



**Wanjohi v Ng'ang'a (Civil Appeal E418 of 2023)
[2024] KEHC 14290 (KLR) (Civ) (15 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14290 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E418 OF 2023

RC RUTTO, J

NOVEMBER 15, 2024

BETWEEN

JOEL MUCHIRU WANJOHI APPELLANT

AND

IRENE NJOKI NG'ANG'A RESPONDENT

(Being an appeal from the Judgment of Honourable S. A. Opande Principal Magistrate in Nairobi MCCC No. E8501 of 2021, delivered on 16th May, 2023)

JUDGMENT

1. This appeal arises from a judgment and decree in Nairobi Principal Magistrate's Civil Suit No. E8501 of 2021. In the said suit, the Appellant sued the Respondent for general and special damages arising from a road traffic accident in which he sustained bodily injuries.
2. The Respondent was sued in her capacity as the owner of motor vehicle registration number KCG 040W. The facts of the case are that the Appellant was lawfully riding motorcycle registration number KMEV 081J along Thika Road. It was alleged that motor vehicle KCG 040W was negligently driven, resulting in a collision with the Appellant's motorcycle, as a result of which the Appellant sustained injuries. Upon hearing the parties, the trial court delivered its judgment, apportioning 100% liability in favor of the Appellant against the Respondent.
3. The trial court also awarded general damages of Kshs. 350,000 and special damages of Kshs. 5,550, with interest at court rates payable from the date of the judgment until payment in full, as well as costs of the suit.
4. The Appellant, being aggrieved by the judgment, lodged this appeal dated 23rd May 2023, setting out the following grounds of appeal, which I hereby produce verbatim and seriatim:



- a. That the Learned Trial Magistrate erred in law and in fact in finding that the Appellant was entitled to general damages of Kshs. 350,000, which was too much on the lower side in view of the injuries suffered by him, that it presented a miscarriage of justice.
 - b. That the Learned Trial Magistrate erred in law and in fact by failing to consider conventional awards for general damages in cases of similar injuries and awarded general damages for pain and suffering which is very low.
 - c. That the Learned Trial Magistrate erred in law and in fact by failing to consider the Appellant's submissions and judicial authorities on the quantum of damages for pain, suffering, and loss of amenities, thereby arriving at an erroneous figure on the same.
 - d. That the Learned Trial Magistrate erred in law and in fact when making his award by failing to consider the passage of time and incidence of inflation.
 - e. That the court erred by rendering a judgment that was not based on proper consideration of the applicable law and principles on the award of general damages payable to the Appellant herein.
5. The Appellant seeks that the trial court award on quantum be set aside and the court to reassess the general damages as well as grant costs of this appeal. The Appeal was canvassed by way of written submissions.

The Appellant's Submissions

5. The Appellant's submissions, filed by the firm of Waiganjo Wachira & Company Advocates, are dated 29th May 2024. They provide a background of the case and identified one issue for determination: whether the award of kshs 350,000/= awarded to the Appellant as general damages for pain suffering and loss of amenities was inordinately low so as to present a wholly erroneous estimate of damages awardable for the injuries sustained.
6. He submitted that the award of Kshs. 350,000 as general damages was inordinately low compared to the severity of the injuries sustained and comparable awards by the courts. To buttress this reference was made to the case of *Tayab vs Kinanu* (1983)KLR 114 and *Sheikh Mustaq Hassan vs Nathan Mwangi Kamau Transporters & Others* (1986) KLR 457.
7. It was submitted that it was common ground that the appellant sustained fracture of the left distal tibia, the degree of permanent incapacitation was assessed at 20% by the Appellant's doctor and 4% by the Respondent's doctor hence a sum of Kshs. 1,500,000 would have been reasonable and sufficient compensation to restore him to the position he was in before suffering injuries. Reliance was placed on the case of *Joseph Musee Mua v. Julius Mbogo Mugi & 3 Others* [2013] eKLR, where the court awarded Kshs. 1,300,000 for comparable injuries as general damages for pain, suffering, and loss of amenities.
8. Also relied upon was the case of *Kimathi Muturi Donald v. Kevin Ochieng Aseso* [2021] eKLR, where an award of Kshs. 1,200,000 was made for comparable injuries.
9. The Appellant urged this court to allow the appeal with costs and interest as prayed.



The Respondent's Submissions

10. The Respondent's submissions, filed by the firm of S. M. Righa & Company Advocates, are dated 22nd July 2024. The Respondent submitted that the award of quantum, awarded by the trial court was sufficient considering the injuries sustained by the Appellant.
11. It was her submission that the authorities relied upon by the Appellant in the trial court were not relevant to this case since the injuries in those cases were more serious than those suffered by the Appellant.
12. She further submitted that the trial court's award of Kshs. 350,000 was sufficient and relied on numerous cases, including *Daniel Otieno Owino & Another v. Elizabeth Atieno Owuor* [2020] eKLR, where the appellate court set aside the lower court's award of Kshs. 600,000 and substituted it with Kshs. 400,000 for head, chest, and leg injuries with cut wounds and a fracture, injuries on the left lower ankle joint and on the left thigh.
13. She relied on the case of *Atunga v. Mogambi* (Civil Appeal E009 of 2021) [2022] KEHC 9854 (KLR), where the court upheld an award of Kshs. 550,000 as general damages for pain and suffering for the following injuries; bruises on the frontal part of the head; cut wound on the pariental region; chest trauma; dislocation of the right wrist; bruises with multiple cut wounds on upper limbs; fracture on the right tibia/fibula bones; dislocation of the right hip joint and multiple cut wounds on the lower limbs.
14. She also made reference to the case of *Paul Muiruri Njau v. David Waruinge Gichia & Another* [2020] eKLR, where the High Court substituted the award of Kshs. 300,000 with an award of Kshs. 250,000 as general damages for pain and suffering for the following injuries; fracture of the distal tibia and soft tissue injuries on the wrist.
15. It was therefore the Respondent's submission that the trial court's award was fair and reasonable and she urged the court not to interfere with the same.

Analysis and Determination

17. This being a first appellate court, it is guided by the dictum in the case of *Selle v. 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 tendered before the trial court, assess it, and make its own conclusions in the circumstances.
18. Having considered the record of appeal, supplementary record of appeal, grounds of appeal, submissions, and authorities relied on by the respective parties, I opine that the sole issue for determination is whether the award of general damages was inordinately low.
19. The principles upon which this court can interfere with an award of damages made by the trial court are well settled. In *Gitobu Imanyara & 2 Others v. Attorney General* [2016] eKLR, the Court of Appeal held that:

“...it is firmly established that this Court will be disinclined to disturb the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a larger sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court 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 low as to make it, in the judgment of



this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled.
(Emphasis mine).

20. Additionally, the Court of Appeal in *Odinga Jacktone Ouma v. Mourreen Achieng Odera* [2016] eKLR stated as follows: “Comparable injuries should attract comparable awards.”
21. In the present suit, it is not in dispute that the Appellant’s injuries, as set out in the Plaint, were a fracture of the left distal tibia. In awarding damages of Kshs. 350,000, the trial court observed that the Appellant sustained a fracture of the left distal tibia with a 20% permanent incapacity. The trial court took into account the fact that there was no evidence the plaintiff sustained soft tissue injuries. The court also considered the differences and similarities of the injuries sustained and held that comparable injuries should attract comparable awards.
22. I have considered the Medical Report by Dr. Wambugu dated 23rd November 2021, which indicated blunt trauma as well as skeletal and soft tissue injuries with 4% permanent incapacitation. Further I also note that the medical report provides for future medical expense however, it was not pleaded by the Appellant and hence will not delve into it.
23. I have considered other comparative cases where awards for fractures of the left distal tibia were made as follows:
 - i. *Kiama v Mutiso (Civil Appeal 40 of 2023)* [2024] KEHC 5135 (KLR) (13 May 2024) (Judgment) the court set aside the award of Kshs. 700,000.00 awarded as general damages and substituted it with an award of Kshs. 400,000.00 for the following injuries a fracture of the left tibia bone (upper 1/3) and a blunt injury to the left leg and thigh, 8% permanent partial disability. The medical report also noted that the plaintiff would have stiffness of the left knee, the fracture site would be predisposed to arthritis and he will suffer accelerated bone and joint wear and tear.
 - ii. *Triad Coaches Ltd and Another v Mary Mutheu Kakemu* [2020]eKLR where the court awarded Kshs. 250,000.00 to the claimant who suffered a fracture of the distal tibia fibula and soft tissue injuries on the wrist.
24. The question then is whether Kshs. 350,000/- award was inordinately low in the circumstances. Having evaluated the cases cited by the Appellant, I note that the injuries therein were more serious than those suffered by the Appellant. I therefore hold that the award of Kshs. 350,000.00 is reasonable in the circumstances.
25. The Appeal is therefore dismissed each party to bear its own costs.

RHODA RUTTO

JUDGE

DELIVERED, DATED AND SIGNED THIS 15TH DAY OF NOVEMBER 2024

For Appellant:

For Respondent:

Court Assistant:

