



REPUBLIC OF KENYA



**CiICGeneral Insurance Ltd v Musyoka (Civil Appeal E289 of 2020)
[2024] KEHC 1280 (KLR) (Civ) (16 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1280 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E289 OF 2020

AN ONGERI, J

FEBRUARY 16, 2024

BETWEEN

CIC GENERAL INSURANCE LTD APPELLANT

AND

PAUL MAISYO MUSYOKA RESPONDENT

*(Being an appeal from the judgment and decree of Hon. D. O. Mbeja
(SPM) in Milimani CMCC No. 7789 of 2017 delivered on 13/12/2019)*

JUDGMENT

1. The respondent in this case filed Milimani CMCC No. 7789 of 2017 against Moto Gari Limited and Martin Mutethya Riungu seeking special damages of ksh.3,550 and general damages for pain and suffering in respect of injuries suffered by the respondent on 8/8/2017 along Mombasa Road.
2. The respondent was involved in a traffic road accident with motor vehicle registration no. KBZ xxxR which was driven by 2nd defendant belonging to the 1st defendant.
3. The case proceeded exparte and judgment was entered in the sum of ksh.406,244 and the respondent filed a declaratory suit against the appellant.
4. The appellant has filed this appeal on the following grounds;
 - i. That the learned magistrate erred in law and fact by awarding damages that were inordinately so high and were not commensurate with the injuries sustained by the respondent.



- ii. That the learned magistrate erred in law and fact by failing to consider case law on award of damages which would have guided him in awarding damages commensurate with the injuries sustained by the respondent.
5. The parties filed written submissions as follows; the appellant submitted that according to the medical report by Dr. G. K Mwaura the doctor stated that the respondent sustained soft tissue injuries moderate in degree meaning that they were not severe. He was awarded a sum of Kshs. 400,000 which was inordinately high.
6. The appellant proposed a sum of Kshs. 200,000 and in support cited *Francis Omari Ogaro v JAO (minor suing through next friend and father GOD* [2021] eKLR, the court set aside an award of Kshs 230,000/= and substituted it with an award of Kshs 180,000/=. In that case, the Respondent had sustained the following injuries: - Multiple cut wounds on the right lower limb; Bruises on the right lower limb; Bruises on both elbows; Bruises on the right iliac region; Bruises on the frontal region; Bruises on the temporal region; Lacerations on the frontal region; Cut wounds on the left iliac region; Cut wounds on the frontal region; Cut wounds on the temporal region and Blunt trauma to the abdomen.
7. The respondent alternatively submitted that the nature and extent of the injuries sustained by him is not in dispute. From the medical evidence before the trial court, it is proved that he sustained the following injuries: Bruises-left cheek; Bruises-left thumb and Bruises-right wrist. The injuries as sustained were severe and subjected him to untold suffering, emotional anguish, distress and physical pain.
8. The respondent submitted that it is trite that the essence of awarding general damages is to compensate the victim for the injury suffered and try as much as possible to restore them to the position they were in before suffering the injury.
9. That the assessment of damages is not an exact science achieved by a calculus and therefore, being discretionary, a trial court can award less or more damages depending on the circumstances of a particular case.
10. Further, that the award by the trial court was within the range awarded by courts for comparable injuries and was in all aspects reasonable as well stated out in his reasoned judgment. In support the respondent in support cited the following cases;
 - a. *Devki Steel Mills Ltd v James Makau Kisilu* [2012] eKLR where an award of Kshs.250, 000 was made for comparable injuries.
 - b. *Martin M. Mugi v Attorney General* [2000] eKLR where the plaintiff who had sustained comparable injuries was awarded Kshs.350, 000 as general damages.
11. This being a first appeal the duty of the first appellate court is to re-evaluate the evidence adduced before the trial court and to arrive at its own conclusion whether or not to support the findings of the trial court.
12. The sole issue for determination in this case is whether the assessment of quantum of damages was excessive.
13. The appellant maintained that they have always been willing to settle this claim and further that the amount of quantum assessed by the court is excessive.



14. The respondent sustained the following injuries
 - i. Bruises of the left cheek
 - ii. Bruises of the left thumb.
 - iii. Bruises of the right wrist.

15. I have considered the following cases where the plaintiff sustained soft tissue injuries;
 - a) *Godwin Ileri v Franklin Gitonga* (2018) eKLR where the claimant sustained a cut on the scalp and forehead, swelling on the dorsum of the left foot and a bruise on the right knee. An award of Kshs.300,000/= was reduced to Kshs.90,000/= on appeal.
 - b) *George Mugo & Anor v AKM* (2018) eKLR where the claimant sustained soft tissue injuries to the left shoulder, blunt chest injury interior, bruises of left wrist region and blunt injury left arm. An award of Kshs.300,000/= was reduced to Kshs.90,000/= on appeal.
 - c) *Lamu Bus services & Anor v Caren Adhiambo Okello* (2018) eKLR where the claimant sustained a dislocation of the left shoulder joint, a deep cut wound on the left chin, a deep cut wound on the left thigh and a blunt injury to the left thigh. An award of Kshs.200,000/= was reduced to Kshs.130,000/= on appeal.

16. I find that an award of 400,000 is excessive for the soft tissue injuries sustained by the respondent.
17. I find that the appellate court can interfere with an award of damages if the same is excessive as to warrant interference.
18. I reduce the award to ksh.150,000. The award of special damages is allowed.
19. The appeal is allowed with costs to the appellants.
20. The respondent will pay costs of the suit and interest at court rates from the date of the trial court's judgment until payment in full.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 16TH DAY OF FEBRUARY, 2024.

.....

A. N. ONGERI

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent

