



REPUBLIC OF KENYA



**Panij Automobiles (K) Limited & 2 others v Mathu (Civil Appeal
E056 of 2022) [2024] KEHC 14392 (KLR) (15 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14392 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E056 OF 2022
SM MOHOCHI, J
NOVEMBER 15, 2024**

BETWEEN

PANIJ AUTOMOBILES (K) LIMITED 1ST APPELLANT

JOSEPH MUCHIRI 2ND APPELLANT

BENARD KINYANUI NJUGUNA 3RD APPELLANT

AND

STEPHEN MATHU RESPONDENT

*(Being an Appeal against the Judgment of the Honourable E.K USUI (CM) -
Chief Magistrates in Nakuru CMCC NO.679 of 2020 on 23rd March, 2022)*

JUDGMENT

Introduction

1. This appeal arises from the judgment delivered on 23rd March 2022 in Nakuru CMCC No. 679 of 2020 where the Appellant was held liable and judgment entered in favour of the respondent herein for Kshs. 750,000.00 awarded as general damages.
2. According to the plaint dated 27th August 2020, as a result of the accident, the Respondent sustained the following injuries:
 - a. Displaced fracture of the right clavicle
 - b. Dislocation of the right shoulder joint
 - c. Soft tissue injuries of the left shoulder joint
 - d. Soft tissue injuries of the left knee joint



3. Being aggrieved by the said judgment, the Appellant instituted this appeal vide a Memorandum of Appeal dated 13th April, 2022 which essentially revolved on the issue of quantum.
4. The Appellants prays that the judgment and decree be set-aside or otherwise reviewed and substituted with a suitable award. He also pleads for costs of the appeal. The Respondent opposes this appeal.
5. Being a first Appeal, the Court relies on a number of principles as set out in *Selle and Another Vs Associated Motor Boat Company Ltd & Others* [1968] 1EA 123:’

“.....this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this Court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence.”

6. In *Gitobu Imanyara & 2 Others vs Attorney General* [2016] eKLR the Court of Appeal stated that: -

“An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect”.

7. From the above cases, the appropriate standard of review to be established can be stated in three complementary principles: -
 - a. That on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
 - b. That in reconsidering and re-evaluating the evidence, the first Appellate Court must bear in mind and give due allowance to the fact that the Trial Court had the advantage of seeing and hearing the witnesses testify before it; and
 - c. That it is not open to the first Appellate Court to review the findings of a Trial Court simply because it would have reached different results if it were hearing the matter for the first time.
8. The Argument advanced was that, the Quantum award was excessive inordinately high that it was an erroneous estimate. The Appellant advanced the Argument that an award of Kshs 350,000/- should suffice as general damages for pain and suffering.
9. On the quantum awarded by the learned trial magistrate, I am guided by both decisions in the case of *Sofia Yusuf Kanyare -vs- Ali Abdi Sabre & Anor* [2008] eKLR that it is now a settled position that an award of damages is a matter of discretion on the part of the Court seized of the matter and as in all discretionary matters the same is exercised judiciously depending on circumstances of each case but the guiding factor in regard to quantum of damages is that it should not be either too low to amount to an injustice or too high to amount to unjust enrichment of the victim.
10. The Analysis by this Court reveals that the Appellant submitted before the Subordinate Court that kshs 40,000/- would suffice while the Respondent submitted that kshs. 800,000/- would suffice and in this instance the Court awarded an award of Kshs 750,000/-



11. The Court notes that, the Appellants have introduced and relied on new authorities/materials to challenge the decision of the learned trial magistrate and the said authorities/materials were not presented/availed to the learned trial magistrate at the time of making the award herein. This is erroneous as this being an appeal, it is only fair and just that parties do challenge the same within the context that the learned trial magistrate dealt with the matter for reasons that this Honourable Court is supposed to consider the materials presented before the Trial Court when deciding whether or not the trial magistrate erred as was held in the case of Sila Tiren & another v Simon Ombati Omiambo [2014] eKLR.
12. The Court notes that the range of award between Kshs 350,000/- to Kshs 800,000/- are parameters already set by Courts in relation to similar injuries and that, the same range is for exercise of discretion based on peculiar circumstances in each case.
13. The Appellants have not pointed out in this appeal any irrelevant factor that the trial magistrate took into account in making the award. Neither has the appellant pointed out any relevant factor the learned magistrate left out. The appellant has also not shown how the said award of the trial Court is inordinately high and erroneous.
14. Damages should as matter of law compensate the victim and restore him or her to as much as possible to the position he/she was before prior to the accident.
15. In this appeal the appellant has not persuaded me that the amount awarded by the learned trial magistrate was so inordinately high that that it was either an erroneous estimate or that it kind of enriched the victim (respondent) of the accident, this Court finds that the quantum of damages awarded in the Lower Court was reasonable and was arrived at by the learned trial magistrate after taking into account all relevant factors.
16. As has been held by the High Court awards of between 350,000 to kshs 800,000/- are within acceptable range for exercise of discretion and the lower award band cannot be termed as being inordinately low and the higher award band cannot be termed as being inordinately high such as to be an erroneous estimate.
17. In the premises, this Court finds no merit in this appeal and the same is disallowed, the Lower Court judgment delivered on 23rd March 2022 is hereby upheld.
18. Costs of the Appeal are awarded to the Respondent.

It is so ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY VIA TEAMS ON THIS 15TH DAY OF NOVEMBER, 2024.

MOHOCHI S.M

JUDGE

