



Ali v Nasir (Civil Appeal E259 of 2023) [2025] KEHC 12140 (KLR) (23 June 2025) (Judgment)

Neutral citation: [2025] KEHC 12140 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA**

CIVIL APPEAL E259 OF 2023

F WANGARI, J

JUNE 23, 2025

BETWEEN

BAHATI MUSA ALI APPELLANT

AND

HUSSEIN MOHAMED NASIR RESPONDENT

(Being an Appeal from the Judgment of Hon. Sogomo delivered on 25/08/2023)

JUDGMENT

1. Through a Plaint dated 08/03/2019, the Plaintiff/ Appellant claimed General and Special Damages as a result of injuries sustained in an accident that occurred on 09/05/2018. It was pleaded that the Appellant was riding in the Defendant/ Respondent's motor cycle as a fare paying passenger where the said motor cycle was carelessly driven and lost control thereby causing an accident resulting to injuries sustained by the Appellant.
2. The matter proceeded by way of formal proof after the Defendant failed to enter appearance nor file the Statement of Defence, and interlocutory judgment entered. The Trial Court thereafter proceeded to render Judgement on 25/08/2023 where the Defendant was found to be 100% liable for the accident. Kshs. 200,000/= was awarded as General Damages for pain and suffering, diminished earning capacity awarded at Kshs. 50,000/= and Special Damages of Kshs. 3,550/=.
3. Aggrieved by the finding of the Trial Court, the Appellant lodged a Memorandum of Appeal hence this Appeal. The appeal was on quantum only.
4. Upon filing this appeal, this court directed that the appeal be disposed of by way of written submissions. Despite the Respondent participating in the appeal, only the Appellant complied by filing his submissions dated 22/11/2024. It was submitted that the trial court's award of Kshs. 200,000 as General Damages was manifestly too low given the nature of the injuries sustained by the Appellant.



Analysis

5. This being a first Appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a Trial Court, unlike the Appellate Court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand. (see *Peters vs Sunday Post Limited* [1958] EA 424 and *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123)

Quantum

6. The Appellant submitted that an award of Kshs. 200,000 was manifestly too low for general damages for pain and suffering as commensurate compensation in the circumstances of this case.
7. The Court of Appeal, pronounced itself succinctly on the principles for disturbing award of damages in *Kemfro Africa Ltd Vs Meru Express Service Vs. A.M Lubia & Another* 1957 KLR 27 as follows: -

“The principles to be observed by an appellate Court in deciding whether it is justified in distributing the quantum of damages awarded by the trial Judge were held in the Court of Appeal for the former East Africa to be that it must be satisfied that either the Judge in assessing the damages, took into account an irrelevant facts or left out of account a relevant one or that short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of damages.”
8. It is thus settled that for the Appellate court, to interfere with the award it is not enough to show that the award is high or if I handled the case in the subordinate court, I would have awarded a different figure. Damages are said to be at large. They must be commensurate with similar injuries.
9. There is no dispute that the Appellant suffered the injuries as pleaded. In assessing injuries arising from a road traffic accident, consistency in the award of damages is necessary for judicial predictability and certainty. This is achieved through awarding similar injuries with similar or relatively similar damages.
10. The Court of Appeal in *Odinga Jacktone Ouma V Maureen Achieng Odera* [2016] eKLR stated that “comparable injuries should attract comparable awards”
11. The principle on the award of damages is settled. In *Charles Oriwo Odeyo vs. Appollo Justus Andabwa & Another* [2017] eKLR the court set out the principles which guide the court in the assessment of damages in a personal injury case. The considerations include but not limited to; -
 - 1) An award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained.
 - 2) The award should be commensurable with the injuries sustained.
 - 3) Previous awards in similar injuries sustained are mere guide but each case be treated on its own facts.
 - 4) Previous awards to 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.
12. The Appellant suffered displaced fracture of the right clavicle and with a 2% permanent incapacity. In *Joseph Kimanthi Nzau v Johnson Macharia* [2019] eKLR, the court, G.V. Odunga J. as then he was, considered a case where the plaintiff suffered cut wound on the occipital region with lacerations on the



left temporal region of the head, fracture of the skull on the occipital region, subluxation of the cervical vertebrae C1, C3 and C4, fracture of 2nd, 3rd, 4th, 5th, 6th, 7th and 8th ribs of the left side of the chest, fracture of the left scapula and cut wound on the left hand and left arm and awarded Kshs. 800,000.

13. In comparison to the injuries sustained by the Plaintiff in the above mentioned case, and the injuries sustained by the Appellant in this case, the injuries sustained by the Respondent much less as he only suffered the fracture of the clavicle. I find an award of Kshs. 500,000 would be adequate and sufficient considering the loss of value for money.
14. On the issue of costs, it is settled that the same follows the event. That is the import of section 27 of the *Civil Procedure Act*. The court reserves its discretion on whether to award costs to either party. This was well enunciated by the Supreme Court in the case of Jasbir Singh Rai & 3 others v Tarlochan Singh Rai Estate of & 4 others [2013] eKLR. The Appellant will bear his own costs.

Determination

15. In the upshot, I make the following orders: -
 - a. The Appeal has merits and is allowed on the following terms;
 - i. Judgment of the lower court on award of General Damages of Kshs. 200,000/= is hereby set aside.
 - ii. The award is substituted with an award of Kshs. 500,000.
 - b. The Appellant to bear his own costs.
- It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA ON 23RD DAY OF JUNE, 2025.

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F. WANGARI

JUDGE

In the presence of;

Mr. Wanyama Advocate for the Appellant

N/A by the Respondent

Ms. Getrude, Court Assistant

