REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

CIVIL APPEAL NO. E040 OF 2024

THE BOARD OF DIRECTORS

CHUKA UNIVERSITY

COLLEGE.....APPELLANT

VERSUS

FREDRICK LAGAT.....RESPONDENT

(Being an appeal against the judgment and decree of Hon. J .Gandani Chief Magistrate in Chuka MCCC No. E070 of 2020 delivered on 30th October 2024.)

JUDGEMENT

1. This Appeal arises from the judgment and decree of Hon. J Gandani Chief Magistrate in Chuka MCCC No. E070 of 2020 delivered on 30th October 2024. By way of a plaint dated 21st February 2022, the Plaintiff had sued the Defendant seeking general and special damages arising out of a road traffic

accident. The Plaintiff's case was that on 17th June 2021, he was riding motor cycle registration number KMFP 989F travelling along Chuka-Kaanwa road near Kathituni area, when the defendant's driver, assignee, servant, employee, agent so negligently drove, managed and/or controlled the defendant's motor vehicle KBG 131C that he caused or permitted the same to get out of control and knock the motor cycle. Consequently, the Plaintiff sustained injuries. The Plaintiff blamed the driver of the motor vehicle for the accident.

2. The Defendant filed a statement of defence dated 11th May 2022 denying the averments in the Plaint. The Defendant denied ownership of the motor vehicle. It also denied the occurrence of the accident and averred that if the same occurred then the same was caused or substantially

contributed to by the actions or omissions of the Plaintiff.

3. The matter proceeded for hearing with two witnesses testifying for the Plaintiff and one witness testifying for the Defendant. Judgment was entered in favour of the Plaintiff in the following terms:-

    a. Liability at 70%

    b. General damages at Kshs. 1,000,000

    c. Special damages Kshs. 17,430

    d. Future medical expenses Kshs. 300,000

4. Dissatisfied with the judgment, the Defendant (now the Appellant) lodged the appeal on the following grounds:-

    i. That the learned trial magistrate erred in fact and in law by awarding general damages for pain and suffering and loss amenities that that is so manifestly

excessive as to amount an erroneous estimate of the injuries and loss suffered by the Respondent.

ii. The learned trial magistrate erred in fact and in law and fact by awarding general damages for pain, suffering and loss of amenities that is so inordinately high as to represent an erroneous estimate of judicial awards for comparable injuries.

iii. The learned trial magistrate erred in fact and law by making an award of general damages for pain and suffering and loss of amenities which is inconsistent with the authority relied on by the court.

iv. The learned trial magistrate erred in fact and law by failing to consider the Appellant's written submissions and authorities cited therein in assessing

general damages for pain, suffering and loss of amenities.

5. The Appeal was canvassed by way of written submissions as per the directions of the court. The Appellant filed their written submissions dated 25th April 2025 while the Respondent filed their written submissions dated 5th May 2025 all discussing the sole issue of quantum for damages.

6. My duty as the first appellate court is to re-evaluate and re-examine the evidence in the trial court and come to my own findings and conclusions. This principle was espoused in the Court of Appeal case of ***Kiilu & Another-v-Republic (2005) 1 KLR 174*** where the Court of Appeal stated: -

> ***"An Appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive***

examination and to the appellate court's own decision on the evidence. The first appellate court must itself weight conflicting evidence and draw its own conclusions.

It is not the function of a 1st appellate court to merely scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusion. It must itself make its own finding. Only then can it decide whether the Magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had advantage of hearing and seeing the witnesses."

Analysis and determination

7. I have considered the trial record, grounds of appeal and the respective submissions of the parties. The sole issue for determination is the quantum of damages awarded by the trial court.

8. The general principle is that money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums, which must be regarded as giving reasonable compensation. In the process there must be endeavour to secure some uniformity in the general method of approach. By common consent awards must be reasonable and must be assessed with moderation.

9. These principles were set out by the Court of Appeal in **Southern Engineering Company Ltd. vs. Musingi Mutia [1985] KLR 730** where it was held that:

"It is trite law that the measurement of the quantum of damages is a matter for the discretion of the individual Judge, which of course has to be exercised judicially and with regard to the general conditions prevailing in the country generally, and prior decisions which are relevant to the case in question to principles behind the award of general damages enumerated…The difficult task of awarding money compensation in a case of this kind is essentially a matter of opinion judgement and experience. In a sphere in which no one can predicate with complete assurance that the award made by another is wrong the best that can be done is to pay regard to the range and limits of current thought. In a case

such as the present it is natural and reasonable for any member of the appellate tribunal to pose for himself the question as to award he, himself would have made. Having done so, and remembering that in this sphere there are invariably differences of view and of opinion, he does not however proceed to dismiss as wrong a figure of an award merely because it does not correspond with the figure of his own assessment…It is inevitable in any system of law that there will be disparity in awards made by different courts for similar injuries since no two cases are precisely the same, either in the nature of the injury or in age, circumstances of, or other conditions relevant to the person injured.

The most that can be done is to consider carefully all the circumstances of the case in question, and to consider other reasonably similar cases when assessing the award…it need hardly be emphasized that caution has to be exercised when paying heed to the figures of awards in other cases. This is particularly so where cases are merely noted but not fully reported. It is necessary to ensure that in main essentials the facts of one case bear comparison with the facts of another before comparison between the awards in the respective cases can fairly or profitably been made. If however, it is shown that cases bear a reasonable measure of similarity then it may be possible to find a reflection in them of a

general consensus of judicial opinion. This is not to say that damages should be standardized or that there should be any attempt to rigid classification. It is but to recognize that since in court of law compensation for physical injury can only be assessed and fixed in monetary terms the best that Courts can do is to hope to achieve some measure of uniformity by paying heed to any current trend of considered opinion."

10. Similarly, the court of Appeal **in Sheikh Mustaq Hassan vs. Nathan Mwangi Kamau Transporters & 5 Others [1986] KLR 457** stated that:-

"The appellate court is only entitled to increase an award of damages by the High Court if it is so inordinately

low that it represents an entirely erroneous estimate or the party asking for an increase must show that in reaching that inordinately low figure the Judge proceeded on a wrong principle or misapprehended the evidence in some material respect…A member of an appellate court when naturally and reasonably says to himself "what figure would I have made?" and reaches his own figure must recall that it should be in line with recent ones in cases with similar circumstances and that other Judges are entitled to their views or opinions so that their figures are not necessarily wrong if they are not the same as his own…The Judges of both

courts should recall that inordinately high awards in such cases will lead to monstrously high premiums for insurance of all sorts and that is to be avoided for the sake of everyone in the country."

11. The Plaintiff (PW2) adopted his witness statement. He produced as PEX 7 a medical report dated 8th July 2021 by Dr. Njiru G.N. From the medical report, the plaintiff sustained the following injuries: -

a. Depressed right sided skull fracture
b. Extensive laceration right frontal parietal scalp.
c. Chest contusion.
d. Laceration right hand dorsal surface.
e. Laceration and contusion to the left knee
f. Multiple lacerations right pretibial region.

g. Laceration over the right ankle joint with associated ankle joint contusion.

h. Abdominal contusion.

i. Laceration left shoulder joint.

j. Laceration left wrist joint

12. From the P3 form produced as PEX 4, the Plaintiff's injuries were classified as grievous harm.

13. The Appellant submitted that the prevailing circumstances were not properly considered and/or given sufficient weight by the trial court in arriving at the award of damages. They urged that PW2 was not the investigating officer, did not visit the scene nor produce the sketch map and the police abstract produced had two conflicting outcomes. That there was no eye witness to give an account of how the accident occurred. That The plaintiff was riding a motor cycle on a public road without a licence; and that the motorcycle was not insured.

14. It was submitted that the above factors ought to have been taken into consideration in apportioning liability and that at the trial court made an inordinately high award.

15. It was also submitted that the authority relied upon by the trial court, while relying on comparable injuries awarded twice what was awarded by the Appellate court in that authority. Further, that the authorities cited by the Appellant have a more consistent trend of awards for fairly comparable injuries. The Appellant relied on the following authorities:-

(i)Dismas Kipyego v Philip Kiprono [2019] eKLR where the court awarded Kshs. 250,000 for severe blunt injury to the head and loss of consciousness, depressed skull fracture of the occipital parietal bones, blunt injury to the chest,

sub-laxation of the right shoulder joint and blunt injury to the right hip.

(**ii**)**Moiz Motors Limited & Another V Harun Ngethe Wanjiru [2021] KEHC 8702 KLR** where the Appellate court substituted an award of Kshs. 700,000 with Kshs. 500,000 for depressed frontal bone fracture of the skull, severe tissue injuries in the face, soft tissue injury to the chest, soft tissue injury of both knees, soft tissue injury of both hip joints and severe soft tissue injury of the toes of the right leg.

16. The Appellant urged the court to set aside, and or substitute the trial court's award with a lower award.

17. The Respondent on his part submitted that no evidence was produced by the Appellant to contradict the injuries as per the medical report which was produced by consent. It was his

submission that the injuries he sustained are comparable to those in **Kyoga Hauliers (K) Ltd and Another v Philip Mathiu Nyingi [2017] eKLR and Panniack Investments Ltd V Davidson Mwanzia Kamuta [2018] eKLR** where the damages awarded were Kshs. 1,000,000 and Kshs. 800,000.

18. I have considered the authorities submitted by the parties. In the case of **Charles Mwaniki Muchiri v Coastal Kenya Enterprises Ltd [2016] KEELRC 224** (**KLR),** the plaintiff suffered severe head injuries which *inter alia* included compound comminuted frontal depressed skull fracture, multiple lacerations on the scalp and a right parietal linear fracture. The court awarded general damages of Kshs 800,000.

19. The Respondent sustained comparable head and multiple soft tissue injuries as the Plaintiff in

the above case. Taking into consideration the comparative award, I am of the considered view that the award in the present case was reasonable.

20. It is my finding that award was not inordinately high and represented a fair estimate of compensation for damages suffered by the Respondent. I uphold both the apportionment of liability and the award.

21. The Appeal has no merit and is dismissed with costs to the Respondent.

Judgement delivered, dated and signed at Chuka this 26th day of November, 2025.

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R. LAGAT-KORIR

JUDGE

Judgement delivered in the presence of Mr. Ajwang holding brief Mr. Olao for the

Appellant and N/A for the Respondent.

Muriuki (Court Assistant.)