



Coast Raha Limited & another v Ayanga alias Wilson Anyanga (Civil Appeal E226 of 2021) [2024] KEHC 3789 (KLR) (5 April 2024) (Judgment)

Neutral citation: [2024] KEHC 3789 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E226 OF 2021
DAS MAJANJA, J
APRIL 5, 2024**

BETWEEN

COAST RAHA LIMITED 1ST APPELLANT

WAMBUA KITHOME MULWA 2ND APPELLANT

AND

WILSON ASNAGA AYANGA ALIAS WILSON ANYANGA RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. E. Muchoki, RM dated 9th December 2020 at the Magistrates Court at Mombasa in Civil Case No. 2561 of 2018)

JUDGMENT

1. The Appellants are dissatisfied with the judgment of the Subordinate Court dated 09.12.2020 that awarded the Respondent Kshs. 600,000.00 as general damages for injuries he sustained as a result of an accident that occurred on 27.10.2018 at Toyo roundabout area along the Nairobi-Mombasa highway. The Respondent was a passenger in the 1st Appellant's motor vehicle registration number KCK *G being driven by the 2nd Appellant. The Subordinate Court found the Appellants 100% liable for the accident as the Respondent's evidence that the accident was caused by the negligence of the Appellants was unchallenged.
2. Through their memorandum of appeal dated 26.11.2021, the Appellants aver the Subordinate Court erred by proceeding on wrong principles when assessing the damages to be awarded to the Respondent. That it misdirected itself by awarding a sum that was inordinately high and excessive in the circumstances and that it failed to adequately evaluate the evidence and exhibits and thereby arrived at a decision unsustainable in law. The Appellants therefore urge the court to allow their appeal, set aside the Subordinate Court's judgment and that the award be re-assessed.



3. In determining this appeal, the court is guided by the principle that it is its duty to re-evaluate the evidence independently and reach its own conclusion as to whether to uphold the judgment. In doing so, the court must make an allowance for the fact that it neither heard nor saw the witnesses testify (see *Selle v Associated Motor Boat Co. Ltd* (1968) EA 123). On the quantum awarded by a subordinate court, this court can only disturb the awarded sum if it is shown that the court took into account an irrelevant factor, or left out of account a relevant one, or the amount is inordinately low or inordinately high that it was a wholly erroneous estimate of the damages (see *Kemfro Africa Ltd t/a Meru Express Services v Lubia & Another* [1982-88] 1 KAR 777). The court should also make fair and consistent awards in line with the principle that similar injuries must attract similar awards (see *Maore v Geoffrey Mwenda* [2004]eKLR).
4. It was not disputed that the Respondent sustained a fracture of the left humerus arm bone (lower 1/3rd) and had a cut wound on the right hand. As per the medical report dated 01.11.2018 produced by Dr. Ajoni Adede, the doctor assessed his permanent partial liability at 8%, that healing will take place with stiffness of the left elbow and that the fracture sites will remain a weak point for life even if the bones unite. That the fracture site is a focus for accelerated bone and joint wear and tear. I note that whereas the Respondent filed written submissions in support of its position for damages, the Appellants did not file the same despite the subordinate court granting them various opportunities to do so. The Subordinate Court could therefore not be faulted for only considering the Respondent's submissions in arriving at the sum to be awarded.
5. Even though the Respondent sought for a sum of Kshs. 1,500,000.00, the Subordinate Court held that a sum of Kshs. 600,000.00 would be appropriate. I find that this sum is within the range of awards issued for persons who have sustained "a fracture of the left proximal 1/3 humerus" (see *Agility Logistics Limited v John Wambua Musau & another Voi HCCA No. 27 of 2015* [2017] eKLR).
6. I do not find any reason to disturb the award given by the Subordinate Court. The Appeal is dismissed with costs. The Appellant shall pay costs assessed at Kshs. 30,000.00.

SIGNED AT NAIROBI

D. S. MAJANJA

JUDGE

DATED AND DELIVERED AT MOMBASA THIS 5TH DAY OF APRIL 2024.

OLGA SEWE

JUDGE

