



**Utilitas Tecknologies Limited v Andrew & another (Civil Appeal
155 of 2023) [2025] KEHC 15924 (KLR) (5 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15924 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CIVIL APPEAL 155 OF 2023
JK NG'ARNG'AR, J
NOVEMBER 5, 2025**

BETWEEN

UTILITAS TECKNOLOGIES LIMITED APPELLANT

AND

CHARLES OMURWA ANDREW 1ST RESPONDENT

DARSON TRADING LIMITED 2ND RESPONDENT

*(Being an appeal against the judgment delivered by Hon. P.K.
MUTAI (PM) on 18/12/2023 in Kisii CMCC NO. E 943 OF 2021)*

JUDGMENT

1. This judgment determines the appellant's appeal brought vide the memorandum of appeal dated 22/12/2023. The appeal relates only to the issue of quantum and special damages.
2. The 1st respondent who was the plaintiff before the trial court pleaded that on 18/7/2021 he was off the verge of Kisii-Daraja Mbili road when the appellant's authorized driver recklessly drove the subject motor vehicle KDA 348Z and it knocked down the 1st respondent causing him serious injuries. That the appellant and 2nd respondents were the registered and beneficiary owners of the subject vehicle.
3. After conducting the hearing, the court entered liability at 100% as against the defendants. The trial court also awarded Kshs. 1,500,000/= for general damages, Kshs. 500,000/= for loss of earning and Kshs. 29,330/=. The plaintiff therein was also awarded costs.

The Appeal

4. It is that judgment that gave rise to this appeal where the appellant complains that: the trial court erred by failing to consider the parties submissions on quantum; the trial court erred in awarding Kshs. 1,500,000/= for general damages as the amount was excessive, the trial court erred in awarding Kshs.



500,000/= for loss of future earning capacity yet the 1st respondent's earnings were not proven, the trial court erred in awarding special damages of Kshs. 29,330/= an amount that was not proven, and that the trial court's discretion on quantum was injudicious.

5. As observed above, the appeal is against quantum and special damages only. I have considered the submissions both by the Appellant and Respondent alongside the entire record.

Analysis and Determination

6. 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.

7. 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.”

8. The first issue for consideration is whether the trial court erred in awarding Kshs. 1,500,000/= for pain and suffering.

9. 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.”

10. As correctly found by the trial court, all the medical documents on record indicated that the respondent sustained major head injuries and lost consciousness immediately after the accident. As per the medical documents on record inclusive of treatment notes from Kisii Teaching and Referral Hospital, p3 copy and medical report dated 6/8/2021, the 1st respondent sustained head injury with loss of consciousness, multiple skull fractures on various sides of the skull, bi frontal acute epidural hematoma, panhemiosinus, bi frontal and left temporal lobe contusion hemorrhage, left shoulder dislocation, deep cut wounds on the left parietal and temporal regions of the head, abrasions on the left zygomatic region, chest contusion, blunt trauma to the back and bruises on the left shoulder.

11. Dr. Morebu P. Momanyi noted that the 1st respondent continued to suffer headaches and was painkillers, panic attacks, depression, anxiety and post traumatic stress disorder. He was also unable to perform most daily activities during recovery inclusive of personal hygiene and visiting the toilet and would require support. That the 1st respondent would take a long time to recover and needed assessment from a psychologist as well as physiotherapy and occupational therapy. He observed that



- the wounds were healing but they left large disfiguring and permanently ugly scars with a significant cosmetic effect. The dislocation could have future complications and the head injury could cause epilepsy or psychosis. Dr. Morebu assessed permanent disability at 40%.
12. The trial court proceeded to award damages of Kshs1,500,000/= relying on Isaac K. Chemjor & Another VS Laban Kiptoo (2019).
 13. I assessing with that award was inordinately high or low, I rely on Meru Hcc No.100 Of 2016, H.K.N Vs Kenafric Bakery Ltd And Elphas Mugambi, where the plaintiff, a minor, was involved in an accident and suffered serious injuries to the head with brain contusion and oedema, fracture of left mandible, degloving injury to the right thigh and other soft tissues injuries. As a result of the injuries he suffered 60% disability and was awarded Kshs.2.5 Million general damages. I do note that assessment of disability was much higher than that of the 1st respondent herein.
 14. I also rely on Joseph Gichui Thomas v KG (Minor suing through his mother and next friend SNN) [2018] eKLR where the High Court affirmed an award of Ksh. 1,800,000.00 for head injury and multiple cuts and bruises on head, face and chest and Majid v Toza (Civil Case 238 of 2021) [2023] KEHC 20487 (KLR) (17 July 2023) where the High Court set aside an award of Kshs. 2,500,000/= and replaced it with an award of Kshs. 1,700,000/= where the plaintiff had suffered severe head injury involving; comatose state, fracture of the right mastoid involving the occipital and temporal bones, large right parietal extradural hematoma, left frontal intradural hematoma, brain edema, severe multiple bone, brain and soft tissue injuries.
 15. Noting the severe injuries suffered by the 1st respondent, healing difficulties with loss of independence in performing daily tasks, current state of the 1st respondent inclusive of post-traumatic stress, headaches, distorted features and possible future medical care and further noting assessment of permanent disability of 40%, I find that the award of Kshs. 1,700,000/= was not inordinately high and was commensurate with the injuries suffered. That award is confirmed. I say so relying on the Court of Appeal case in Bashir Ahmed Butt V Uwais Ahmed Khan [1982-88] KAR 5 where it was held that: -

“An appellate Court will not disturb an award of damages unless it is so 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”
 16. I find no justification in disturbing the award of damages. This ground of appeal must similarly fail.
 17. The next ground of appeal was in relation to loss of earning capacity. The trial court relied on Mumias Sugar Company Limited Vs. Francis Wanalo (200 KRL) and awarded loss of earning at Kshs. 500,000/=.
 18. The appellant took issue with that award on grounds that the award was wrongly entered as the 1st respondent did not prove his earnings before the accident.
 19. I refer to Mary Khayesi Awalo & Another v Mwilu Malungu & Another ELD HCCC No. 19 of 1997 [1999] eKLR where Nambuye J., stated that: -

“As regards the income of the deceased there are no bank statements showing his earnings. Both counsels have made an estimate of the same using no figures. In the courts opinion that will be mere conjecture. It is better to opt for the principle of a lumpsum award instead of estimating his income in the absence of proper accounting books. In summary I find and hold that the multiplier approach was wholly inappropriate in light of the paucity



of evidence. Taking the aforesaid principles into account, I award the dependants of Eric Okoth Obambla and Collins Ochieng Obambla the sum of Kshs. 700,000.00 each.”

20. In awarding damages under this head, the Court of Appeal in *Mumias Sugar Company Limited vs. Francis Wanalo* (2007) eKLR stated that: -

“...The award for loss of earning capacity can be made both when the plaintiff is employed at the time of the trial and even when he is not so employed. The justification for the award when plaintiff is employed is to compensate the plaintiff for the risk that the disability has exposed him of either losing his job in future or in case he loses the job, his diminution of chances of getting an alternative job in the labour market while the justification for the award where the plaintiff is not employed at the date of trial, is to compensate the plaintiff for the risk that he will not get employment or suitable employment in future. Loss of earning capacity can be claimed and awarded as part of general damages for pain, suffering and loss of amenities or as a separate head of damages. The award can be a token one, modest or substantial depending on the circumstances of each case. There is no formula for assessing loss of earning capacity. Nevertheless, the Judge has to apply the correct principles and take the relevant factors into account in order to ascertain the real or approximate financial loss that the plaintiff has suffered as a result of disability.”

21. It is not in dispute that the 1st respondent did not proof a liquidated amount to show what he was earning before. I do however note that the 1st respondent is an adult and he must have been earning an income to sustain his daily life. This justifies an award of loss of earning and the same does not call for strict proof.
22. The 1st respondent was incapacitated after the accident and was unable to do simple daily tasks such as keep personal hygiene or visit the toilet and he had to rely on other people’s assistance. By that alone, it was quite obvious that he could not perform any task that would attract income until he recovered and the same would take a long time as per the doctor’s assessment.
23. His permanent disability was assessed at 40% and this would affect his ability to make any earnings. It was noted in the medical report that he was a business man and also a gardener and was unable to perform any of those tasks. He also had spiked anxiety and panic attacks when outside as well as flashbacks and always wanted to be indoors. In that state, the 1st respondent cannot be able to earn a living as before. I am convinced that the accident diminished the 1st respondent’s earning capacity. I say so noting that the 1st respondent was 64 years at the time of the medical examination. At that age, any possibility of employment was so low as the 1st respondent was nearing his retirement age.
24. I do find that the award for Kshs. 500,000/= was sound and the same is upheld. See *Majid v Toza* (Civil Case 238 of 2021) [2023] KEHC 20487 (KLR) (17 July 2023) where an award of Kshs. 500,000/= for loss of earning capacity was upheld.
25. The final ground of appeal was on the award of special damages of Kshs. 29,330/= which the appellant averred was not proven. I have carefully perused the record and do agree with the trial court that though the appellant pleaded Kshs. 36,044/=, the receipts produced before court totalled to Kshs. 29,330/=. That award is thus upheld. I see no reason to disturb the trial court’s finding on special damages and the same is upheld.
26. The upshot is that the appeal is found to be unmerited and the same is dismissed with costs to the respondent.



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

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J.K.NG'ARNG'AR

JUDGE

In the presence of:

Siele:CA

N/A for the appellant

Kuse for the respondent

