Inyangala & another v Otieno (Civil Appeal E045 of 2024) [2025] KEHC 13789 (KLR) (3 October 2025) (Judgment)

Neutral citation: [2025] KEHC 13789 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT SIAYA

CIVIL APPEAL E045 OF 2024

DK KEMEI, J

OCTOBER 3, 2025

BETWEEN

ANSELMY MWASHINGA INYANGALA .... 1ST APPELLANT

ELLY OWENA OKWARO .... 2ND APPELLANT

AND

BEATRICE ACHIENG OTIENO .... RESPONDENT

(Being an appeal from the judgment and decree of Hon. T.K. Nambisia (R.M) in Ukwala PMCC No. E080 of 2021 delivered on 12/9/2024)

JUDGMENT

1. The appeal herein arises from the judgment and decree of Hon. T.K. Nambisia (R.M) in Ukwala PMCC No. E080 of 2021dated 12/9/2024 wherein she entered judgement in favour of the Respondent in the following terms:

   a. Liability 100/% against the Defendants jointly and severally.

   b. General damages.......... Ksh 350,000/=

   c. Special damages................ ....Kshs 6,550/=

      Total.......... Ksh 356, 550/=

   d. Costs and interest of the suit.

2. Aggrieved, the Appellants have since filed their Memorandum of Appearance dated 24/9/2024 wherein they raised the following grounds of appeal:

i. That the trial magistrate erred in law and fact in the assessment of quantum by awarding Kshs 350,000/= for general damages which award was excessive and not commensurate with the nature of injuries sustained by the Respondent.

ii. That the trial magistrate erred in law and fact in failing to pay regard to authorities in the defendant's submissions that were guiding in the amount of quantum that is appropriate and applicable in similar cases.

iii. That the trial magistrate erred in law and misdirected herself to the extent and value of the Respondent's injuries and thereby erred in law in her assessment of damages.

iv. The trial magistrate's exercise of discretion in assessment of quantum was injudicious.

Reasons wherefore, the Appellants pray that the appeal be allowed and that the decree of Hon T.K Nambisia be set aside and that this court re-assesses the quantum of damages afresh and that the Appellants be awarded costs of the appeal.

3. Being a first appeal, i have a duty to analyze the entire evidence by subjecting it to a fresh exhaustive scrutiny so as to arrive at my own independent conclusion. I have to bear in mind that i did not have the opportunity to hear or see the witnesses and must therefore give due allowance for that. (See Selle & Another vs Associated Motor Boat Company Ltd & others [1968] 1EA 123; Peters v. Sunday Post Ltd(1958)EA 424;Mary Wanjiku Gachigi v Ruth Muthoni Kamau(Civil Appeal No. 172 of 2000. (Tunoi, Bosire & Owuor JJA);Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & Another Civil Appeal No. 345 of 2000.(Okubasi, Githinji & Waki JJA).

4. Beatrice Achieng Otieno (PW1) testified that on 20th October 2021, she was a fare paying passenger aboard a matatu motor vehicle registration number KCF 867L. That she had boarded the said motor vehicle at Ligega as it headed to Sega. That after about ten minutes later, the said vehicle tried to overtake another vehicle when it lost control, veered off the road and rolled severally causing her bodily injuries on the face, chest and stomach. That she was unconscious and upon regaining consciousness, she found herself at Ambira Hospital. That she was then rushed in an ambulance to Siaya County Referral Hospital and later to Kakamega Hospital. That she blamed the driver of the motor vehicle for the accident and injuries sustained. That she produced the documents on her list of documents dated 16/11/2021. That she identified the medical report (PMFI 4(a), and receipt (PMFI(4b). The rest as per the list of documents as P exhibit B1, p exhibit B3, and P exhibit B5 and P exhibit B8. She prayed for compensation. On cross-examination, she stated inter alia; that she was seated on the second row seat and had fastened her seat belt.

5. Dr. Joseph Sokobe (PW2) testified that he is a doctor based in Eldoret and that he presented a medical report for injuries sustained by Beatrice Achieng Otieno dated 4/11/2021. He produced the report as P Exhibit 4(a) and receipt for Kshs 6000/= as P Exhibit 4(b).

   On cross examination, he stated inter alia; that he relied on the P3 form and the discharge summary to prepare the report; that he prepared the medical report two weeks after the accident; that he did not treat the patient but that he took the history from her; that the discharge summary did not mention any loss of consciousness.

6. That marked the close of the Respondent's case.

7. On the part of the Appellants, no witness were called to testify, but the learned counsels agreed by consent to have the Appellants produce a second medical report conducted on the Respondent which was produced as D- Exhibit 1 and that marked the close of the Appellants' case.

8. The appeal was canvassed by way of written submissions. It is only the Respondent who complied.

9. The Respondent submitted that from the Memorandum of Appeal, the Appellant was simply appealing on quantum. It was submitted that the Appellant has not appealed against liability. Learned counsel urged this court to uphold the trial court's decision on liability.

10. On quantum, the Respondent submits that the general principle on considering an appeal on quantum is that assessment of damages is usually at the discretion of the trial court and that the appellate court will usually not interfere with such discretion unless the lower court acted on wrong principles, or that the award was excessive or inordinately low, or that the trial court took into account irrelevant matters in reaching such a decision.

11. It was submitted that the said award was in tandem with the injuries suffered and that the award of ksh 350,000/= as general damages was reasonable in view of the injuries sustained and the effects of inflation on the economy and hence the same should be upheld. The Respondent urged this court to dismiss the appeal with costs to the Respondent.

12. I have considered the record, the trial court's proceedings, submissions on appeal, and the authorities relied upon and find the issue for determination is whether the Appellants' appeal has merit.

13. It is noted that the Appellant has not appealed against the apportionment of liability and has only raised issue with the award of general damages for pain, suffering and loss of amenities. The Appellant opted not to tender evidence regarding the question on who caused the accident. It is instructive that the Respondent was travelling as a fare paying passenger and thus had no control over the manner in which the Appellants' vehicle registration number KCF 867L Toyota Hiace Matatu. It was the evidence of the Respondent that the Appellant's driver, servant and or agent was overtaking another vehicle when he lost control of the vehicle which veered off the road and rolled severally thereby causing the passengers to sustain injuries. It is clear that the driver of the said vehicle was negligent and reckless and failed to observe the Highway Code of Traffic. I find the evidence of the Respondent was not controverted at all by the Appellant on the issue of liability and thus the finding on liability by the trial court was quite sound and must be upheld. As the Appellant has opted not to challenge the issue of liability, then this court will proceed to consider the issue of quantum of damages awarded by the trial court. In the case of Mkube v Nyamuro[1983]LLR at 403 Kneller JA & Hancox Ag JJA held that:

> " A court on appeal will not normally interfere with the finding of fact by a trial court unless it is based on no evidence, or a misapprehension of the evidence, or the judge is shown demonstrably to have acted on wrong principles in reaching his conclusion."

14. Likewise, in Butt v Khan [1982-88] KAR 1 it was held that:

> " An appellate court shall not disturb an award of damages unless it is inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect and so arrived at a figure which was either inordinately high or low."

15. On the liability, it is evident from the record that the Appellant did not adduce any evident challenging the trial court's decision on liability. In fact, no defence witness testified at the trial and hence the Respondent's evidence thereon remained as uncontroverted.

16. In Boniface Waiti & Another vs Michael Kariuki Kamau (2007) Eklr, it was held that: "The defendant as a driver was expected to drive prudently and to be on the lookout for trouble shooters on the road,

be vigilant and most importantly be able to control the vehicle and bring it to a safe stop in the event of an emergency"

17. In Janet Kathambi vs. Charity Kanja [2021] eKLR, the court observed that there was nothing to show the plaintiff's contribution to the accident. In the present circumstances, it is noted that the Respondent was a fare paying passenger who had no control in the manner in which the vehicle was controlled and or managed. The Respondent also averred that she had fastened her seat belt. I find that the Respondent could not be blamed in any way for the accident.

18. Similarly, in Beatrice William Muthoka & Another suing as legal representative of the estate of the late William Muthoka Yumbia (deceased) vs. Agility logistics limited [2020]eKLR, the court observed that the defendant had not shown the deceased's contribution in the occurrence of the accident and hence he proceeded to hold the defendant vicariously liable for the negligent actions of her driver.

19. In the instant case, the Appellant did not adduce any evidence during trial to rebut the overwhelming evidence of the Respondent. In light of the foregoing observations and guided by the above authorities, Iam in agreement with the trial court's finding on liability and proceed to uphold the apportionment of 100% liability against the Appellants herein.

20. As regards the issue of quantum, the rule of thumb is that in considering an appeal on quantum, the assessment of damages is usually at the discretion of the trial court and that the appellate court will usually not interfere with such discretion unless the lower court acted on wrong principles, or that the award was excessive or inordinately low, or that the trial court took into account irrelevant matters in reaching such a decision. See Butt v Khan [1982-88] KAR 1.

21. It is noted that the Respondent sustained injuries inter alia; head injury with brief loss of consciousness, multiple facial lacerations, blunt injury to the chest(anterior), and a cut wound on the right iliac fossa(anterior abdomen).

22. In the case of West (H) and Sons Ltd v Shepherd (1964) AC 326 as cited with approval in Cecilia Mwangi & another v Ruth Mwangi CA 251 OF 1996 where Lord Morris stated:

> " But money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process they must endeavor to ensure uniformity in the general method of approach. By common constant awards must be assed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are a considerable extent conventional"

23. In the case of Poa link Services Co. Ltd & Another vs Sindani Boaz Bonzemo (2021) eKLR, the court awarded Kshs 350,000/= for soft tissue injuries which were similar to those in the instant case. It is noted that this was the amount awarded by the trial magistrate. I find the same to reasonable and commensurate with the injuries sustained and took into account the depreciating value of the shilling due to inflationary trends on the economy. I find that the trial court did not take into account irrelevant factors while assessing the quantum of damages for pain, suffering and loss of amenities. Being guided by the principle of stare decisis, I find that the trial court correctly exercised its mind and discretion in assessing and awarding the award of damages and hence, i find no justifiable reason to interfere with the same.

24. In the result, it is my finding that the Appellants' appeal is devoid of any merit. The same is dismissed with costs to the Respondent.

Orders accordingly.

DATED AND DELIVERED AT SIAYA THIS 3RD DAY OF OCTOBER 2025.

D. KEMEI

JUDGE

In the presence of:

M/s Turgut for M/s Ongonga......for Appellants

N/A M/s Soita..............for Respondent

Okumu..............Court Assistant