



**African Attractions Safaris Ltd v Nganga (Civil Appeal
479 of 2018) [2024] KEHC 3988 (KLR) (5 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 3988 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL APPEAL 479 OF 2018
AN ONGERI, J
APRIL 5, 2024**

BETWEEN

AFRICAN ATTRACTIONS SAFARIS LTD APPELLANT

AND

SERAH NJERI NGANGA RESPONDENT

*(Being an appeal from the judgment and decree of Hon. Kabaria
(SRM) in Milimani CMCC No. 3900 of 2014 delivered on 24/11/2017)*

JUDGMENT

1. The respondent was the plaintiff in Milimani CMCC No. 3900 of 2014 where she sued the appellants seeking general damages for injuries she sustained on 6/2/2019 at around 1.00pm along Raphta road junction with David Osieli road when the plaintiff was walking when motor vehicle registration no. KAX 537V collided with motor vehicle registration no. KBK 585K causing motor vehicle KBA 585 to knock down the plaintiff causing her serious injuries.
2. The parties apportioned liability at 70:30% against the appellants in favour of the respondent.
3. The trial court awarded liability at kshs.969,077 subject to apportionment.
4. The appellant who was the 1st defendant has appealed on quantum on the following grounds
 - i. That the learned magistrate erred in fact and ended up misdirecting herself in awarding exorbitant quantum of damages by failing to appreciate and be guided by the prevailing range of comparable awards granted the injuries sustained by the plaintiff/respondent herein.
 - ii. That the learned magistrate erred in making such a high award on general damages as to show that the magistrate acted on a wrong principle of law.



- iii. That the learned magistrate's award was made without considering the medical evidence and respondent's submissions before the court and failed to appreciate the nature of injuries sustained by the plaintiff and failed to be guided by authorities on comparable awards and hence ended up making an excessive award in view of the medical evidence presented before the court.
 - iv. That the assessment and award of general damages of kshs.700,000/= is manifestly excessive and inordinately high so as to amount to a miscarriage of justice.
 - v. That the award of kshs.160,000/= for future medical expenses was not justified as the same was not proved during the hearing and magistrate failed to strike a balance based on the two medical reports.
 - vi. That the learned magistrate erred in law and fact in awarding special damages that were not specifically proved by way of valid receipts.
 - vii. That the whole judgment on quantum was against the weight of evidence before the court.
5. The parties filed written submissions as follows; the applicant submitted that the injuries as pleaded in the plaint did not warrant the award granted. There was neither oral testimony by the plaintiff nor any document relied on by the trial court to arrive at the conclusion that due to the age of the respondent an award of Kshs. 700,000 was commensurate with the injuries sustained.
 6. The appellant argued that the issue of permanent incapacitation due to the age of the respondent at the time of the accident was not a crucial factor to consider.
 7. Further, that the issue of permanent incapacitation had not been pleaded hence the authorities relied by the respondent ought not to have relevance than the ones relied by the appellant.
 8. The appellant submitted that the trial court failed to take into consideration the plaintiff's injuries which had healed with permanent incapacitation of 14% and 20% according to appellant and respondent's doctors in their medical reports, inflation rate and age of comparable awards.
 9. That the respondent pleaded Kshs 160,000 as cost of future medical expenses but the same was not pleaded as part of particulars of special damages hence the same was not awardable.
 10. The appellant submitted that general damages of Kshs. 700,000 was not commensurate with the nature of injuries and proposed an award of Kshs. 250,000 under this head. In support the appellant cited;
 - a. Nairobi HCCA No. 14 of 2018 David Njohu Karanja v. BA (A minor suing through the father and the next friend) MMP & Wambua Agnes [2022] KEHC 15287 KLR where general damages were reassessed from Kshs. 900,000 to Kshs 500,000/- for a respondent who had sustained compound/bimalleolar of the left ankle.
 11. The respondent on their part submitted that the damages that were awarded by the lower court were not excessive and the learned magistrate was guided by comparable cases, inflation and the assessed degree of incapacity in reaching her award. In support the respondent cited;
 - a. Cents Holdings Limited & another v Mwita (Civil Case 503 of 2018) [2022] KEHC 14564 (KLR) where Respondent suffered Bimalleolar fractures of the left ankle joint and the court maintained an award of Kshs. 1,000,000 as general damages.



- b. Athumani & another v David (Civil Appeal 22 of 2020) [2022] KEHC 10385 (KLR) where the respondent sustained a Bimalleolar fracture (lower ends of tibia and fibula)-left ankle; Blunt injury (tender)- anterior chest wall; Wounds, bruises and swelling of the left foot and Bruises on the right leg. The court upheld Kshs. 1,000,000 as general damages.
12. The respondent submitted that future medical costs of Kshs 160,000 were pleaded and proved by way of medical report of Dr. Kinuthia. The trial court cannot therefore be faulted for awarding the respondent the same because that was the cost estimated to cater for the removal and rehabilitative physiotherapy sessions.
13. The sole issue for determination is whether assessment of quantum of damages was excessive.
14. The respondent sustained; Bimalleolar fractures with dislocation of the right ankle joint.
15. I have considered the following comparable injuries;
 - a. Wakasyaka v Yalla & 3 others (Civil Appeal 452 of 2018) [2022] KEHC 15842 (KLR) where the appellant sustained appellant sustained a bimalleolar fracture of the right ankle and a blunt injury to the right shoulder. The Court reviewed general damages from Kshs. 450,000 to Kshs. 600,000.
 - b. Hussein Sambur Hussein v Shariff A Abdulla Hussein & 2 others [2022] eKLR Where general damages were reassessed to Kshs 600,000 for fractures of the right tibia and fibula leg bones (lower 1/3 bimalleolar ankle fracture), dislocation of the right ankle and bruise on the right leg with permanent incapacitation of 18%.
16. I find that the trial court’s award was reasonable. The special damages of Kshs. 160,000 in respect of future medical expenses were pleaded in paragraph 9 of the plaint and Dr Wambugu’s report confirmed the same.
17. The only time the appellate court can interfere with the award is when it is so excessive or so low as to warrant interference.
18. In the case of Butt Vs Khan [1982] 1 KAR. 5 the court correctly said as follows;

“An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles or that he misapprehended the evidence in some material respect and so arrived at a figure which was either inordinately high or low”.
19. The appeal lacks in merit and I dismiss it with costs to the respondent.

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 5th day of April, 2024.

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A. N. ONGERI

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent



