

FREDRICK

FARRAH

KIMANI.....

DEFENDANT

J U D G M E N T

A. Introduction

- 1.** The Appellant was the Plaintiff in the primary suit, where he sued for compensation based on a tort of negligence arising from a Road Traffic Accident which occurred on 10.07.2020. He averred that on the material day, he was lawfully riding his motorcycle registration number **KMFC 830G** along Waiyaki Way, when the respondent's motor vehicle registration number **KCY 005F** was carelessly and negligently driven, and ended up knocking him down and severely injuring him.
- 2.** At the trial, PW1 testified, reiterating the contents of his pleadings, and stated that he was riding on his lawful side of the road and had worn his helmet and reflective jacket when the accident occurred along Waiyaki Way at about 7.30 pm – 8.00 pm. As a result,

he had sustained bruises on his abdomen, a compound fracture of the right distal fibula, a fracture of the right medial malleolus, and had dislocated his right ankle. He blamed the respondent's driver for failing to have a proper lookout for other road users and for over speeding. He produced his claim supporting documents and urged the court to compensate him for the injuries suffered.

3. The Respondent elected not to call any witness and closed their case. In her judgment, the learned trial magistrate did find that the driver of the suit motor vehicle was 100% liable for the accident and awarded the appellant a sum of **Kshs.800,000/=** as general damages and **Kshs.5,500/=** as special damages pleaded and proved. He was also awarded costs and interest of the primary suit.
4. The Appellant, being dissatisfied with the quantum awarded, filed their memorandum of Appeal on 20th January, 2023, raising two (2) grounds of appeal, namely: -

a) That the learned trial magistrate erred in law and fact in failing to appreciate the relevant principles, case law, and

submissions on record in assessing damages and thereby arrived at a very low award on damages.

b) That the learned magistrate misdirected herself and failed to give and due and proper consideration to the pleadings and evidence on record and submissions and thereby made an erroneous judgment on damages.

B. Analysis and Determination

5. In this Appeal, the Appellant is only challenging the quantum of damages awarded. The Court of Appeal in **Catholic Diocese of Kisumu vs Sophia Achieng Tete Civil Appeal No. 284 of 2001[2004] eKLR 55** set out circumstances under which an appellant court can interfere with an award of damages in the following terms:-

“It is trite law that the assessment of general damages is at the discretion of the trial court, and an appellate court is not justified in substituting a figure of its own for that awarded by the court below simply because it would have

awarded a different figure if it had tried the case in the first instance. The appellate court can justifiably interfere with quantum of damage's awarded by the trial court only if it is satisfied that the trial court applied the wrong principles, (as by taking into account some irrelevant factors or leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate".

6. Similarly, in **Jane Chelagat Bor vs Andrew Otieno Oduor [1988] - 92] eKLR 288[1990-1994] EA47** the Court of Appeal held that:-

"In effect, the court, before it interferes with an award of damages, should be satisfied that the judge acted on a wrong principle of law, or has misapprehended the fact, or has for these or other reasons made a wholly erroneous estimate of the damages

suffered. It is not enough that there is a balance of opinion or preference. The scale must go down heavily against the figure attacked, if the Appellate Court is to interfere, whether on the ground of excess or insufficiency.”

7. The Appellant emphasized that as a result of the accident, he suffered a compound fracture on the right distal fibula, a further fracture of the right medial malleolus, and dislocated his ankle joint. Based on a comparative analysis of similar injury compensation, he submitted that an award of **Ksh 2,000,000/=** would adequately compensate him for the injuries suffered. Reliance was placed on the cases of **Geoffrey Mwaniki Mwinzi v Ibero (K) Limited & another (2014) eklr and New Origin Investment Co Ltd v Bernard Kimatu Muia (2019) eklr.**

8. I have carefully considered all the pleadings filed and evidence tendered in court, especially on the issue of injuries sustained by the appellant. The Appellant suffered fractures on the distal right fibula and medial malleolus and a slight dislocation

of the ankle joint as noted by the X-ray report issued at St Ann Wangige X-ray services and treatment notes issued from PCEA Kikuyu Hospital, where he underwent a surgical procedure to fix the same. The Appellant indeed proved that he was injured and therefore entitled to adequate compensation.

9. The question that then arises is whether the award of damages of **Kshs.800,000/=** was adequate. In **West(H) and Sons Limited vs Shepherd [1964] AC 326 at 345** it was appreciated that;-

“The purpose of compensation is not to remedy or recompense every injury, but must be a reasonable compensation in line with comparable. In order to interfere with the award of the lower Court, this court must be satisfied that the trial court did not exercise its discretion judiciously”.

10. In **Geoffrey Mwaniki Mwinzi V Ibero (k) Ltd & Another [2014] eKLR** decision, relied on by the appellant, the plaintiff sustained extensive fractures

of the left tibia and fibula, collar bone, and soft tissue injuries. The doctor assessed permanent disability at 60%, and he was awarded **Ksh.2,500,000/=**.

- 11.** The Appellants' residual disability was assessed at 20% and comparable injury awards range between **Kshs.1,000,000/=** to **Kshs.1,500,000/=**. See *Joash M Nyabincha Vs Kenya Tea Development Authority & 2 others (2013) Eklr, Robert Mwaniki Ndigwa Vs Agatha Kaugi Riunga (2018) Eklr, and James Gathirwa Ndungi Vs Multiple Hauliers (EA) Ltd & Another (2015) eKLR*

- 12.** I do find that, considering the comparable awards and inflationary trends, the trial court award was not reasonable and was inordinately low. The trial magistrate obviously did not exercise her discretion judiciously and erred in principle, thus justifying interference by the appellate court.

C. Disposition

- 13.** The award on general damages by the trial court is thus set aside and substituted with an award of **Ksh.1,500,000/=**.

14. I further exercise my discretion and award costs of this appeal to the Appellant, which I hereby assess at **Kshs.150,000/=** all inclusive.

15. It is so ordered.

Dated, signed, and delivered in open court at **MARSABIT** this **14th** day of **OCTOBER, 2025.**

**FRANCIS RAYOLA OLEL
JUDGE**

Delivered on the virtual platform, Team this **14th** day of **OCTOBER, 2025.**

In the presence of: -

Mr. KulechoAppellant

N/A Respondent

Mr. JarsoCourt Assistant