

3. Further that at the time of the accident, the Appellant was the beneficial owner of the motor vehicle.
4. The Respondent sustained a segmental left tibia fracture.
5. The Appellant denied the Respondent's claim and said the Respondent ran across the road without a warning next to a road bridge.
6. The Appellant said he tried to apply emergency brakes but the space between them was not sufficient and he collided with the Respondent.
7. The Appellant also said he applied emergency brakes and swerved and hooted but he still hit the Respondent.
8. He said the Respondent reeked of alcohol and police blamed him for the accident.
9. The trial court found the Appellant 100% liable for the accident and assessed damages as follows:-

(i)	Special damages	Kshs. 5,550/=
(ii)	General damages for pain and suffering	<u>Kshs. 500,000/=</u>
	Total	<u>Kshs. 505,550/=</u>

10. The Appellant has appealed on the following grounds:-

- (i) The learned Magistrate erred in law and in fact by disregarding the testimony and evidence presented by the Appellant demonstrating negligence on the part of the Respondent which solely caused the accident.**
- (ii) The learned Magistrate misdirected herself by failing to appreciate that the Respondent fell short of the burden of proof required in establishing negligence on the part of the Appellant.**
- (iii) The learned Magistrate misdirected herself by not appreciating that the Appellant was not at fault and liability must always follow fault.**
- (iv) The learned Magistrate erred in law and in fact by holding that the cause of action attracted an award of Kshs. 505,550/= which amount is not commensurate to the injuries suffered.**
- (v) The learned Magistrate erred in law and in fact by failing to take cognizance of the fact that there was insufficient material evidence presented to hold the Appellant entirely responsible.**

11. The parties filed written submissions as follows; The Appellant submitted that this appeal arises from the judgment of the Honourable RM, Mr. Zena Atetwe, delivered on 28th March 2024, which found the

Appellant, Moses Ngugi Njuguna, fully liable for a road traffic accident and awarded the Respondent, Alex Shisanya, Kshs. 505,550 in damages.

12. The Appellant contends that this decision was erroneous both on liability and quantum.
13. On the issue of liability, the Appellant's case is that the trial magistrate disregarded his evidence and wrongly shifted the burden of proof.
14. The Appellant testified that he was driving lawfully on the outer lane when the Respondent suddenly ran across the road at an undesignated point, despite a footbridge being nearby.
15. In an attempt to avoid a collision, the Appellant braked and swerved, but the Respondent nevertheless collided with the vehicle. It is asserted that the Respondent reeked of alcohol at the time.
16. The Appellant emphasizes that the police abstract indicated the matter was still under investigation, and he was never charged with any traffic offence, which suggests the police did not attribute sole blame to him.
17. The Appellant argues that the Respondent failed to discharge the burden of proof to establish negligence.
18. The Respondent's case relied solely on his own uncorroborated testimony and that of a police officer, PC Swalleh, who had no firsthand knowledge of the accident, did not investigate the scene, and could only produce an abstract confirming the accident's occurrence.
19. This evidence, the Appellant submits, was hearsay and of no probative value in determining fault.

20. In the absence of an eyewitness, a proper police investigation report, or the Occurrence Book and Investigation Diary, the finding of 100% liability was speculative and based on conjecture.
21. The Appellant cites authorities to argue that in cases of conflicting evidence with no clear distinction, liability should be apportioned.
22. He urges this Court to find the Respondent entirely or substantially liable for his own negligence in crossing at an undesignated area, or, alternatively, to apportion liability at 70% against the Respondent.
23. Regarding quantum, the Appellant submits that the award of Kshs. 500,000 in general damages was inordinately high and not commensurate with the injuries suffered.
24. The Respondent sustained a segmental left tibia fracture which was managed conservatively without surgery and had fully healed by the time of a subsequent medical examination.
25. Comparing this injury to those in cited authorities where comparable or more severe fractures attracted awards around Kshs. 300,000, the Appellant prays for this Court to substitute the general damages award with Kshs. 300,000.
26. In conclusion, the Appellant prays for the appeal to be allowed. He seeks the setting aside of the trial court's judgment and its substitution with a finding on liability of 70% against the Respondent and 30% against the Appellant.

27. On quantum, he proposes general damages of Kshs. 300,000 and the agreed special damages of Kshs. 5,550, resulting in a total of Kshs. 305,550. Applying the proposed apportionment, the Respondent would be entitled to 30% of this sum, amounting to Kshs. 91,665.
28. The Appellant urged this Court to independently evaluate the evidence and make its own findings.
29. The Respondent, Alex Shisanya, submitted that the High Court should dismiss the appeal and uphold the trial court's judgment, which found the Appellant, Moses Ngugi Njuguna, 100% liable for a road traffic accident that occurred on September 31, 2019.
30. The Respondent argues that the Appellant, as the driver of motor vehicle KBK 927M, breached the duty of care owed to other road users.
31. The evidence, including the Appellant's own admission that he saw and hit the Respondent while the Respondent was on the pedestrian pathway, and the unchallenged police abstract, confirms the Appellant's sole responsibility.
32. The Respondent cites established case law emphasizing the higher duty of care required from motorists in control of a "lethal machine" and asserts that the trial court's finding on liability was sound and based on a proper evaluation of the evidence.
33. Regarding quantum, the Respondent urges the appellate court to enhance the award for general damages for pain and suffering.

34. While the trial court awarded Kshs. 500,000, the Respondent contends this sum is inordinately low given the grievous nature of his injuries, a segmental left tibia fracture resulting in a 20% permanent incapacity, a limp, and deformity.

35. He seeks an award of Kshs. 2,000,000, aligning with comparable precedents such as China Road and Bridge Corporation (Kenya) v Job Mburu Ndungu. The Respondent accepts the special damages award of Kshs. 5,550.

36. He invokes the principle that an appellate court should not interfere with an award of damages unless it is based on wrong principles or is so inordinately low as to constitute an entirely erroneous estimate.

37. Finally, the Respondent prays that the costs of the appeal be awarded to him.

38. The issues for determination in this appeal are as follows;

(i) Whether the learned trial magistrate erred in law and in fact in finding the Appellant 100% liable for the road traffic accident that occurred on 31st September 2019.

(ii) Whether the award of Kshs. 500,000/= as general damages for pain and suffering was inordinately high or low, and thus warrants interference by this appellate court.

39. I have carefully considered the record of appeal, the grounds advanced, and the written submissions filed by counsel for both parties.

40. The cornerstone of a claim in negligence is the establishment, on a balance of probabilities, of a breach of a duty of care owed by the defendant to the plaintiff, resulting in damage.
41. In the context of road traffic accidents, the driver of a motor vehicle owes a high standard of care to other road users, including pedestrians.
42. The trial magistrate, after evaluating the evidence, made a factual finding that the Appellant's version of events was inconsistent.
43. The Appellant testified that the Respondent suddenly ran across the road, yet in his police statement, which was produced as an exhibit, he stated that he "saw a person walking on the pedestrian pathway then I heard a bang."
44. This material contradiction went to the very root of his defence. The trial court was entitled, and indeed duty-bound, to assess the credibility of the witnesses.
45. In **Mbogo & Another v. Shah [1968] EA 93**, it was held that an appellate court will not interfere with a trial court's finding of fact unless it is based on no evidence, or on a misapprehension of the evidence, or the judge is shown demonstrably to have acted on wrong principles in reaching his conclusions.
46. The Appellant has not demonstrated any such error.
47. The Appellant's contention that the Respondent failed to discharge the burden of proof is misconceived.

48. The Respondent testified on how the accident occurred and produced police abstract as evidence. While the abstract itself does not assign blame, it is a formal record confirming the occurrence of the accident involving the Appellant's vehicle.
49. The burden then shifted to the Appellant to explain how the accident occurred without negligence on his part. His contradictory accounts, as found by the trial court, failed to discharge that evidential burden.
50. The mere allegation that the Respondent "reeked of alcohol" was not corroborated by any medical or police report.
51. Similarly, the claim that the matter was "under investigation" did not absolve the Appellant of liability in a civil suit, where the standard of proof is on a balance of probabilities, not beyond reasonable doubt as in a criminal case.
52. I find no fault in the trial magistrate's analysis on this point. The finding of 100% liability against the Appellant was a reasonable inference drawn from the evidence presented and is hereby upheld.
53. On Quantum of Damages, the principles guiding an appellate court in interfering with an award of damages are trite.
54. As stated in **Butt v. Khan [1981] eKLR**, the Court of Appeal will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate, or unless the trial judge proceeded on wrong principles or misapprehended the evidence.

55. The Respondent sustained a segmental fracture of the left tibia. The medical report indicated that the fracture was treated conservatively and had united well, though a subsequent report noted a 20% permanent impairment.
56. The trial court awarded Kshs. 500,000/= for pain and suffering. The Appellant argues this is excessive, citing authorities where awards for similar injuries were lower.
57. The Respondent, in his cross-appeal via submissions, argues the sum is inordinately low and should be enhanced to Kshs. 2,000,000/=.
58. The court's duty is to award damages that are comparable to those awarded in similar cases, taking into account inflation and the unique circumstances of the case, an award of Kshs. 350,000/= for a fractured tibia was considered appropriate.
59. Considering the nature of the injury, a segmental fracture managed conservatively, with a good union but resulting in a permanent impairment, and the guidance from the cited precedents, I find that the award of Kshs. 500,000/= by the trial magistrate falls within the reasonable range of discretionary awards for such an injury.
60. It is not inordinately high so as to constitute a wholly erroneous estimate, nor is it so low as to warrant enhancement.
61. The trial magistrate exercised her discretion judiciously and upon proper principles. Consequently, I find no basis to disturb the award on quantum.

62. In the final analysis, this appeal is devoid of merit. The findings of the trial court on both liability and quantum were sound, based on a correct appraisal of the evidence and the application of settled legal principles.

63. Accordingly, the appeal filed by Moses Ngugi Njuguna is hereby dismissed in its entirety. The judgment of the Honourable Zena Rashid, Resident Magistrate, in Milimani CMCC No. 9036 of 2019 delivered on 27th March 2024 is affirmed.

64. The Appellant shall bear the costs of this appeal.

Dated, signed and delivered this 22nd day of December, 2025 virtually via Microsoft Teams at Voi.

**ASENATH ONGERI
JUDGE**

In the presence of:-

Court Assistant: Millicent/Mabishi

.....**for Appellant**

.....**for Respondent**