



**Saina & another v Boit (Civil Appeal E004 of 2022)
[2024] KEHC 6738 (KLR) (6 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 6738 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
CIVIL APPEAL E004 OF 2022**

JR KARANJA, J

JUNE 6, 2024

BETWEEN

ELIUD KIBET SAINA 1ST APPELLANT

JOYCE CHEPKOECH CHERUIYOT 2ND APPELLANT

AND

COSMAS KIPCHIRCHIR BOIT RESPONDENT

(Being an 21 appeal from the judgment and decree of the Hon. B.W. Wachira, Resident Magistrate delivered on 7th February 2022 in Kapsabet SPMCC No. E027 of 2020)

JUDGMENT

1. On the 1st February 2022, the Resident Magistrate at Kapsabet delivered the impugned judgment in SPMCC No. E027 of 2020, in which the Plaintiff/Respondent, Cosmas Kipchirchir Boit, had sued the Defendants/ Appellants, Eliud Kibet Saina and Joyce Chepkoech Cheruiyot, as the owners of motor vehicle Registration No. KCJ 068J which hit and knocked down a motor cycle Registration No. KMEH 473C on which the Plaintiff was riding on as a pillion passenger. The Plaintiff sustained bodily injuries after the accident and later filed this suit against the Defendants/ Appellants.
2. The Plaintiff/Respondent pleaded that the Appellant’s motor vehicle aforementioned was so negligently driven, managed and/or controlled that it lost control and veered off its lane onto the motor cycle’s lane thereby causing the material accident.

The Respondent therefore prayed for damages against both Appellants, jointly and severally together with costs of the suit and interest.
3. The Appellant denied the Respondent’s allegations against themselves and contended that if the alleged accident occurred, then it was wholly caused and/or substantially contributed to by the negligence of the Plaintiff/ Respondent and/or owner/rider of the aforementioned motor cycle.



The Appellants prayed for the dismissal of the Respondent's suit with costs.

4. At the trial, the Plaintiff (PW2) testified and called a traffic police officer, PC Cherik Too (PW1) as his witness. The Defendants/ Appellants did not lead any evidence in support of their pleadings and after the filing of the final submissions by both sides, the court rendered the impugned judgment to the effect that the Defendants were found fully liable for the accident, hence to the Plaintiff in damages.

The general damages were assessed at Kshs. 1.5million and the special damages at Kshs. 180,360/-. The Plaintiff was also entitled to costs of the suit and interest.

5. Being dissatisfied with the judgment on quantum of damages, the Appellants preferred this appeal on the basis of the grounds contained in the memorandum of appeal dated 9th February 2022 and filed herein on 11th February 2022.

The appeal was heard by way of written submissions which were filed on behalf of the Appellants by Onyinkwa and Company Advocates and on behalf of the Respondent by Morgan Omusundi Law Firm.

This court, gave due consideration to the appeal on the basis of the supporting grounds, the rival submissions and the court records and embarked on reconsidering the evidence with a view to arriving at its own conclusions having in mind that the trial court had the benefit of seeing and hearing the witness (See, *Selle & Another Vs. Associated Motor Boat Company Limited and Others* (1968) EA 123)

6. What emerged as issues for determination were the two aspects of liability and quantum of damages. The trial court's finding on liability of the Appellant at 100% was in consonant with the Respondent's evidence which indicated that the Appellants were culpable for the occurrence of the accident. In any event, this fact was not substantially disputed and was also not disproved by any evidence from the Appellant.

7. On the question of quantum of damages, and in particular, general damages the legal position is that an appellate court cannot interfere with an award for general damages unless it is demonstrated that the trial court applied wrong legal principals in assessing the damages or misapprehended the evidence in some material respect as to arrive at a figure which was either inordinately high or low.

8. This is a principle of law which was pronounced by the Court of Appeal in *Butt Vs. Khan* (1981) KLR 349, and followed in so many other decisions of the superior courts including *Kemfro Africa Limited t/a Meru Express Service and Another Vs. A. M. Lubia and Another* (1982 - 88) 1KAR 727 and *Lukenya Ranching and farming Co-operative Society Limited Vs. Kavoloto* (1970) EA 414.

9. In *Gicheru Vs. Morton and Another* (2005) 2KLR 333, it was held that: -

“In order to justify reversing the trial judge on the question of the amount of damages it was generally necessary that the Court of Appeal should be convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of the court, an entirely erroneous estimate of the damage to which the Appellant was entitled.”

10. The guiding principles in the award of general damages for personal injury claims are that: -
 1. An award of damage is not meant to enrich the victim but to compensate such victim for the injuries sustained.



2. The award should be commensurable with the injuries sustained.
3. Previous awards in similar injuries sustained are mere guide but each case be treated on its own facts.
4. Previous awards to be taken into account to maintain stability of awards but factors such as inflation should be taken into account.
5. The awards should not be inordinately low or high.

These principles were enumerated in the case of Charles O. Odeyo Vs. Apollo J. Andabwa and Another (2017) eKLR.

11. In an earlier decision by the Court of Appeal in Southern Engineering Limited Vs. Musingi Mutia (1985) KLR 730, it was held that: -

“It is trite law that the measurement of the quantum of damages is a matter for the discretion of the individual judge, which of course has to be exercised judicially and with regard to the general conditions prevailing in the country generally, and prior decision which are relevant to the case in question to principles behind the award of general damages enumerated. The difficult task of awarding money compensation in a case of this kind is essentially a matter of opinion judgment and experience.”

12. It was further held in the same case that: -

“The most that can be done is to consider carefully all the circumstances of the case in question, and to consider other reasonably similar cases when assessing the award..... it need hardly be emphasized that caution has to be exercised when paying heed to the figures of awards in other cases..... This is not to say that damages should be standardized or that there should be any attempt to rigid classification. It is but to recognize that since in court of law compensation for physical injury can only be assessed and fixed in monetary terms the best that courts can do is to hope to achieve some measure of uniformity by paying need to any current trend of considered opinion.”

13. As was held in the case of Simon Taveta Vs. Mercy M. Njeru (2014) eKLR, the context in which the compensation for the Respondent must be evaluated is determined by the nature and extent of injuries and comparable awards made in the past.

In the present case, the medical reports by Dr. Sokobe dated 17th November 2020 and Mr. Z. Gaya dated 19th March 2021 were in agreement that the plaintiff suffered fracture of the right humerus bone and the right tibia/ fibula.

14. According to Dr. Sokobe, the injuries were mainly bony tissue injuries which were healing well even though further treatment for removal of the implants at a cost of Kshs. 200,000/- was necessary. Dr. (Mr.) Gaya indicated that at the time he examined the Plaintiff, he did not have any present complaints.

Both reports, it may safely be stated herein, indicated that the Plaintiff recovered or was expected to recover from his injuries without any residual effect of a permanent nature.

15. In the final submissions before the trial court, the Plaintiff/ Respondent proposed a sum of Kshs. 2.5million in general damages and future medical expenses. He claimed a sum of Kshs. 173,810/- as special damages.



The Defendant/Appellant proposed a sum of between Kshs. 200,000/- and Kshs.250,000/- general damages and urged the court to award special damage, on the basis of the receipts exhibited in court.

Both parties cited authorities which were relevant to their respective proposals.

16. The trial court considered the injuries suffered by the Plaintiff and the authorities cited by the parties and observed that: -

“Assessment of damages is not without limits. A court must have presence of mind to ascertain to itself the sum of general damages that courts would ordinarily award in respect of particular injury. A court must therefore be guided by precedents.”

17. The trial court, being alive to the principle pronounced in the case of Southern Engineering Company Limited (supra) and heavily relying on the decisions in the case of Teresia Ngugi and Another Vs. Michaelo M. Kimende (2018)eKLR and the case of Francis N. Wambui & Others Vs. VK (a Minor) (2019) eKLR, awarded the Plaintiff general damages in the sum of Kshs. 1.5million.

18. Although the injuries suffered by the Plaintiffs in the aforementioned authorities were of a more serious nature than the injuries suffered by the Plaintiff herein, mostly an account of the residual effects connoting permanent disability, the award of Kshs. 1.5million was reasonable and adequate regard being given to current trend of inflation and the aspect of future medical expenses being factored in.

19. This court does not see any convincing reasons to interfere with that award. The Appellants have failed to demonstrate that the trial court applied wrong principles in arriving at the award or that the award was inordinately excessive in the circumstances. Consequently, this court upholds the award.

As regards, special damages, the Plaintiff/ Respondent claimed a sum of Kshs. 180,360/- which was duly awarded by the trial court on the basis of the documentary evidence availed by the Plaintiff in the form of receipts, invoices and notes depicting the expenses incurred in the course of treatment.

20. In sum, this appeal is wanting on merit and is hereby dismissed in its entirety with costs to the Respondent.

Ordered accordingly.

DELIVERED AND DATED THIS 6TH DAY OF JUNE 2024.

**J. R. KARANJAH,
JUDGE**

