



REPUBLIC OF KENYA



Ahmed v Abdi (Civil Appeal E139 of 2023) [2024] KEHC 7204 (KLR) (13 June 2024) (Judgment)

Neutral citation: [2024] KEHC 7204 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E139 OF 2023
TW CHERERE, J
JUNE 13, 2024**

BETWEEN

ANWAR AHMED APPELLANT

AND

HAWA ISAACK ABDI RESPONDENT

*(Appeal against judgment and decree in Isiolo CMCC No.
E034 of 2021 by Hon. K. Mutai (CM) on 11th August, 2023)*

JUDGMENT

1. Sometimes on 21st April, 2021, a road accident occurred involving Appellant's M/V KAY 531X (motor vehicle) and motor cycle KMFG 792H (motor cycle) in which Respondent was travelling as a pillion passenger as a result of which she suffered injuries.
2. Respondent filed suit for damages against the Appellant and at the conclusion of the trial, the learned trial magistrate found that the motor vehicle was driven negligently. Appellant was found liable at 100% and judgment was entered for the Respondent as follows:
 1. General damages Kshs 400,000/-
 2. Special damages Kshs 10,000/-
 3. Costs
 4. Interest

Appeal

3. Appellant has appealed on grounds among others that the trial magistrate misapprehended the evidence, erred in wholly blaming Appellant for the accident and in awarding an exorbitant and erroneous amount.



Analysis and Determination

4. I have considered the appeal in the light of the evidence on record and the submissions filed on behalf of both parties.
5. This being a first appeal this court is by law mandated and obligated to proceed by way of a retrial. In doing so the court has the duty to re-examine and reappraise all the facts on record and the law applicable and find for itself a conclusion without the need to be bound by the findings of the trial court. It should also bear in mind that it did not see nor hear the witnesses and give an allowance for that. See *Selle & another v Associated Motor Boat Co. Ltd & others* (1968) E.A 123; *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR; *Abok James Odera t/a A. J. Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates* [2013] eKLR.
6. At the hearing, Respondent blamed the Appellant for abruptly turning onto the lawful lane of the motor cycle causing the accident. Abdullahi Roba who was riding behind the accident motor cycle stated that the accident occurred when the motor vehicle made a sudden turn knocking the motor cycle off the road.
7. Appellant conceded the accident occurred on 21st April, 2021 involving M/V KAY 531X that he was driving and motor cycle KMFG 792H in which Respondent was travelling as a pillion passenger as a result of which Respondent suffered injuries.
8. From the evidence on record, the Respondent's evidence that Appellant turned suddenly onto the lawful lane of the motor cycle demonstrates negligence on the part of the Appellant and that evidence was well corroborated. I therefore find as did the trial magistrate that Appellant was wholly to blame for the accident and liable at 100%.
9. On quantum, a medical report by Dr. Wachira dated 05th May, 2021 reveals that Respondent suffered the following injuries:
 - i. Blunt trauma to the lower limbs
 - ii. 2 x2 cm and 2x3 cm cuts, a bruise and soft tissue injury on left knee
 - iii. Bruises on proximal left leg
 - iv. Blunt trauma and soft tissue injuries to the back
 - v. Mild head injury
 - vi. Soft tissue injuries to the left hand
10. At the time of examination 13 days after the accident, Respondent had not healed and was experiencing headaches, pain on left thumb, was limping and had a swollen right knee, scars and bruises on left knee. The doctor assessed permanent incapacity at 26.67%.
11. Dr. Namasaka in his undated report reveals that Respondent suffered:
 - i. Cut wound on forehead
 - ii. Small cut wound on nasal bridge
 - iii. Dislocation left thumb
 - iv. Bruises right lateral aspect of right knee



- v. Bruises left knee
- vi. Bruises right elbow
12. The doctor additionally found that Respondent still had headaches and joint pains especially on left fibula joint and the left thumb was still healing.
13. At the hearing, Respondent prayed for Kshs 500,000 and cited *GA (Minor suing thro' her father and next friend BZ) v Paul Muthiku* [2020] eKLR where the High Court enhanced an award of Kshs 300,000- to Kshs 500,000/- for Multiple fractures of; (1) frontal left orbital roof. (comminuted) (2) right temporal bones(petrous) (3) Bleeding in the skull airspaces (haemosinus), cut on the head(frontal) and cut on the chin and *Moiz Motors Limited & another v Harun Ngethe Wanjiru* (2021) eKLR where the Plaintiff sustained soft tissue injuries and moderate head injury and was hospitalized for three days. The trial court substituted an award of general damages of Kshs 700,000/- with that of Kshs 500,000/-.
14. Appellant did not make any offer but urged the court to be guided by the following authorities;
- i. *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 and award of Kshs. 300,000 was reduced to Kshs. 90,000 on appeal
- ii. *Sokoro Saw Mills Limited v Grace Nduta Ndungu* (2006) eKLR where Kshs 30,000/- was awarded for soft tissue injuries
- iii. *Richard Olwanda Otolu v Francis K. Kamau* [2000] eKLR where Kshs 90,000/- was awarded for Soft tissue injury to the right shoulder joint, right thigh, knee joint and ankle joint.
15. The Court of Appeal in *Stanley Maore v Geoffrey Mwenda* NYR CA Civil Appeal No 147 of 2002 [2004] eKLR settled the principles to be applied in assessing damages and stated that:
- Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases. (Emphasis added).
16. Quantum is a matter of judicial discretion which can only be interfered with if the court is satisfied that the court's decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion. (See *Mbogo v Shab* (1968) EA 93 and *Kemfro Africa Limited t/a Meru Express Services (1976) & another v Lubia & another, No 2* [1987] KLR 30).
17. Although the trial court did not specifically distinguish the cited authorities, *Moiz Motors Limited & another v Harun Ngethe Wanjiru* (2021) eKLR cited by the respondent appears to have more or less similar injuries as those suffered by the Respondent.
18. From the foregoing, I do not find any reason to interfere with the discretion of the trial magistrate. The award was in my considered view reasonable in the circumstances.
19. In the end, I find that the appeal is unmerited and it is dismissed with costs to the Respondent.

DELIVERED AT MERU THIS 13TH DAY OF JUNE 2024

WAMAE. T. W. CHERERE



JUDGE

Appearances

Court Assistants - Kinoti/Munene

For Appellant - Mr. Mwirigi for Mukira Mbaya & Co. Advocates

For Respondent - Mr. Amule for Khan & Associates

