



**ENW (Minor Suing through Next Friend and Mother AWM) v Ayan Automobiles Limited & another (Civil Appeal E068 of 2022) [2025] KEHC 17049 (KLR) (20 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17049 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CIVIL APPEAL E068 OF 2022  
TW OUYA, J  
NOVEMBER 20, 2025**

**BETWEEN**

**ENW ..... APPELLANT**

**MINOR SUING THROUGH NEXT FRIEND AND MOTHER AWM**

**AND**

**AYAN AUTOMOBILES LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**ZAKAYO NJOROGE ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal against the judgement and decree of Hon. S.K Nyaga (PM) delivered on 28th October, 2022, at the Murang'a Chief Magistrate Court in CMCC case no. E143 of 2021 dated 28th October 2022)*

**JUDGMENT**

1. This appeal emanates from the judgement and decree of the lower court in which the Appellant, ENW, was awarded general damages for pain and suffering in the sum of Kshs. 2,500,000 and Kshs.250,000, as future medical expenses together with costs of the suit plus interest.
2. These damages, were awarded in a suit that was instituted by the appellant, a minor suing through an adult next friend and mother, following personal injuries that she sustained as a result of a road traffic accident that occurred on 21<sup>st</sup> January, 2021 involving her as a fare paying passenger on board motor vehicle registration number KCR 874W which was allegedly being driven carelessly and negligently, that it caused an accident and as a result, the appellant sustained serious injuries. The particulars of the alleged negligence were pleaded at paragraph 4 of the appellant's plaint dated 8<sup>th</sup> July, 2021.
3. The records of the trial court show that the learned trial magistrate found the respondents 100% liable for the accident and proceeded to assess the general damages payable to the appellant.



4. The appellant was dissatisfied with the trial court's findings on quantum and proffered an appeal to this court vide a Memorandum of Appeal dated 24<sup>th</sup> November 2022.
5. In the Memorandum of Appeal, the appellant faulted the learned trial magistrate for failing to appreciate the relevant principles and caselaw in assessing damages, thereby arriving at a very low award on damages and for failing to give any due and proper consideration to the pleadings, submissions, and evidence on record, and as a result, she made an erroneous judgement on damages.
6. The appeal was canvassed by way of written submissions. The appellant's submissions dated 30<sup>th</sup> July 2024 was filed by their learned counsel Kulecho & Company Advocates. The respondents did not file their submissions, despite being granted several chances by this court to do so.
7. In their written submissions, the appellant alleged that an award of Kshs. 2,500,000 by the learned trial magistrate as general damages for pain and suffering was inordinately low, considering the extent and severity of injuries sustained by the appellant, which injuries left her 100% permanently incapacitated. The appellant contends that a sum of Kshs. 8,000,000 would be adequate compensation under this head.
8. The appellant in her written submissions also faulted the learned trial magistrate for failing to award her damages under the head of loss of earning capacity. She submitted that she has been left at a disadvantaged position following the accident, as she cannot comfortably continue with her education as she used to. She further submitted that she still had 53 years of productive life ahead of her with a bright and promising future, however, her chances in the job market have now been limited due to the accident. She therefore urged this court to award her a lump sum of Kshs. 2,000,000 as damages for loss of earning capacity.
9. This being a first appeal, it is an appeal on both facts and the law. Given that the appeal only challenges the quantum of damages awarded by the trial court, it is important to set out the parameters within which an appellate court can interfere with an award made by the trial court.
10. As a general rule, an appellate court should be slow to interfere with an award of damages made by the trial court mainly because such awards depend on the trial courts discretion. An appellate court can only interfere with an award made by the trial court, where it is shown that the learned trial magistrate acted on wrong principles, or that he or she misapprehended the evidence on record on some material aspect, and so arrived at a figure that was either inordinately high or low.
11. This principle was reiterated by the Court of Appeal, in the case of *Mariga Vs Musila* [1984] KLR; as follows:

“The assessment of damages is more like an exercise of discretion and an appellate court is slow to reverse a lower court on the question of the amount of damages unless it is satisfied that the judge acted on a wrong principle of law or has for these or other reasons made a wholly erroneous estimate of the damages suffered. The question is not what the appellate court would award but whether the lower court judge acted on the wrong principle...”
12. Similarly, the Court of Appeal in *Bashir Ahmed Butt versus Uwais Ahmed Khan* [1978] eKLR; stated 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....”

13. It is trite that in assessing damages for personal injuries, the general method of approach is that comparable injuries should be compensated by comparable awards but regard must be had to the fact that no two cases can be exactly similar. Each case therefore must be decided on its own merits.
14. This position was restated by the court of appeal in Stanley Maore versus Geoffrey Mwenda [2004] eKLR; as follows: “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 method of approach should be that comparable injuries should as far as possible be compensated by comparable award keeping in mind the correct level awards in similar cases.”
15. In this case, the injuries sustained by the appellant following the road traffic accident are not disputed. According to Paragraph 6 of the plaint, the appellant sustained Burst fracture of T4 thoracic vertebra with paralysis of both lower limbs.
16. This injury was confirmed by the P3 form, the discharge summary form from the National Spinal Injury Referral Hospital dated 14<sup>th</sup> June, 2021 and also from the Medical report by Dr. Cyprian Okoth Okere dated 30<sup>th</sup> June, 2021.
17. As per the medical report from Dr. Okere, the appellant sustained a burst T4 thoracic vertebra with paralysis of both lower limbs. She also suffered from incontinence of faeces and urine. Dr. Okere classified the injury as grievous harm and assessed her degree of permanent disability at 100%. According to Dr. Okere, the appellant would need nursing care throughout her life as well as a motorized wheel chair.
18. The appellant was also taken by the respondent to Dr. Jenipher Kahuthu for a second medical exam. As per the Medical report by Dr. Kahuthu dated 30<sup>th</sup> November, 2021, the appellant sustained a burst T4 fracture with incomplete cord injury and resultant paraplegia. She noted that the appellant had difficulties moving around and was unable to control her bowel and bladder.
19. Further, it is submitted that Dr. Kahuthu indicated that the appellant would require bladder and bowel care, a care giver and physiotherapy for the rest of her life. She assessed the appellants degree of permanent disability at 80%.
20. It is contended that the learned trial magistrate while awarding the appellant a sum of Kshs.2,500,000 as general damages for pain and suffering, did not indicate the authorities that she relied on in arriving at the said amount. She only stated that the said amount was sufficient, given that the appellant suffered 80% permanent disability due to paraplegia.
21. In my assessment, I do not agree with the learned trial magistrate that an award of Kshs. 2,500,000 would be adequate compensation for the injury sustained by the appellant. I say so because, both medical reports from Dr. Okere and Dr. Kahuthu, confirm that the appellant would need the help of nursing care for the rest of her life. In fact, Dr. Kahuthu in her medical report noted that the appellant would require bowel and bladder care as well as physio therapy for the rest of her life. It is also not disputed that the appellant has lost her ability to walk and will be using a motorized wheelchair for the rest of her life.
22. It is therefore evident that the appellant is entirely incapacitated as she will be unable to lead a normal life as she once did. It is also evident that she will be in need of nursing care through out her entire life, seeing that she has lost the ability to control her bowel and bladder. Dr. Okere, had in his medical report opined that the appellant had suffered 100% permanent disability, Dr. Kahuthu on the other hand was



of the view that the appellant had suffered a permanent disability of 80%. Based on the reasons stated above, I agree with Dr. Okere that indeed the appellant has suffered 100% permanent disability.

23. Given that in assessing damages for personal injuries, the guiding principle is that comparable injuries should attract comparable awards, I find the following authorities relevant:
- i. Nicholas Njue Njuki versus Eluid Mbugua Kahuro (2014) eKLR; In this case, the plaintiff sustained unstable fracture dislocation of the lumbar vertebrae leading to spinal cord damage; paralysis of the lower limbs; and incontinence of stool and urine as a result of a road traffic accident. He would also be confined to a wheelchair for the rest of his life, his permanent incapacity was assessed at 100%. The court in that case awarded him Kshs. 3,800,000 as general damages for pain and suffering and loss of amenities.
  - ii. Eva Mueni Wambugu versus Simon Peter Githae and Another, (2012) eKLR; the plaintiff in that case sustained Fractured ribs on the left chest, 3 ribs with haemopneumothorax, Fractured tarsal bones right foot, Compressed fracture dislocation of L1 and L2, Paralysis of both lower limbs, Loss of sensation from the waistline downwards and Loss of urine and stool control, as a result of a road traffic accident. his permanent disability was also assessed at 100%. The court in that case awarded the plaintiff Kshs. 3,500,000 as general damages for pain and suffering.
24. Guided by the above authorities, and considering also the inflationary trends, as the aforementioned cases were decided over a decade ago, and considering also the purchasing power of the Kenyan shillings, I find that an award of Kshs. 2,500,000 by the trial court as general damages for pain and suffering was inordinately low and I proceed to substitute it with kshs. 3,500,000 which would be adequate compensation in this case.
25. Regarding the prayer for loss of earning capacity, the appellant faulted the learned trial magistrate for not awarding her the said damages, whereas she had pleaded for the same. I have gone through the plaint dated 8<sup>th</sup> July, 2021, and indeed the appellant had pleaded for damages for loss of earning capacity. It was therefore an error on part of the learned trial magistrate not to award her the said damages.
26. It is trite that diminished/loss of earning capacity is a general damage that need not be pleaded but must be proved on a balance of probabilities. This position was restated by the court in Kihara & another v Mutuku [2022] KEHC 15626 (KLR); as follows: “Loss of earning capacity is in the nature of general damages and need not be pleaded though it has to be proved on a balance of probability.”
27. In Mumias Sugar Company Limited v Francis Wanalo [2007] KECA 485 (KLR) the court of appeal stated as follows regarding damages for loss of earning capacity:

“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.”

28. In this case, it is clear from the medical reports that has been adduced, that the appellant would for the rest of her life, be incapable of using the lower part of her body. There is evidence on record that the appellant has no control of her bowel and bladder. Her mother, Alice Wambui Mwangi, who testified at the trial court as PW1, stated that the appellant uses diapers and catheters. Both Drs. Okere and Kahuthu opined that the appellant would be in need of a care giver for the rest of her life. It is therefore evident that the appellant would be incapable of getting any employment in future or doing anything meaningful to earn her any income. The appellant is therefore entitled to loss of earning capacity of Kshs. 1,500,000.
29. This is supported by the court of appeal case of S J v Francesco Di Nello & Sacha Francesco (2015) eKLR, where the appellate court awarded a 15-year-old, who had been rendered 100% paraplegic following a road traffic accident, damages for loss of earning capacity in the sum of Kshs. 1,500,000.
30. To this end, the appellant’s appeal succeeds on the following terms:
  - i. The award of Kshs. 2,500,000 in general damages is hereby set aside and substituted instead with an award of Kshs. 3,500,000.
  - ii. The appellant is awarded damages for loss of earning capacity in the sum of Kshs. 1,500,000.
  - iii. The appellant shall also have the costs of this appeal.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 20<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**HON. T. W. OUYA**

**JUDGE**

