



**Rai Cement Limited & another v Kiplang'at (Civil Appeal  
021 of 2023) [2025] KEHC 10312 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10312 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET  
CIVIL APPEAL 021 OF 2023  
JR KARANJA, J  
JULY 17, 2025**

**BETWEEN**

**RAI CEMENT LIMITED ..... 1<sup>ST</sup> APPELLANT**

**CHARLES KIPROP CHERUIYOT ..... 2<sup>ND</sup> APPELLANT**

**AND**

**NICKSON KIPLANG'AT ..... RESPONDENT**

*(An appeal arising from the judgment and decree of Hon. Irene Kabuteh, [Resident Magistrate] in Kapsabet CMCC No. 58 of 2023 between the Respondent and the Appellant delivered on the 27th July 2023 in favour of the Respondent)*

**JUDGMENT**

1. The Appellants were Defendants in the primary suit filed against them by the Respondent who was the Plaintiff. The claim in the suit being Kapsabet SPMCC No. E058 of 2021 and not No. 58 of 2023 as indicated in the Record of Appeal was for damages arising from a road traffic accident which occurred along the Kapsabet - Nandi Hills Road on 8<sup>th</sup> June 2020 involving the Appellants Motor Vehicle Registration No. KCQ 045N and the Respondent's Motor Cycle Registration No. KMEL 664F.
2. It was pleaded that the Respondent was at the material time riding the motor cycle when the Appellant's motor vehicle due the negligence, carelessness and recklessness of its driver [2<sup>nd</sup> Respondent] veered off its path into the path of the motor cycle and knocked down the Respondent. As a result, the Respondent suffered severe personal injuries which resulted in the amputation of his right lower limb above the knee. He in the process incurred medical and other expenses.
3. The Respondent therefore claimed general and special damages against the Appellants blaming them for being responsible for the accident.



The Appellants filed a statement of defence in which they denied the Respondent's allegations and claim against them and prayed for the dismissal of the Respondent's suit with costs.

4. After a full trial, the trial court found and determined that both the Appellants and the Respondent were equally liable for the accident at the ratio of 50:50%. Consequently, the trial court awarded damages to the Respondent [Plaintiff] on the said ratio as follows: -
  1. General damages - Kshs. 2,500,000/-
  2. Future medical expenses - Kshs. 600,000/-
  3. Loss of future earnings - Kshs. 2,254,086/-
  4. Special damages - Kshs. 6,550/-

The Respondent was also given costs of the suit and interest from the date of judgment until payment in full.

5. Being dissatisfied with the award, the Appellants preferred the present appeal on the basis of the grounds set out in the memorandum of appeal dated 8<sup>th</sup> August 2023, which clearly shows that the appeal was basically on quantum of damages only.

It is settled law that the duty of the first appellate court is to re-evaluate the evidence adduced at the trial court and arrive at its own findings and conclusions bearing in mind that the trial court had the advantage of hearing and seeing the witnesses [See, *Selle & Another Vs. Associated Motor Boat Company Limited & Others* [1968]EA 123].

6. Having given due consideration to the appeal on the basis of the supporting grounds and the rival submissions it became apparent to this court that the issue arising for determination was whether the damages awarded by the trial court should be disturbed or interfered with by this court considering that assessment of general damages is basically a discretionary matter at the hand of the trial court.
7. It is trite law that an appellate court would not be justified in interfering with the assessment of damages made by a trial court simply because it would have awarded a different amount if it was in the shoes of the trial court. Such interference would only be justified if the appellate court is satisfied that the trial court applied the wrong principles by taking into account irrelevant favours or disregarding relevant factors or that the trial court misapprehended the evidence and arrived at an award which was so inordinately high or low as to represent an entirely erroneous estimate of the damages [See, *Kemfro Africa Limited t/a Meru Express Services and Another Vs. AM Lubia and Another* [1983-88] 1 KAR 777].
8. The Court of Appeal in the aforementioned case stated as follows: -

“The principles to be observed by an appellate court in deciding whether it is justified in dismissing the quantum of damages awarded by a trial judge were held by the former Court of Appeal for Eastern Africa to be that: -

It must be satisfied that either the judge in 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 low or so inordinately high that it must be a wholly erroneous estimate of the damage.”

[See also, *Catholic Diocese of Kisumu Vs. Sophia Achieng* [2004] 2KLR 55].



9. The question herein would be whether taking into account the nature of the injuries suffered by the Respondent [Plaintiff] as a result of the accident, comparable awards for such injuries, inflation and the passage of time, the award of damages made by the trial court was inordinately excessive or undeserving as alleged by the Appellant to warrant interference by this court.

10. The term “quantum of damages” in the context of legal remedies refers to the measure or amount of damages awarded to a party who has suffered harm or loss as a result of a tortious act or other legal wrong.

It represents the monetary value assigned to compensate the injured party for the actual harm or loss they have suffered and aims at placing the injured party in the position they would have been if the wrong doing had not occurred.

11. In personal injury claims such as the present one, damages are calculated based on factors such as medical expenses, loss of earning, pain and suffering “inter-alia”.

Whereas general damages are non-specific, special damages are specific and quantifiable. Ultimately, the assessment of quantum of damages is typically within the discretion of the trial court taking into account the evidence presented, the applicable legal principles and the specific circumstances of the case with a goal to provide fair and just compensation to the injured party.

12. In this case, with regard to general damages for pain, suffering and loss of amenities, the Respondent [PW1] testified that he suffered injury to his right leg which was eventually amputated. This was confirmed by Dr. Joseph Sokobe [PW2] whose medical report dated 2<sup>nd</sup> April 2021 indicated that the amputation was of the right lower limb above the knee and this resulted in the Respondent suffering permanent disability placed at 50%.

13. The doctor opined that the Respondent would need to fit a prosthesis at an estimated cost of Kshs. 450,000/-.

The Plaintiff, in his final submissions before the trial court proposed a sum of Kshs. 3 Million as being adequate and reasonable compensation in terms of general damages. On the other hand the appellate proposed a sum of between Kshs. 500,000/- and Kshs. 900,000/-. Both parties cited several past decisions of the superior courts in support of their respective proposals.

14. In the opinion of this court, all the cited authorities were relevant to this case, but considering the degree of injury suffered by the Respondent herein and the residual effects thereof together with the passage of time and trend of inflation from the date the cited authorities were made the decision cited by the Respondent [Plaintiff] were most relevant and comparable to the circumstances of this case.

15. Therefore, the award of Kshs. 2,500,000/- general damage made by the trial court was reasonable, fair and just compensation to the Respondent under the head and cannot be described as having been inordinately high or excessive. It is hereby upheld.

With regard to the award of Kshs. 600,000/- for further medical expenses, the evidence by the doctor [PW2] raised the possibility that the Respondent would require an artificial limb or prosthetic limb to replace his amputated limb. This was expected to come up with the factor of costs.

16. According to the good doctor [PW 7], the estimated cost of fitting a prosthesis limb was set at Kshs. 450,000/-.

Therefore, the award of Kshs. 600,000/- made by the trial court under the head of future medical expenses was not anchored on any evidence, hence unjustified. It is hereby reduced to the sum of Kshs. 450,000/-.



On loss of earnings, the trial court awarded a sum of Kshs. 2,254,086/- on the basis of the multiplier rather than global approach and set a multiplicand of Kshs. 12,522/70, being the applicable minimum wage for a general labourer given that the Respondent did not lead any evidence to prove that he was a motor cycle taxi operator [boda-boda] earning an income of Kshs. 1000/- per day. The multiplier was set at 15years.

17. The Appellants submitted herein that the claim for loss of earning was a special damage claim which had to be specifically pleaded and proved, as such the trial court was in error when it held that the Respondent failed to prove his earning, but instead of dismissing the claim the court proceeded to award the claim by adopting the minimum wage standard applicable to general damages.
18. In *Butler Vs. Bulter* [1984] KLR 225, it was observed that compensation for loss of future earning is awarded for real assessable loss proved by evidence.  
  
Such loss is different from loss of earning capacity otherwise known as “lost year’s which is awarded as part of general damages. It would appear herein that the trial court awarded damages for loss of future earning as if it was damages for loss of earning capacity which falls under general damages.
19. And, there being no proof that the Respondent earned his daily income as a boda-boda rider at the rate of Kshs. 1000/- per day, it would follow that the award of Kshs. 2,254,086 for loss of future earning made by the trial court was erroneous and must hereby be set aside and dismissed.
20. There was no challenge to the award of special damages made by the trial court. The appeal was essentially on general damages, future medical expenses and loss of earning and in that regard the appeal is partly allowed to the extent that the award made for general damages by the trial court is upheld while the award for future medical expenses is reduced to Kshs. 450,000/- while the award for loss of future earnings is set aside.
21. The Appellant shall have the costs of the appeal.

Ordered accordingly.

**DELIVERED AND DATED THIS 17<sup>TH</sup> DAY OF JULY, 2025**

**HON. J. R. KARANJAH,**

**JUDGE**

