



Odera & another v SAO aka SAO (Minor suing through her next friend JAO) (Civil Appeal E091 of 2021) [2023] KEHC 18798 (KLR) (13 June 2023) (Judgment)

Neutral citation: [2023] KEHC 18798 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL E091 OF 2021**

**KW KIARIE, J
JUNE 13, 2023**

BETWEEN

HERINE ODERA 1ST APPELLANT

CHOUNDRY MOTORS LTD 2ND APPELLANT

AND

**SAO AKA SAO (MINOR SUING THROUGH HER NEXT FRIEND
JAO) RESPONDENT**

*(Being an Appeal from the judgment and decree in Oyugis Principal Magistrate's
PMCC No. 100 of 2019 by Hon. Celesa Okore – Principal Magistrate)*

JUDGMENT

1. Herine Odera and Choundry Motors Ltd, the appellants, were the defendants in Oyugis Principal Magistrate's PMCC No. 100 of 2019 where the claim was for general damages and special damages following a road traffic accident involving motor vehicle KCQ 862U and the deceased. The deceased was a pedestrian along Kendu Bay-Katito road when she was knocked down and sustained injuries. The learned trial magistrate held the appellants 100% liable and awarded Kshs.1, 500, 00.00 in general damages and Kshs.14, 000.00 special damages.
2. The appellants were aggrieved by the said judgment and filed this appeal through the firm of Kimondo Gachoka & Company Advocates. They raised the following grounds of appeal:
 - a. The learned trial magistrate grossly misdirected himself in treating the evidence and the submissions on quantum before him and consequently coming to wrong conclusion on the same.
 - b. The learned magistrate erred in law and in fact in was entitled to kshs.1, 500,000/- (one million five hundred thousand shillings only) being general damages.



- c. That the learned trial magistrate proceeded on worn principles when assessing damages to be awarded to the respondent if any and failed to apply precedents and tenets of the law applicable.
 - d. The learned trial magistrate decision was unjust, against the weight of evidence and was based on misguided points of law and wrong principles of law and has occasioned a miscarriage of justice.
 - e. The learned trial magistrate erred in law and fact in relying on extraneous circumstances which were not supported by the evidence on record, hence arriving at wrong findings as regards the nature of the plaintiff's injuries.
 - f. The learned trial magistrate erred in fact and in law by basing his judgment solely on the testimony of the plaintiff and disregarding the evidence on record.
 - g. The learned trial magistrate erred in fact and in law by awarding the plaintiff inordinately high quantum as damages in the circumstances of this case.
 - h. The learned trial magistrate erred in fact and in law in awarding damages to the claimant/respondent for injuries not pleaded by the respondents herein.
 - i. The learned trial magistrate erred in fact and in law in failing to consider conventional awards both on liability and quantum in cases of similar nature.
3. The appeal was opposed by the respondents through the firm of Nyatundo & Company Advocates. The respondent contended that it had not been demonstrated that the trial court acted on wrong principles and that the award was not inordinately high.
4. This Court is the first appellate court. I am aware of my duty to evaluate the entire evidence on record bearing in mind that I had no advantage of seeing the witnesses testify and watch their demeanor. I will be guided by the pronouncements in the case of *Selle vs. Associated Motor Boat Co. Ltd.* [1965] E.A. 123, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its own conclusions in the matter.
5. The appeal is on quantum in respect of general damages.
6. It is trite law that an appellate court will only interfere with an award of the trial court if certain circumstances are satisfied. In *Butt vs. Khan* [1981] KLR 349 at page 356 Law JA stated:
- ...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 a figure which was either inordinately high or low.
7. The respondent sustained the following injuries as a result of the complained of accident:
- a. Multiple deep cut wounds on the occipital region;
 - b. Chest contusion;
 - c. Degloving injury on the left thigh;
 - d. Compound left humerus fracture;
 - e. Multiple bruises on the right lower limb;
 - f. Right clavicle fracture;



- g. Severe head injury with loss of consciousness;
- h. Multiple bruises on the face; and
- i. Multiple bruises on the scalp.

The doctor concluded and opined:

Following the road traffic accident, S sustained grievous harm i.e. severe head injury, humerus fracture, clavicle fracture with multiple body injuries that are on the process of healing with large disfiguring permanent ugly scars. Recovery is expected to take a very long time. She requires physiotherapy with occupational therapy. The head injury may complicate later with post traumatic epilepsy.

- 8. In the trial court the appellants proposed an award of Kshs.180, 000.00 as reasonable compensation and cited several decisions which they relied on to urge their proposal. They relied on Francis Mwangi Muchine vs Francis Kimani Mbugua [2001] eKLR where an award of Kshs. 100,000/= was made on 3rd May 2001 for fracture of the left humerus and fracture of the left tibia and fibular. The second decision they relied on was Provincial Insurance Company of East Africa Ltd v Mordekai Mwanga Nandwa Civil Appeal No. 179 of 1995 [1995 – 1998] 2 EA 289.
- 9. Both cases were on less severe injuries than what the respondent herein suffered and were decided more than twenty years prior to the decision appealed from.
- 10. On appeal the appellants increased their proposal to Kshs.400, 000/=.
- 11. Either deliberately or inadvertence, the record of appeal did not include the submissions of the respondent in the trial court.
- 12. After considering the injuries sustained, the prognosis by the doctor who examined the complainant and the authorities cited, I find that the award in general damages cannot be described as not inordinately high. The appeal lacks merit and the same is dismissed with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 13TH DAY OF JUNE, 2023

KIARIE WAWERU KIARIE

JUDGE

