



Isosa v MKN (Minor suing through her mother and next friend SMO) (Civil Appeal E093 of 2022) [2025] KEHC 15837 (KLR) (5 November 2025) (Judgment)

Neutral citation: [2025] KEHC 15837 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CIVIL APPEAL E093 OF 2022
JK NG'ARNG'AR, J
NOVEMBER 5, 2025**

BETWEEN

THOMAS NYANGENA ISOSA APPELLANT

AND

**MKN (MINOR SUING THROUGH HER MOTHER AND NEXT FRIEND
SMO) RESPONDENT**

*(Being an appeal on from the judgment and decree of Hon. S.
N Abuya (CM) on 9/11/2022 in Kisii CMCC No. E786 of 2019)*

JUDGMENT

1. Vide plaint dated 26/9/2019, the respondent filed the suit before the lower court on grounds that on 26/9/2018, he was a pillion passenger aboard motor cycle registration number KMDT 281R when at Naivas junction the driver of the subject vehicle registration number KAS 230M negligently drove the vehicle and it veered off its lane colliding into the motor cycle and the respondent sustained injuries.
2. That the appellant was the registered owner of the subject motor vehicle. The respondent thus sought judgment against the appellant for special damages of Kshs. 6,600/=, general damages, costs and interest.
3. The appellant filed a statement of defence dated 2/12/2019 denying liability and blamed the respondent and rider of the motor cycle for the accident and sought orders that the suit be dismissed with costs.
4. The matter proceeded for hearing and the respondent called witnesses. The appellant did not call any. Vide judgment delivered on 9/11/2022, the trial court entered liability at 100% as against the appellant and awarded the respondent Kshs. 400,000/= for quantum and special damages of Kshs. 6,500/=.



5. The appellant was dissatisfied with that judgment and filed the memorandum of appeal dated 1/8/2024.

The Appeal

6. The appellants filed the memorandum of appeal dated 10/11/2022 on both quantum and liability on grounds that the respondent did not prove his case on liability against the appellant, and that the award on general damages was excessive. The appellant sought orders that the trial court's judgment be set aside and reviewed and that the appellant be awarded costs of the appeal.
7. The appeal proceeded by way of submissions. The respondent filed his dated dated 6/8/2025. The appellant's were however not on record. I have seen and considered those submissions alongside the entire record of appeal.

Analysis and Determination

8. It is now settled law that the duty of the first appellate court is to re-evaluate the evidence in the subordinate court both on points of law and facts and come up with its findings and conclusions see Court of Appeal for East Africa in *Peters –vs- Sunday Post Limited* [1958] EA 424.
9. In an appeal against assessment of damages an appellate court must be careful not to interfere with the trial court's discretion unless certain conditions are met. These conditions were outlined in the case of *Kemfro Africa Limited t/a “Meru Express Services (1976)” & Another v Lubia & Another (No 2)* Civil Appeal No 21 of 1984 [1985] eKLR where the court held that: -

“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either the Judge, in assessing the damages took into account an irrelevant factor, or left out of account a relevant one, or that; short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.”

Whether the award of Kshs. 650,000/= for general damages was inordinately high or low.

10. The main issue for consideration is whether the trial court erred in entering liability at 100% as against the appellant, and in awarding Kshs. 400,000/= for general damages.

Liability

11. It was not denied that the accident occurred on 26/9/2018 involving the motor cycle KMDT 281 R and the subject vehicle KAS 230M. The same was confirmed by the police abstract produced as PEXH 4. PW1 and PW2 both testified that the subject vehicle was being driven at a high speed when it hit the motor cycle. PW2 testified that the motor cycle was hit from behind.
12. PW1 testified that the motor cycle was in its rightful lane when the accident occurred and the driver of the subject vehicle ought to have seen the motor cycle and avoid hitting it. Though the appellant blamed the respondent for the accident, he did not call any witness to narrate how the accident occurred and how the respondent contributed for the accident.
13. The respondent also shifted blame to the rider of the motor cycle, however, he did not take out any third-party proceedings against the rider to effectively shift liability.



14. In the circumstances, the respondent's averments remained uncontroverted. Noting that the respondent was a pillion passenger, I do not see how he contributed negligently to the occurrence of the accident.
15. In the circumstances, I do find that the trial court's finding on liability at 100% in favor of the claimant was sound and there is no justification to interfere with that finding.

Quantum

16. This Court is called to assess whether the award was inordinately high or low. The guiding principle in the assessment of damages is that an award must reflect the trend of previous, recent and comparable awards. This position finds support in the case of *Stanley Maore v Geoffrey Mwenda NYR CA Civil Appeal No. 147 of 2002 [2004]eKLR* where the Court of Appeal held: -

“Having so said, 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.”

17. I have carefully considered the record before me. As per the documents produced by PW3 Dr. Peter Morebu inclusive of the P3 form dated 9/10/2018, discharge summary, treatment notes from Kisii Training and Referral Hospital and medical report dated 22/10/2018, the respondent suffered a chest contusion, right shoulder dislocation, cut wound on the right leg and bruises on the right thigh.
18. In assessing whether the award was inordinately high or low, I rely on the following cases: -

Veronicah Mkanjala Mnyapara v Charles Kinanga Babu [2020] eKLR where the High Court upheld the trial court's award of Kshs. 300,000/= where the respondent had suffered a dislocation of the left ankle joint and left wrist joint, deep cut wound on the forehead, chest contusion, and bruises on the face, hands and ankle joints.

In Platinum Credit Ltd & another v Erick Oloo Okello [2022] eKLR where the plaintiff suffered various injuries including; Dislocation of the right shoulder joint; Dislocation of the left ankle joint; Chest injury; Blunt injury on the right pelvic bone; and Blunt injury. The high court upheld the award of Kshs. 600,000/=. The plaintiff therein however sustained more injuries than the respondent in the instant suit.

In Mara Tea Factory Limited v Lillian Bosibori Nyandika [2021] eKLR the high court set aside the trial's court award of Kshs. 400,000/= and substituted it with that of Kshs. 300,000/= where the plaintiff had sustained head injury, dislocation of the left shoulder joint, dislocation of the left wrist joint and a deep cut wound on the head.

The court in *Carolyne Indasi Mwonyonyo v Kenya Bus Service Ltd Civil Appeal 17 of 2007 [2012]eKLR* substituted the award of the trial court with an award of KShs.350,000/= where the appellant's injuries were in the nature of soft tissues and a dislocation of the knee joint.

In Coast Broadway Co. Ltd v Elizabeth Alaka Achebi [2015] eKLR the court affirmed an award of Kshs 300,000/= for a plaintiff that had suffered a dislocation of the shoulder.

19. I have also considered the authorities quoted before this Court.



20. From the above and taking into consideration the lapse in time and changing economic circumstances between when the authorities were delivered and now, and further taking into consideration that no amount can retribute the claimant to exactly how he was before the accident occurred or even take away his pain and suffering, I find that an award of Kshs. 400,000/= was not inordinately high and was indeed commensurate with the injuries and circumstances of the case and the same is upheld.
21. The upshot is that the appeal is found to be unmerited and the same is dismissed with costs to the respondents.

JUDGEMENT DELIVERED VIRTUALLY, DATED AND SIGNED THIS 5TH DAY OF NOVEMBER, 2025.

In the presence of:

Siele:CA

N/A for the appellant

Moranga holding brief for the respondent

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J.K.NG'ARNG'AR

JUDGE

