

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BOMET
CIVIL APPEAL NO. E006 OF 2024

EASTERLAND CONSTRUCTION LTD.....

APPELLANT

VERSUS

FARIDAH CHEPKOECH

RESPONDENT

(Being an Appeal from the Judgment of Senior Principal Magistrate, Boke E. at the Senior Principal Magistrate's Court at Bomet, Civil Suit Number E024 of 2023)

JUDGEMENT

1. The Respondent (then Plaintiff) sued the Appellant (then Defendant) for general and special damages arising from a road traffic accident on 2nd July 2022. The Respondent stated that she was aboard motorcycle registration number KMEV 112Z as a pillion passenger when she was

hit by motor vehicle registration number KDE 097V (allegedly belonging to the Appellant) thereby occasioning her injuries. The Respondent blamed the Appellant for causing the accident.

2. Parties recorded a consent on liability in the ratio of 80:20 in favour of the Respondent/Plaintiff.
3. In its Judgment dated 5th March 2024, the trial court awarded the Respondent Kshs 750,000/= as general damages and Kshs 12,900/= as special damages.
4. Being aggrieved with the Judgment of the trial court, the Appellant filed its Memorandum of Appeal dated 3rd April 2024 appealing against the award on damages which it stated was excessive.
5. My work as the 1st appellate court is to re-evaluate the evidence in the trial court and come to my own findings and conclusions, but in doing so, to have in mind that it neither heard nor saw the witnesses testify.

6. I now proceed to summarise the respective parties' cases in the trial court and their submissions in the present Appeal.

The Plaintiff's/Respondent's case.

7. Through her Complaint dated 15th February 2023, the Respondent stated that she was riding motorcycle registration number KMEV 112Z when she was hit by motor vehicle registration number KDE 097V.

8. The Respondent stated that the Appellant was the owner of motor vehicle registration number KDE 097V and was negligent in causing the accident. The particulars of the negligence were listed in paragraph 4 of the Complaint.

9. That as a result of the accident, he the following injuries: -

- a) Fracture of the tibia fibula.
- b) Bruises on the right ankle joint.

- c) Deep cut on the ankle joint.
- d) Redness of the skin on the right knee.
10. The Respondent's claim against the Appellant was for special and general damages as a result of the accident.
11. Through her written submissions dated 5th August 2025, the Respondent submitted that the award of Kshs 750,000/= as general damages was fair, just and met the ends of justice. She relied on **Omar Musa Hassan & another cs Rashied Salim & another [2000] KEHC 183 (KLR), Alphonse Muli Nzuki v Braian Charles Ochuodho (2014) eKLR et.al.** The Respondent further submitted that she pleaded and proved special damages and the same should not be disturbed.

The Defendant's/Appellant's case

12. Through its statement of defence dated 15th March 2023, the Appellant denied that it was the registered owner of motor vehicle registration number KDE 097V.

13. The Appellant denied the particulars of negligence levelled against it. That if any accident happened, it was caused solely by the negligence of the Respondent and the rider of the motorcycle. It particularized the negligence in paragraph 9 of its Defence.
14. Through its written submissions dated 4th August 2025, the Appellant submitted that the award of Kshs 750,000/= as general damages was excessive and proposed an award of Kshs 300,000/=. It relied on **Gerald Muhuitha Mwangi v John Mbururgu & another (2022) eKLR, Daniel Otieno & another v Elizabeth Atieno Awuor (2020) eKLR et.al.** The Appellant further submitted that the award on special damages should be subjected to 20% contribution.
15. I have gone through and carefully considered the Record of Appeal, the Supplementary Record of Appeal the Appellant's written submissions dated 4th August 2025 and Respondent's written submissions dated 5th August 2025.

The only issue for my determination therefore was whether the award on general damages was excessive.

Quantum

16. Having gone through the Appeal and the parties' respective submissions, there was no dispute as to the nature of injuries suffered by the Respondent. This much was confirmed by the Appellant who in his submissions dated 4th August 2025 confirmed the injuries suffered by the Respondent to be similar to the ones pleaded in the Pleint. The only point of departure and as earlier alluded in this Judgement was the extent of general damages payable to the Appellant.
17. For this court to interfere with an award, it must be satisfied that the trial magistrate misdirected himself in some manner and as a result arrived at a wrong decision, or that it was clear from the case as a whole that the trial magistrate was clearly wrong in the exercise of his discretion and that as a result there has been a

miscarriage of justice. **See Catholic Diocese of Kisumu vs Tete (2004) eKLR.**

18. In the present case, the Appellant submitted on the issue of general damages that the award of Kshs 750,000/= was inordinately high and he proposed an award of Kshs 300,000/=. On the other hand, the Respondent asked this court to uphold the award of Kshs 750,000/= as it represented a fair award.

19. It is judicial practice that the general approach in awarding damages for injuries is that comparable injuries should as far as possible be compensated by comparable awards. The Court of Appeal in **Stanley Maore vs Geoffrey Mwenda (2004) eKLR**, held: -

“...we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible,

be compensated by comparable awards keeping in mind the correct level of awards in similar cases.”

20. The Respondent suffered the following injuries: -

- a) Fracture of the tibia fibula.
- b) Bruises on the right ankle joint.
- c) Deep cut on the ankle joint.
- d) Redness of the skin on the right knee.

21. In addition to the authorities cited by the parties in their respective submissions, I have found the following cases quite helpful in terms of comparison: -

- I. In **China Wu Yi Company Ltd v Stephen Muniu Kinyanjui [2021] KEHC 1725 (KLR)**, the court upheld the award of Kshs 800,000/= for a fracture and dislocation of tarsal-metatarsal joint right foot and a Degloving injury medical aspect right foot.

- II. In **Jesca Kajumwa Masela v Razick Aziz Obuba [2021] KEHC 9010 (KLR)**, the court increased the award of Kshs 350,000/= to Kshs 500,000/= for a fracture of the first metatarsal on the left foot, fracture of the proximal phalanx of the left big toe and a massive 10*4 cm Degloving injury on the left foot.
- III. In **Otieno vs Mega Wholesalers Limited [2025] KEHC 13569 (KLR)**, the claimant sustained fractures of the tibia and fibula, with multiple soft tissue injuries. The trial court awarded Kshs. 1,200,000/= as general damages, which the High Court reduced to Kshs. 800,000/=.
- IV. In **George William Awuor vs. Beryl Awuor Ochieng [2020] KEHC 1103 (KLR)**, the injuries were fractures of the right femur and left tibia/fibula. The trial court awarded Kshs 2,000,000/= which the High Court reduced to Kshs. 1,200,000/=.

22. I have considered the authorities above, the parties' submissions and the nature of the injuries suffered by the Appellant. I have also considered the current inflation

rates and I find that the award of Kshs 750,000/= as general damages was fair and commensurate to the injuries suffered by the Respondent. I hereby uphold the award.

23. In regards to the special damages, the Respondent pleaded Kshs 6,500/= for the Medical Report, Kshs 5,200/= for medical treatment and Kshs 1,200/= for motor vehicle search and CR12. I have seen the CR12 and bundle of receipts produced as **P. Exh 6** and **7** respectively and they support the Respondent's prayer for Kshs 12,900/= as special damages. This prayer was awarded by the trial court and I uphold the same.

24. In the final analysis, this court has no reason to interfere with the trial court Judgment as the award on general and special damages was fair and just.

25. In the end, the Appeal dated 3rd April 2024 has no merit and is dismissed. The Respondent shall have the costs of

the Appeal while the costs in the original suit shall remain as awarded by the trial court.

**Judgement delivered, dated and signed at Bomet this
17th
day of November, 2025.**

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**Hon. JULIUS K. NG'ARNG'AR
JUDGE**

Judgement delivered in the presence of:

Siele/Susan (Court Assistants).

Kipyegon for the Appellant

Ng'eno for the Respondent