



REPUBLIC OF KENYA



KENYA LAW
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**Kinyanjui v Kinyanjui (Civil Appeal E116 of 2023)
[2024] KEHC 16235 (KLR) (5 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 16235 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL E116 OF 2023
REA OUGO, J
NOVEMBER 5, 2024**

BETWEEN

JACOB NDUNGU KINYANJUI APPELLANT

AND

EUNICE NDUNGU KINYANJUI RESPONDENT

(Being an appeal against the judgment/decree of the Principal Magistrate's Court at Sirisia Law Courts by Honourable J.O Manasses (RM) on 7th September 2023 in SPMCC NO E075 OF 2022)

JUDGMENT

1. On 7th August 2022, a road accident occurred between motor vehicle registration number KBU 742K Mitsubishi Pajero and motor vehicle reg. no. KDG 503L Mazda CX-5 at Mayanja area. The respondent was a passenger in the KBU 742K Mitsubishi Pajero, and sustained serious bodily injuries. The respondent claimed to have suffered the following injuries: blunt injuries to the head, neck, chest and back. The respondent sought general and special damages.
2. The appellant filed his statement of defence. He denied the occurrence of the accident. He averred that if any such accident occurred, then it was solely caused and contributed to by the driver of motor vehicle KBU 742K Mitsubishi Pajero.
3. The finding on liability in the Principal Magistrate's Court at Sirisia in SPMCC NO E073 of 2022 (now Bungoma HCCA No E117 of 2023) was to be applied to this case. The lower court adopted the liability of 70:30 in favour of the respondent. The respondent was awarded general damages of Kshs 400,000/- and Kshs 10,040/- as special damages. The damages were subjected the apportioned liability.
4. The appellant dissatisfied with the finding of the court filed an appeal challenging the finding of the lower court on the following grounds:



1. THAT the learned trial magistrate erred in law and in fact in awarding the respondent a sum of Kshs 500,000/- on general damages which award is inordinately excessive considering the injuries sustained by the respondent and existing court awards in comparable injuries.
 2. That the learned magistrate misdirected himself by failing to consider sufficiently the appellant's submissions, the medical report on record, the treatment notes, the pleadings and the evidence thereby arriving at a wrong decision on general damages which has occasioned a miscarriage of justice.
 3. The learned trial magistrate grossly misdirected himself ignoring the principles applicable and relevant authorities on general damages cited in the written submissions presented and/or filed by the appellant.
 4. That the learned trial magistrate proceeded on wrong principles when assessing the general damages to be awarded to the respondent and failed to apply precedents and tents of the law applicable thereby arriving at a figure which is manifestly excessive.
 5. That the learned trial magistrate erred in law and in fact in applying a high inflation rate thereby arriving at an erroneous award in general damages that is inordinately excessive for such injuries.
 6. That the learned trial magistrate erred in awarding a sum in respect of damages which was inordinately high in the circumstances occasioning a miscarriage of justice by deviating from existing and established judicial principles on accident claims.
 7. That the learned trial magistrate failed to adequately evaluate the evidence and exhibits and thereby arrived at a decision unsustainable in law.
 8. That the learned magistrate erred in law and in fact in misapprehending and misunderstanding the extent and severity of the injuries suffered by the respondent thereby leading to an erroneous estimate of injuries sustained by the respondent.
 9. That the learned magistrate erred in law and fact in apportioning liability at 70%:30% thus failed to appreciate the appellant's statement of defence, the totality of the evidence before him against the weight of the evidence tendered by the respondent/plaintiff and did not consider the submissions on behalf of the appellant.
 10. That the learned trial magistrate erred in law and in failing to appreciate the reasonable and sufficient evidence tendered in court hence erroneously held the defendant/appellant 70% liable.
 11. That the learned magistrate erred in law and fact in holding the appellant/defendant liable for negligence yet the evidence of Pw4 police officer was not conclusive on whether the appellant/defendant was to blame for the occurrence of the accident.
 12. That the learned senior resident magistrate misdirected himself in law by assessing and awarding damages that were manifestly excessive and incomparable to the current judicial awards and not commensurate with the nature of injuries sustained by the respondent.
5. At the lower court, there was consent by the parties that the liability determined in the lead file was Principal Magistrate's Court at Sirisia in SPMCC NO E073 of 2022 was to be applied. However, the finding on liability in Principal Magistrate's Court at Sirisia in SPMCC NO E073 of 2022 was the subject of appeal in Bungoma HCCA No E117 of 2023 and the apportionment of liability at 70:30 was



set aside and substituted with that of 50:50 as against the appellant and driver of KBU 742K Mitsubishi Pajero. Given that the parties at the subordinate court entered a consent that the liability in the lead file, now HCCA No E117 of 2023 shall be adopted, therefore, I apportion liability between the appellant and respondent at 50:50.

6. Therefore, the only issue for determination is whether the damages awarded were manifestly excessive. In an appeal against the assessment of damages, an appellate court must be careful not to interfere with the trial court's discretion unless certain conditions are met. These conditions were outlined in the case of *Kemfro Africa Limited t/a "Meru Express Services (1976)" & Another v Lubia & Another (No 2) Civil Appeal No 21 of 1984 [1985] eKLR* thus:

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either the Judge, in assessing the damages took into account an irrelevant factor, or left out of account a relevant one, or that; short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.”

7. The appellant submits that the respondent sustained soft tissue injuries. He also contends that the medical report produced by the appellant was not considered. Therefore, the award of Kshs 400,000/- was excessive.
8. The respondent submits that they had sought an award of Kshs 510,590/- at the lower court. Therefore, an award of 287,028/- was reasonable. The amount awarded by the trial court was not inordinately high.
9. According to the medical report of D Sokobe, the respondent sustained soft tissue injuries. He noted that the respondent was recovering well. Similarly, according to Dr. Gaya, the respondent sustained soft tissue injuries that had healed well. Although Dr. Gaya's report talks of an injury to the left thumb, the respondent did not plead that she sustained any injury on her thumb.
10. It is clear that the respondent sustained soft tissue injuries listed in his plaint. In *Daniel Gatana Ndungu & another v Harrison Angore Katana [2020] eKLR* the court awarded damages of Kshs 140,000/- where the plaintiff sustained soft tissue injuries. In my view the award of Kshs. 400,000/- was inordinately high.
11. In conclusion, I substitute the award of Kshs 400,000/- with an award of Kshs 140,000/- as general damages. The award shall be subjected to the liability as apportioned between parties, that is, 50:50. The award of special damages was not challenged by the appellant in his submissions. The appellant shall have the cost of the appeal.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 5TH DAY OF NOVEMBER 2024

R.E. OUGO

JUDGE

In the presence of:

Miss Ochieng -For the Appellant

Miss Shikhu -For the Respondent

Mr. Kizito -C/A

