



Telewa v EOM (Suing as Father and Next Friend to JO) (Civil Appeal E786 of 2021) [2024] KEHC 2570 (KLR) (Civ) (15 March 2024) (Judgment)

Neutral citation: [2024] KEHC 2570 (KLR)

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

CIVIL

CIVIL APPEAL E786 OF 2021

DAS MAJANJA, J

MARCH 15, 2024

BETWEEN

PERSIL ROSE TELEWA APPELLANT

AND

EOM (SUING AS FATHER AND NEXT FRIEND TO JO) RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. D.O Mbeja, SRM dated 29th October 2021 at the Magistrates Court at Nairobi, Milimani in Civil Case No. 1373 of 2019)

JUDGMENT

1. The Appellant is dissatisfied with the judgment of the Subordinate Court dated 29.10.2021 where the trial court awarded the Respondent Kshs, 700,000.00 following a road traffic accident that occurred on 01.06.2018 along Uhuru Highway, Nairobi involving the child and the Appellant's motor vehicle registration number KCQ ***D. The issue of liability was settled in the ratio 80:20 against the Appellant.
2. The Appellant appeals against the judgment in line with the memorandum of appeal dated 30.11.2021 in which she assails the award as inordinately high and excessive. The parties have filed written submissions in support of their respective positions.
3. According to the plaint dated 08.02.2019, the child sustained degloving injury to the right foot, recurrent pains and a resulting degloving scar on the right foot. The child was seen by Dr Cyprianus Okoth Okere on 13.12.2018 and in his report he confirmed the injuries sustained. He noted the after the accident, the child was treated at Kenyatta National Hospital with debridement wound cleaning, dressings and medications and at the time of examination he was suffering from recurrent pains.



4. The Respondent proposed an award of Kshs. 800,000.00 based on *Hellen Kwamboka Onchonga v John Ouko Oyoo* [2010] eKLR where the plaintiff sustained extensive circumferential degloving injury to her right lower limb as well as superficial bruises over the right lower limb. She underwent three sessions of degranulation and bone decortication and skin grafting. Her right lower limb was deformed with no muscles on the anterior aspect of the leg and as a result she could not walk. She was awarded Kshs. 800,000.00 as general damages. He also cited *Easy Coach Limited v Emily Nyangasi* [2017] eKLR where the court affirmed an award of Kshs. 700,000.00 where the plaintiff sustained facial injuries, injury to the chest, back, right hand with cut wound and right leg with cut wound.
5. On her part, the Appellant submitted that an award of Kshs. 400,000.00 was sufficient to compensate the Respondent. She relied on the *H. Young Construction Company Ltd v Richard Kyula Ndolo* [2014] eKLR where the plaintiff sustained degloving injuries to the left leg, with loss of stud over calf muscles and blunt injury to the left ankle leg. The Appellant Court reduced an award of Kshs. 350,000.00 to Kshs. 250,000.00. She further relied on *Spin Knit Limited v Johnstone Otara* [2006] eKLR where the court awarded the plaintiff Kshs. 300,000.00 for suffering a degloving injury to the right hand and *Al Samah Enterprises Limited & Abubakar Omar v DM (minor suing through mother and next friend CGK)* [2016] eKLR where the court sustained degloving injury extending from the right knee to the leg. The plaintiff was expected to heal with 10% disability due to scarring on the right leg and thigh and was awarded Kshs. 400,000.00 which the appellate court affirmed.
6. From the judgment, it is clear that while the trial magistrate appreciated the principles to be followed in awarding damages set out in *Mohamed Mahmoud Jabane v Highstone Butty Tongoi Olenja* [1986] eKLR, he did not engage with the decisions cited by the parties. The principle that comparable injuries should attract comparable awards means that the trial court must explain its reasoning, in reference to decided cases, why it reached the conclusion it did (see *Maore v Geoffrey Mwenda* [2004] eKLR).
7. I have looked at the Respondent's injuries vis-à-vis the decisions cited by the parties. The Respondent sustained a degloving injury of the right foot. The only residual effect of the injury was pain and a scar. There was no disability noted. The Subordinate Court only cited the *Hellen Kwamboka Case (Supra)*. The plaintiff in that case sustained far more serious injuries which required more extensive and invasive medical procedures and treatment. Unlike the Respondent, the plaintiff in that case suffered physical disability. In the other cases cited by both the Appellant and Respondent, the injuries were more serious as well as the residual effects. The cases cited by the Appellant are more outdated.
8. Ultimately, the injury sustained by the Respondent was not as serious or as grave as those in the cases cited. Doing the best I can, I award the Respondent Kshs. 500,000.00 as general damages.
9. In conclusion, I allow the appeal on the following terms:
 - a. The award of general damages by the Subordinate Court in the Judgment dated 29.10.2021 is set aside and substituted with an award of Kshs. 500,000.00.
 - b. The Respondent shall bear costs of the appeal assessed at Kshs. 30,000.00.

DATED AND DELIVERED AT NAIROBI THIS 15TH DAY OF MARCH 2024.

D. S. MAJANJA

JUDGE

Mr Njuguna instructed by Hannah Muriithi and Company Advocates for the Appellant.

Mr Mbiti instructed by Musili Mbithi and Company Advocates for the Respondent.

