

2. The respondent particularized the instances of negligence on the part of the appellant and her injuries. For those reasons, the respondent prayed for general damages, special damages of Kshs. 7,050.00, costs of the suit and interest. By judgment of the learned magistrate, liability was entered at 80:20 in favor of the respondent as against the appellant. The court then awarded Kshs. 325,000.00 in damages together with costs of the suit and interest.
3. The appellant is displeased with those findings. It filed its memorandum of appeal amended on 5th November 2024. The appellant raised nine grounds disputing the findings of the trial magistrate. I have taken the liberty to summarize those grounds in the following terms: the award of general damages was excessive and failed to take into account its defence and submissions as well as the principles applicable in assessment of damages; the decision on quantum and liability arrived at was erroneous since the respondent was 100% liable for the accident; and the decision was arrived at on the basis of extraneous matters. For those reasons the appellant prayed that the judgment dated 25th September 2024 be set aside, varied and/or quashed. It further prayed for costs of this appeal.
4. The appeal was disposed of by way of written submissions. The appellant filed written submissions dated 28th August 2025. The

appellant limited its appeal to the question of quantum. Citing several decisions regarding general guidelines in assessment of damages, the appellant submitted that the respondent was only entitled to general damages to be capped between Kshs. 100,000.00 and Kshs. 150,000.00. The appellant further prayed for costs of the appeal.

5. The respondent opposed the appeal. He filed his written submissions dated 29th August 2025 to submit that the injuries that he sustained following the accident were never disputed. For that reason, it submitted that the decision to award damages in the sum of Kshs. 400,00.00 was justifiable. Lastly, on liability, the respondent submitted that the totality of the evidence in fact should find the appellant 100% liable. Be that as it may, the findings on liability before the trial court were fair. He prayed that the appeal be dismissed with costs.
6. I have considered the submissions, examined the record of appeal and analyzed the law. The role of this court as a first appellate court was succinctly set out by the Court of Appeal in the case of **Joseph Mung'athia vs. County Council of Meru & another** CA Civil Appeal No. 146 of 2002 (Nyeri) (*unreported*) in the following terms:

“In law, this matter coming as a first appeal, we have a duty to consider both matters of fact and of law. On facts, we are duty bound on

first appeal to analyze the evidence afresh, evaluate it, and arrive at our own independent conclusion, but always bearing in mind that the trial court had the advantage of seeing the witnesses, hearing the witnesses and seeing their demeanour and making allowance for the same.”

7. The record shows that the respondent called three witnesses to the stand while the appellant called two. According to the evidence of the respondent, PW1 Sergeant Robert Moseki working at Nyamaramba police station produced the police abstract. It was revealed that an accident occurred on 15th November 2021 at 8:00 p.m. involving the suit vehicle and the respondent. The vehicle was driven by James Omolo. The respondent was hit on the left side of the road and rushed to Rongo Sub-County Hospital. The driver assisted the victim to obtain treatment. In his view, the driver was to blame for causing the accident as he was not careful. This is because the point of impact was on the edge of the road point where the respondent was walking, PW1 visited the scene after the accident occurred. He added that the driver reported the accident and was charged with a traffic offence.
8. PW2 a senior clinician testified that he filled the respondent's P3 form on 5th November 2021. He also saw the respondent's treatment notes, medical report and clinic card that were produced in evidence. He relied on those documents to affirm that

the respondent was injured following a road traffic accident and sustained the injuries captured in his plaint.

9. PW3 the respondent testified that on 1st November 2021, he was walking along but off the Kamagambo Nyamarambe road. On reaching Town Down Academy, PW3 saw the appellant's driver drive the suit vehicle so negligently that he was hit from the left side and suffered a scalp contusion, neck whiplash injuries, right shoulder joint dislocation and a right patella dislocation. PW3 was treated at Kisii Teaching and Referral Hospital. He lost consciousness and was put on a plaster.
10. The accident was report at Nyamarambe Police Station. PW3 was later issued with a P3 form and an abstract. He also went for a second medical examination and was seen by Dr. Daniel Nyameino. He blamed the driver for causing the accident has he was careless and drove at a high speed. He thus prayed for compensation and produced documents in support of his claim.
11. On the part of the appellant, DW1 Charles Ragoi, an insurance investigator, testified that his services were retained by APA Insurance on 13th February 2023 to investigate the circumstances leading to the accident that occurred on 1st November 2021. Upon interrogating the relevant parties and scrutinizing the evidence, DW1's conclusion was that an accident occurred along the Nyamarambe Kamagambo road involving the suit vehicle and the

respondent. He established that the respondent was a pedestrian when he was hit by the suit vehicle. It was unearthed that according to the driver of the suit vehicle, the respondent was staggering when walking and was suspected to be under the influence of alcohol. He thus concluded that the respondent was to blame for the accident. He produced his investigation report in evidence.

12. DW2 James Inda Omolo, the driver of the appellant, testified that on the fateful day, the respondent was walking in the same direction that the suit vehicle was moving towards. In his view, though he hit him from behind, the respondent appeared drunk. He explained that the circumstances of the accident were that though he was driving at a moderate speed, the respondent wobbled and bumped himself onto the rear nearside body panel of the suit vehicle. He recalled that the doctor said the respondent was drunk. He took the respondent to Rongo Sub-County Hospital.
13. It is not disputed that an accident occurred on 1st November 2021 along the Nyamarambe Kamagambo road. The appellant's vehicle motor vehicle registration number KAV 225B Isuzu bus, was involved in the accident together with the respondent who was a pedestrian. Both parties confirmed that the respondent sustained injuries resulting from the accident and it was DW2 who rushed the respondent to Rongo Sub-County Hospital.

14. The appellant opined that the respondent was drunk and therefore caused the accident. However, no evidence was adduced to prove that indeed the respondent was drunk and wobbled on the vehicle. As correctly analyzed by the trial court, a vehicle moving at slow speeds would not have impacted the respondent in the manner that he did. It is therefore probable that the driver was over speeding and could not have applied brakes beneficially to mitigate the damage.
15. It is also however instructive to note that the respondent ought to have been careful so as to mind other road users. In this case, the respondent ought to have walked in the direction that he could see the vehicles so as to avoid the accident. Having said that, it is indeed correct that both parties were liable but in different degrees. Accordingly, the trial court properly entered liability in the ratio of 80:20 in favor of the respondent as against the appellant. I therefore see no reason to disturb those findings.
16. Turing to quantum, it is not gainsaid that the respondent suffered a scalp contusion, neck whiplash injuries, right shoulder joint dislocation and a right patella dislocation. Those injuries were captured by the doctor's report when the respondent underwent a second medical examination. The trial court relied on the decisions in **Stanley Maore vs. Geoffrey Mwena** [2004] eKLR, **Poa Link Services Co. Ltd & another vs. Sindani Boaz Bonzeme** [2021] eKLR and **Francis Omari Ogaro vs. J.A.O.**

(minor suing through next friend and father G.O.D. [2021]
eKLR to apply the correct principles and award Kshs. 400,000.00.

17. In my view, the trial magistrate explained how she arrived at her decision. The court took into account the various authorities, comparable awards and market inflation to award Kshs. 400,000.00 that was subjected to the liability ratio. The court then awarded special damages of Kshs. 7,050.00 together with costs of the suit and interests.
18. The appellant has not demonstrated the error and application of wrong principles to arrive at an overestimate. I find that the award was commensurate to the injuries the respondent sustained taking into account the current market rates. The appeal on quantum fails, including that of special damages that was pleaded and proved, is similarly dismissed.
19. In view of the foregoing, I find that the appeal lacks merit. It is hereby dismissed with costs to the respondent.

It is so ordered.

**Judgement delivered Virtually, dated and signed
this 5th day of November, 2025.**

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HON. J.K.NG'ARNG'AR

JUDGE

Judgement delivered in the presence of;

Siele (Court Assistant).

Kipyegon for the Appellant

Nyandoro for the Respondent

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