



**REPUBLIC OF APPEAL**  
**IN THE COURT OF APPEAL**  
**AT MOMBASA**  
**(Coram: Potter, Kneller & Hancox, JJ A)**  
**CIVIL APPEAL 33 OF 1983**

**BETWEEN**

**PAUL MUNYASIA ..... APPELLANT**

**AND**

**1. TIRUS GATUMBU**

**2. JOHN M T GATUMBU ..... RESPONDENTS**

**(Appeal from a Judgment of the High Court of Kenya at Mombasa (Bhandari, J) dated February 18th, 1983 In**

**Civil Case 529 of 1982)**

**JUDGMENT OF KNELLER, J A**

On February 18, 1983 the High Court in Mombasa (Bhandari J) awarded Paul Munyasia, the appellant, Kshs 600 special damages and Kshs 20,000 general damages, costs and interest on all those sums. The appellant in his Memorandum of Appeal, and by the submissions of his advocate, urges this court to allow his appeal with costs and order that his suit be reheard on the issue of damages or, alternatively, vary them because the learned judge erred in law and in fact on this award. Paul Munyasia was 6 or 64 years old on December 5, 1981 when he was taken to the Coast Province General Hospital for treatment after he was involved in a road traffic accident. He was conscious when he was admitted and he had a fracture of his left tibia – fibula. This left leg was manipulated and out into a plaster cast. He left hospital about a fortnight later, his plaster was removed two and a half months later and he then had physiotherapy for about 3 months.

On April 1, 1982, Mr Patel a Mombasa surgeon, examined him and the xrays of his left leg taken by Dr Salyani on March 26. Mr Patel predicted the appellant would have no permanent disablement and by, say, mid July this year be able to have the normal use of it. His leg was not shortened, his ankle movements were all right and he could flex his knee to 95. The fracture had healed well but on April 1, 1983 he had some symptoms, which were the after effects of prolonged immobilization of this left leg in plaster.

These were a swelling of the left ankle and foot, sclerosis of the lateral femoral condyle (most probably post-traumatic) in the left knee, osteoporosis of the ankle bones, slight over-riding in the tibia shaft union and significant callus on the tibular shaft, all in the left knee. At that examination the appellant told Mr

Patel he could not walk long distances or run at all, he had pain in his left ankle and his left knee was stiff. This would disappear after those months if he used it sensibly. He had sued Tirus Gatumbu and John M T Gatumbu, the respondents, for damages for his pain, suffering, loss and expenses alleging negligence by the first when he was the servant or agent of the second and drove the latter's saloon car KJS 265 into him as he walked along Abdul Nasser Road near the Zaitoon Restaurant at 7.30 pm on December 5, 1981.

The appellant's advocate obtained, as usual, an order for substituted service on the respondents and they did not enter appearance so judgment was entered for the appellant against them on September 29, 1982. The suit came on for formal proof on the issue of damages on February 16, 1983 and the witnesses were Mr Patel, Constable Wanjala with the police investigation file and, of course, the appellant. The only matter added to all that I have set out so far which these three produced was the fact that the appellant revealed his occupation was that of an independent cleaner of cesspits.

The learned judge wrote in his judgment that he recalled the appellant's injuries, status in life, the work he did and the pain and suffering he had endured.

Case 193 from Michael Wilkson's "Quantum of Damages" 1971, 3rd edition was cited by the appellant's advocate to the judge. This was Milenger v Masaka Ginners Ltd HCCC 341 of 1963 and the then Chief justice of Uganda, Udo Udoma, awarded the Plaintiff Kshs 300,000 for the fracture of his right tibia and fibula, which had left him with a 25% permanent disability, concussion and a laceration over an eyebrow. The age, occupation and status of Millenger are not set out in this report. It was probably a 1964 decision. One other point. It was a compound fracture. Today the appellant's learned advocate referred to awards of the High Court in Mombasa for infants or adults in past years for comparable injuries which have been set out in Anisa Ali v John Muhozozo & Another Civil Appeal 9 of 1981 July 21, 1983 and need not be repeated in this one. There was no error of fact or law in the approach of Bhandari, J in this case, and his award of damages, in my view, should not be increased. Accordingly, in my judgment, this appeal should not be increased.

**Delivered at Mombasa this 22nd day of July, 1983**

**A A KNELLER .....**

**JUDGE OF APPEAL**

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**(Coram: Potter, Kneller & Hancox, JJ A)**

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**JUDGMENT OF POTTER, J A**

The appellant, a labourer of some 60 to 64 years at the material time, appeals against an award of Kshs 20,000 general damages for pain and suffering. There is no residual disability. The appellant suffered a fracture of his left tibia - fibula in a road accident. He was in hospital for two weeks; his leg was in plaster for three months and thereafter he received physiotherapy. In my view the award was appropriate to the facts of the case. I would dismiss this appeal with costs. As Kneller JA and Chesoni Ag JA agree, it is ordered so.

**Delivered at Mombasa this 22nd day of July, 1983**

**K D POTTER .....**

**JUDGE OF APPEAL**

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**JUDGMENT OF CHESONI, AG J A**

The appellant sustained injuries when he was, on December 5, 1981 knocked down by a motor vehicle registration KJS 265, driven by the first respondent, who it is alleged in the plaint, was the servant or agent of the second defendant. The appellant sustained a fracture of the tibia-fibula (left leg). He was hospitalized for two weeks. The leg had to be immobilized in a plaster. At the time of trial this case the fracture had healed in good alignment and Dr Patel who examined him was of the opinion that the appellant would have normal use of the leg after the next 2-3 months from April 1, 1982, and there would be no permanent disability. The appellant was aged 64 years at the time of trial, that is. On February 18, 1983. He was self-employed as a cesspit cleaner. Bhandari J awarded him Kshs 20,000 general damages and Kshs 600 special damages. He has appealed against the quantum of general damages. Taking into account the nature and extent of the injuries and the fact that the injuries have satisfactorily healed and there is no permanent disability, the award of general damages for pain and suffering was adequate. I would dismiss this appeal with costs.

**Delivered at Mombasa this 22nd day of July 1983.**

**Z R CHESONI**

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**AG JUDGE OF APPEAL**

**I certify that this is a true copy of the original.**

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**DEPUTY REGISTRAR**