

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**CIVIL APPEAL NO. E123 OF 2023**

**THE GUARDIAN COACH LTD .....1<sup>ST</sup>**  
**APPELLANT**  
**JULIUS MOKAYA ..... 2<sup>ND</sup> APPELLANT**

**VERSUS**

**AMISI AKINYI ONUKU .....1**  
**RESPONDENT**

*(Being an Appeal from the Judgment of Senior Resident Magistrate, Ogweno C. at the Magistrate's Court at Kisii, Civil Suit Number E241 of 2022)*

**JUDGEMENT**

1. The Respondent (then Plaintiff) sued the Appellants (then Defendants) for general and special damages that arose from a road traffic accident on 5<sup>th</sup> January 2021 along Keroka-Kisii Road.
2. The trial court conducted a formal proof hearing where the Respondent called four witnesses before closing her case while the Appellants did not call any witnesses in aid of their Defence.

3. In its Judgement delivered on 19<sup>th</sup> September 2023, the trial awarded the Respondent Kshs 500,000/= as general damages and Kshs 48,860/=. The trial court also found the Appellants 100% liable for causing the accident. Being aggrieved with the Judgment of the trial court, the Appellants filed their Memorandum of Appeal dated 11<sup>th</sup> October 2023 appealing against the award on quantum which they stated was inordinately high.
4. My duty as the 1st appellate court is to re-evaluate and re-examine the evidence in the trial court and come to my own findings and conclusions, but in doing so, to have in mind that I neither heard nor saw the witnesses testify.
5. I hereby proceed to summarise the case in the trial court and the parties' respective submissions in the present Appeal.

**The Plaintiff's/Respondent's case.**

6. Through her Amended Plaintiff dated 3<sup>rd</sup> June 2022, the Respondent stated that on 5<sup>th</sup> January 2022, she was driving motor vehicle registration number KDA 494G when she was hit by the Appellant's driver who was driving motor vehicle registration number KCR 691W.
7. It was the Respondent's case that the Appellants should be held vicariously liable for causing the accident. The

particulars of the negligence were stated in paragraph 5 of the Plaint. That as a result of the accident, the Respondent suffered the following injuries: -

- i) Right proximal phalange bone fracture of the first finger.
- ii) Fracture of the first proximal phalange.
- iii) Dislocation of the right elbow.
- iv) Chest contusion.
- v) Blunt trauma to the back.

8. The Respondent prayed for special and general damages arising from the accident.

9. At the time of writing this Judgement, the Respondent had not filed her written submissions.

**The Defendants'/Appellants' case.**

10. As I have stated earlier in this Judgement, the Appellants neither filed their defence nor called any witnesses in aid of their case.

11. Through their written submissions dated 3<sup>rd</sup> January 2025, the Appellants submitted that the award of Kshs 500,000/= was inordinately high as the Respondent had suffered a fracture of the interphalangeal joint of the thumbs and soft tissue injuries. They proposed an award of Kshs 150,000/=.

The Appellants further submitted that the award trial court's award was not based on any legal principle.

12.I have gone through and carefully considered the Record of Appeal dated 4<sup>th</sup> January 2025 and the Appellants' written submissions dated 3<sup>rd</sup> January 2025. The only issue that I have sieved for my determination was whether the trial court's award was excessive.

### **Quantum**

13.I have looked at the medical evidence tendered. Risper Nyawira Mwangi (PW4) produced a Medical Report and x-rays as **P. Exh 1**, the Respondent (PW2) produced a P3 Form as **P. Exh 2** and Dr. Peter Morebu Momanyi (PW1) produced his Medical Report as **P. Exh 3c**. There was no objection to the production of the documents and they all confirmed that the Respondent suffered the injuries she pleaded in the Plaintiff i.e.: -

- i. Right proximal phalange bone fracture of the first finger.
- ii. Fracture of the first proximal phalange.
- iii. Dislocation of the right elbow.
- iv. Chest contusion.
- v. Blunt trauma to the back.

14.As earlier stated, the trial court awarded Kshs 500,000/= as general damages, an amount the Appellants felt was excessive. They proposed an award of Kshs 150,000/=.

15.For this court to interfere with an award, it must be satisfied that the trial magistrate has 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.

16.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. In addition to the parties' authorities, I have found the following cases quite helpful in terms of comparison: -

i. In **Stejes Agencies Ltd v Makali [2023] KEHC 22809 (KLR)**, the Appellant suffered cut wound on the forehead right side/ bruises to the face, blunt injuries to the forehead with formation of hematoma, deep cut wound on the anterior chest wall, blunt injuries on the lower back, fracture of the proximal phalangeal bone of right little finger, multiple bruises on the lower limbs and bruises on the upper

limb. The court reduced the award from Kshs 400,000/= to Kshs 350,000/=.

- II. In **Ogega & another v Maingi [2024] KEHC 14472 (KLR)**, the court upheld the award of Kshs 250,000/= for a tender interior chest wall and a fracture of the right middle finger at the proximal phalanx.
- III. In **Michael Okello v Priscilla Atieno [2021] KEHC 7266 (KLR)** the court substituted a trial court's award of Kshs 500,000/= with Kshs 250,000 for a claimant who sustained blunt injuries to the head, forehead, neck, left shoulder, left upper limb, right upper limb, right lower limb and chest with fracture of the 1st anterior rib.
- IV. In **Pelton Transporters Limited & another v Maina [2025] KEHC 12428 (KLR)**, the court upheld an award of Kshs 400,000/= for as fractures of the 7th and 8th ribs of the right side, blunt soft tissues of the anterior chest, neck muscles, back and lacerations and swelling of the left leg.

17.I have considered the authorities above and the nature of the injuries suffered by the Appellant and I have also considered that her permanent disability was assessed at 20%. It is my finding that the Kshs 500,000/= awarded as general damages by the trial court was excessive and not

commensurate to the injuries suffered by the Respondent. I therefore vacate the trial court's award and substitute it with Kshs 350,000/=.

18.Regarding special damages, I have looked at the bundle of receipts produced as **P. Exh 6** for the Medical Report, medical expenses and the copy of the motor vehicle search. I agree with the trial court's award of Kshs 48,860/= as special damages. I therefore uphold the award.

19.The final computation is as below: -

General Damages	Kshs 350,000/=
Add Special Damages	Kshs 48,860/=
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	<b>Kshs 398,860/=</b>

20.In the end, the Memorandum of Appeal dated 11<sup>th</sup> October 2023 is successful. There will be no orders as to costs.

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

.....

**J.K.NG'ARNG'AR**

**JUDGE**

Judgement delivered in the absence of parties who were duly notified via CTS.

ORIGINAL