



Hillspark Investment Company Limited v HAO (Minor Suing through Mother and Next Friend JM) (Civil Appeal E054 of 2023) [2025] KEHC 7099 (KLR) (13 May 2025) (Judgment)

Neutral citation: [2025] KEHC 7099 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL E054 OF 2023
GL NZIOKA, J
MAY 13, 2025**

BETWEEN

HILLSPARK INVESTMENT COMPANY LIMITED APPELLANT

AND

HAO RESPONDENT

MINOR SUING THROUGH MOTHER AND NEXT FRIEND JM

(Being an appeal from the decision of Honourable E. Mburu Principal Magistrate delivered on 7th March 2023 vide Naivasha CMCC No. 893 of 2018)

JUDGMENT

1. By a plaint dated 7th September 2018 the plaintiff (herein “the respondent”) sued the defendant (herein “the appellant”) seeking for judgment against the appellant for: -
 - a. General damages for pain, suffering and loss of amenities
 - b. Special damages of Kshs 3,750.
 - c. Costs and interest at courts rate
 - d. Any other or further relief that this honourable court may deem fit and just to grant
2. The respondent’s claim arose out of injuries she sustained in a road traffic accident that occurred on 19th September 2017, when she was travelling as a lawful passenger on a motor vehicle registration No. KBX 928R. The respondent blames the appellant and/or its servant for driving the vehicle negligently as per the particulars at paragraph 4 of the plaint and as a result causing the accident.
3. The respondent pleaded that as a result of the accident she suffered the following injuries: -
 - a. Soft tissue injuries to the right big toe;



- b. Crush injuries to the 3rd right toe;
 - c. Crush injuries to the 4th right toe;
 - d. Blunt injury to the abdomen.
4. However, the respondent's claim was denied by the appellant vide a statement of defence dated 2nd November 2018. The appellant blamed the respondent and/or the driver of the other motor vehicle registration No. KCD 623L ZE 5705 that was also involved in the accident for negligently causing the accident.
 5. The particulars of negligence attributed to the respondent and driver of the other vehicle are set out at paragraph 5 and 6 of the statement of defence respectively.
 6. The matter proceeded to full hearing. (PW1) Dr. Titus Ndeti testified on behalf of the respondent and produced a medical report dated 16th August 2018, of the examination of the respondent. (PW2) Janet Moraa adopted her statement dated 7th September 2018 as evidence in chief and stated that, the minor's injury has not fully recovered.
 7. The appellant did not adduce any evidence in support of its case.
 8. Subsequently, the trial court rendered a judgment dated 7th March 2023, and held the appellant 100% liable for causing the accident and awarded the respondent quantum as follows: -
 - a. General damages.....Kshs 450,000
 - b. Special damages.....Kshs 3,350
 - Total.....Kshs 458,550
 9. In making the award the trial court stated that, it had considered the authorities cited by the parties and noted the respondent's authorities related to more serious injuries than those herein. However, the court did not record its finding on the authorities relied on by the appellant.
 10. Be that as it were the trial court then relied on the decision in the case of, Claustine Mwigine Akonga –vs- Samuel Kairu Chege HCCC No. 12 of 2016 where the court awarded Kshs 400,000 for a fracture.
 11. However, the appellant is aggrieved by the decision of the trial court based on the following grounds: -
 - a. The learned Magistrate erred in fact and in law in awarding the respondent Kshs 450,000 as general damages and Kshs 3550 for special damages, which amount was exorbitantly high in the circumstances and injuries suffered by the respondent.
 - b. The learned Magistrate erred in fact and in law in holding that the respondent had proved his case on a balance of probabilities which finding was against the height of the evidence on record.
 - c. The learned Magistrate erred in law and in fact when he failed to consider the appellant's evidence on points of law and facts with regard to quantum based on the injuries sustained by the respondent.
 - d. The learned Magistrate's decision was unjust, against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.



- e. The learned trial Magistrate erred in law and in fact in failing to pay regard to submissions and decisions filed alongside the defendant's submissions that were guiding in the amount of quantum that is appropriate and applicable on similar injuries as the case he was deciding.
 - f. The learned Magistrate erred in fact and law in finding that the respondent was entitled to general damages that were too high in view of the injuries suffered by the plaintiff.
12. Consequently, the appellant prays for the following orders that: -
- a. This appeal be allowed with costs
 - b. That the appellate court do set aside the learned trial magistrate's judgment delivered on 7th of March 2023, on quantum and re-place with its own assessment.
 - c. That cost of this appeal be borne by the respondent.
13. In considering the grounds of appeal, it is evident that, the appeal herein is generally on quantum. The liability is not contested and even if it was, I would not hold otherwise, as the plaintiff minor was a passenger who had no control of the vehicle and could not have contributed to the occurrence of the accident. Furthermore, the defendant did not adduce any evidence to support its case or rebut the respondent's evidence. I uphold the finding on liability.
14. As regards quantum, I note that the respondent pleaded to the injuries suffered in the accident at paragraph 4 of the plaint as follows: -
- a. Soft tissue injuries to the right big toe
 - b. Crush injuries to the 3rd right toe
 - c. Crush injuries to the 4th right toe
 - d. Blunt injury to the abdominal
15. In support of the injuries she produced a P3 form, medical report by Dr. Titus Nzina Ndeti, treatment notes from Kenyatta National Hospital, and the summary from Kenyatta National Hospital which notably was incomplete.
16. In considering the afore documents I note that, the report produced by Dr. Nzina reflects the injuries as pleaded in the plaint and the significant finding is that the respondent was still complaining of pain on the injured sites. The doctor indicates in the report that the plaintiff minor sustained severe soft tissue injuries that caused her untold pain, prolonged mobility and suffering. That the injuries have resolved with residual scars which are permanent. The degree of injuries was classified as suffered "maim". Notably, the medical report was not challenged by any other report to the contrary.
17. The P3 form indicates that the respondent suffered soft tissue injury to the right big toe, crush fracture of 2nd and 4th toe. The doctor classified the injuries as grievous harm. It suffices to note that the P3 form defines maim and grievous harm as follows: -

"Maim" - means destruction or permanent disability of any external organ, member or sense.

"Grievous harm" means any harm which amounts to maim, or endangers life or seriously or permanently injures health, or which is likely to injure health or which extends to permanent disfigurement or to any permanent or serious injury to the external organ.



18. Evidently, the classification of the injuries as “maim” and “grievous harm” in this matter indicates that they are serious.
19. The appellant proposed an award of Kshs. 50,000 as general damages. I note that, the authorities cited by the appellant in the trial court were rendered in the years 2021 and 2016 being one (1) and six (6) years old respectively.
20. Further, although the appellant argued that the injuries therein were similar to those herein, it is not evident as the injuries in both cases were neither particularized nor analysed for comparison.
21. Finally, taking into account the issue of inflation, it is not tenable to argue that a respondent who has suffered grievous harm can be compensated with a sum of Kshs. 50,000 wherein the accident occurred in the year 2017 and the award made in the year 2023 six (6) years thereafter.
22. Be that, as it were, I note from the submissions of the respondent in the trial court that they relied on the case of; *Katana Mgao vs Andrew Kamau & another* (1993) eKLR, where allegedly the injuries were similar as herein. However just like the appellant, there were no particulars of those injuries or comparison thereof.
23. In conclusion, it is the considered opinion of this court, taking into account that the accident herein occurred in the year 2017, a period of over eight (8) years, the case was filed in the year 2018, about seven (7) years ago and the impugned decision delivered two (2) years ago, it is clear the respondent has sought for justice for a prolonged period of time.
24. In fact, if the respondent been awarded the Kshs. 50,000 in the year 2018, and the money invested in an interest earning account, it would have yielded more than the impugned sum. In that regard I decline to interfere with the finding on quantum.
25. The results of the finding is that the appeal is dismissed in its entirety with costs to the respondent.
26. Right of appeal 14 days explained.

DATED, DELIVERED AND SIGNED THIS 13TH DAY OF MAY 2025.

GRACE L. NZIOKA

JUDGE

In the presence of

Mr. Asiyo H/B for Mr. Nzavi for the respondent

N/A for the respondent

Hannah: Court assistant

