



**Co-operative Bank of Kenya Ltd v Meni (Civil Appeal E006 of 2023)
[2025] KEHC 4283 (KLR) (4 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4283 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPENGURIA
CIVIL APPEAL E006 OF 2023
RPV WENDOH, J
APRIL 4, 2025**

BETWEEN

CO-OPERATIVE BANK OF KENYA LTD APPELLANT

AND

IRENE SENELWA MENI RESPONDENT

JUDGMENT

1. This is an appeal by Co-operative Bank of Kenya Limited (formerly defendant) arising from the judgment of SRM Kapenguria delivered on 2/11/2022 in favour of the Respondent Irene Senelwa Meni (formerly plaintiff)
2. The respondent, by a plaint dated 15/11/2021 had sued the appellant for general and special damages for injuries and damage that she sustained in a road traffic accident which occurred on 13/5/2021 involving the appellant's motor vehicle registration No. GKB 890T which the Respondent alleged, that was driven carelessly and negligently as a result of which it was involved in an accident in which the Respondent suffered serious injuries.
3. The appellant entered appearance and filed a statement of defence in which liability was derived at, that if an accident occurred, it was wholly caused by the Respondent or that she contributed to it by her negligence.
4. After the trial, the appellants driver was found wholly to blame for the accident and liability was apportioned at 100% as against the appellant. Judgment was entered in favour of the appellant as follows; -
 1. General damages Kshs.3,500,000/=
 2. Special damages Kshs.56,188/=Total = 3,556,188/=



5. The appellant is aggrieved by the said judgment and filed this appeal based on the following grounds of appeal;
 1. That the Magistrate erred by using the wrong principles in the assessment of damages thereby arriving at an erroneous decision;
 2. That the Magistrate failed to take into account and failed to be guided by relevant authorities and or precedents with comparable injuries to those sustained by the Respondent thereby awarding excessive amount in general damages;
 3. That the Magistrate failed to consider the appellants submissions;
 4. That the Magistrate awarded damages of Kshs.3,500,000/= as damages which is inordinately high.
6. The appellant therefore prays that the court do allow the appeal, set aside the general damages and reassess damages downwards and costs of appeal be awarded to appellant.
7. The appeal was canvassed by way of submissions. The appellant is represented by Onyinkwa Advocates while the Respondent is represented by Otunga Advocates.
8. This being a first appeal, the duty of the court is to re-examine all the evidence tendered in the trial court, re-evaluate it and come up with its own findings and conclusions. The court has to bear in mind however, that it neither heard nor saw the witnesses testify. The above principles were set out in the case of *Selle & Another -VR- Associated Motor Boat Company Ltd & others (1986) EA 123* where the court held as follows; “This court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court from a trial by the High Court is by way of retrial and the principles upon 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 bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound necessarily to follow the trial judges’ findings of fact if it appears either that he has clearly failed on some point to take into account of particular circumstance or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally”.
9. From the grounds of appeal, it is clear that the appellant only challenges the quantum and the only issues that arise are;
 1. Whether the magistrate used the wrong principles in assessment of damages;
 2. Whether the general damages are excessive in the circumstances.
10. It is trite law that an appellate court will not disturb an award of the lower court in damages unless the damages are inordinately low or high as to represent an erroneous estimate. This was the holding in *Butt -V- Khan 1982-1988 KLR* where the court said thus 1977 (1978) eKLR Madan Judge of Appeal stated as follows;- “An Appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and arrived at a figure which was either inordinately high or low.”
11. In *Catholic Diocese of Kisumu –V- Tete (2004) eKLR* the court added that; “It is trite law that the assessment of general damages is at the discretion of the trial court and an appellate court 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 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 irrelevant factor or leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to present an entirely erroneous estimate”.

See also *Kemfro Africa Ltd t/a Meru Express Services & others -V- AMM Lubia and Another* (1982-88) 1 KAR 777.

12. In *Charles Oriwo Odeyo -V- Apollo Justus Andabwa & Another* (2017) eKLR in HCC.99/2014.
13. The Principles that should guide the court in assessing of damages are as follows;-
 1. An award of damages is not meant to enrich the victim but to compensate such a victim for the injuries sustained;
 2. The award should be commensurate with the injuries sustained;
 3. Previous awards in similar injuries sustained are no guide, but each case be treated on its own facts;
 4. Previous awards be taken into account to maintain stability of awards but factors such as inflation should be taken into account;
 5. The awards should not be inordinately low or high.
14. See also the cases of *Denshire Muteti Wambua -V- Kenya Power and Lighting Co, Ltd* (2013) eKLR and *Godfrey Wamalwa Wamba & Another -V- Kyalo Wambua* (2018) eKLR.
15. In the case of *Rahima Tayab & others -V- Anna Mary Kinanu* (1983) eKLR 114, the court of Appeal held as follows; “But money cannot renew a physical frame that has been battered and shattered. All that 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. By common consent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional.
15. The court must always bear in mind that the award of damages is an attempt by the court to give a party reasonable compensation for the injuries suffered because the injured party cannot be put back in the shoes they were in before. See *West (H) & Son Ltd -V- Shepherd* (1964) PC 326 P.345
16. Guided by all the decisions referred to above, the court will go ahead to consider the issues raised by the appellant.
17. The appellant testified in the trial court regarding the injuries she sustained. Her evidence was supported by the P3 form produced as PEXH.4 and the medical report of Doctor Ruto (PW4) dated 26/5/2021 P.Exh.7.
18. As per the P3 form produced by PW3, the respondent arrived in hospital while semi-conscious (coma). On examination she was found to have multiple injuries, deep cut on lower back which was stitched; bruises on upper limb, swollen left wrist joint, crush injury to left lower limb and the left limb was amputated as it was damaged beyond repair. She was admitted for thirteen (13) days. PW4 also confirmed that the Respondent had received soft tissue wound on the left wrist, right hip, right knee and lumbosacral area and that the power of the right lower limb was graded at three (3) out of five (5).



He recommended that the Respondent be enrolled in the disability program and advised to seek for a left artificial limb (prosthesis) for easier mobility at an estimated cost of Kshs.500,000/=.

19. The trial court relied on the following decisions in arriving at her decision; Michael Wafula Malenya -V- Matunda (Fruits) Bus Services (2022) eKLR where the appellant sustained extensive degloving injury to the left leg, deep penetrating perineum, a grade 111C fracture-dislocation on the bi-malleolus ankle, a facial and scalp abrasion, an elbow laceration and amputation of the leg – an award of Kshs.1,200,000/= was made and was enhanced to 3,000,000/= in March 2022
20. In Peter Mogaka -V- Zipporah Gesare Omuya (2022) eKLR, the Respondent was in ICU for three (3) months, fracture of cervical bone C6-7,rapture of Oesophagus; compound fracture of the left tibia/fibula leading to knee amputation, compound fracture of tibia /fibula, multiple disfiguring lacerations on the head and an award of Kshs.4,000,000/= was upheld by the High Court
21. In Abdi Werdi Abddulahi -V- James Royo Mungatia & Another (2019) eKLR 1/2018 the plaintiff suffered multiple fractures of the right lower and upper limb, Amputation of right lower limb. Multiple fractures and bruises of upper right limb leading to affixation of two metal plates, injury to right eye leading to impaired vision, compressed burst L4 vertebra with fractured
22. Fragment, Head trauma leading to concussion and deep bruising on the chest, an award of Kshs.3,500,000/= was made in November, 2019.
23. After considering the above decisions that the trial court relied upon, I agree with the appellants submissions that they were not comparable to the instant case because the injuries sustained therein were more serious than those suffered by the Respondent.
24. The Respondent on their part further relied on the decision of Holiday Cars & Tours Ltd -V- Lubenga & 2 others (2023) KEH where the Respondent had suffered compound and comminuted fracture of the right fibula; fracture of right fibula, compound fracture of the right femur; fracture of the right ulnar; injury to right hip and permanent disability assessed at 50%.
25. In Humphrey Okumu Odondi -V- Imperial Driving School HCA 68/2017 where in 2018, the court awarded Kshs.1,200,000.00 for crush injury to right leg leading to comminuted compound fracture of the right tibia/fibula and below the knee amputation of the leg. I find that the two (2) cases cited by the Respondent are not comparable to the instant case.
26. However, the trial court had also relied on the case of Crown Bus Services Ltd & 2 others -V- BM (Minor suing through his mother & next friend) SMA (2020) eKLR, where the Respondent, a minor aged five (5) years sustained an amputation of the right leg above the knee and the Magistrate awarded Kshs.3,000,000/= general damages which were reduced to Kshs.2,500,000/= on appeal. The injuries sustained in the Crown Bus case (Supra) were quite comparable to those in the instant case. The said case was decided in 2020 about five (5) years ago.
27. In HCA E002/2023 John Kamau Maina -V- Stephen Ewoi Pkemoi, on 27th March 2025, this court upheld an award of Kshs.3,000,000/= where the Respondent had sustained a crush injury leading to amputation of the lower limb. In that case, the court relied on the Crown Bus case and that of Ngooro Timothy & Another -V- Daniel Mutuga Wangeci (2020) eKLR where the Respondent suffered a degloving injury crush to the right foot that resulted in below the knee amputation. The court upheld an award of Kshs.3,000,000/= in 2020. I find that the most comparable award for nearly similar injuries is that of Crown Bus Services Ltd (supra) and the cases this court has cited above. In the result, I find that the award herein is on the higher side. The applicant's suggestion that an award of Kshs.1,000,000/= - Kshs.1,200,000/= is way too low.



28. In my view an award of Kshs.3,000.000/= is reasonable compensation for the injuries that the respondent sustained. The special damages were not contested.

29. In the end, I allow the appeal and enter judgment for the respondent as follows; -

General damages Kshs. 3,000,000/=

Special damages Kshs. 56,188/=

Total 3,056,188/=

The appellant will have half the costs on appeal

DATED, SIGNED AND DELIVERED ON 4TH DAY OF APRIL, 2025

HON. R. WENDOH

JUDGE.

Judgement read in open court in the presence of

Appellant- Ms. Nyabuto - present

Respondent-Mr. Otunga present

Juma/Hellen-Court Assistants

