited and I therefore dismiss it with costs to the Respondent.
19. It is so ordered.



**JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA VIA MICROSOFT TEAMS
THIS 20TH DAY OF MARCH 2025.**

W. A. OKWANY

JUDGE

