

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL NO E097 OF 2023

DANIEL NJUGUNA.....
APPELLANT

VERSUS

CATHERINE
NASIMIYU.....RESPONDENT

*(Being an Appeal against the judgement of Hon. R. Otieno delivered
on 18th May 2023 in Eldoret SCCC No. E171 of 2023)*

CATHERINE
NASIMIYU.....CLAIMANT

VERSUS

DANIEL NJUGUNA.....1ST
RESPONDENT

GRIFT RIFT EXPRESS SHUTTLE SERVICES LTD.....2ND
RESPONDENT

Coram: Before Justice R. Nyakundi
M/s Kairu & McCourt Co Advocates
M/s Keter Nyolei & Co Advocates

JUDGMENT

Background

1. The brief facts of this Appeal are that the Respondent herein who was the Claimant at the trial Court filed her Statement of Claim dated 11th February 2023 seeking compensation for personal injury following a road accident which occurred on or about the 12th July 2022. It was the Respondent's case that on or about 12th July 2022 she was a passenger in a motor vehicle registration number KCH 342X Toyota Matatu along Eldoret-Nakuru Road at Safa Oil Junction near Turbo, when the Appellant carelessly drove at a high speed, lost control of the vehicle, jumped off

the vehicle and the vehicle veered off the road to the left hand side unmanned and landed on a ditch in a maize farm off the road. The Claimant stated that she sustained serious bodily injuries which included; blunt injury to the forehead, mild head injury with brief loss of consciousness, blunt injury to the back, bruises on the left leg anterior and blunt injury to both legs.

2. The Appellant who was the Respondent in the trial Court filed his Response to the Statement of Claim dated 24th March 2023 and denied the occurrence of the said accident as had been stated in the Statement of Claim. The Appellant stated at the trial Court if at all the accident occurred (which is denied) the same was solely, wholly and/or substantially contributed by the Claimant and that the Claimant was negligent in failing to take any or adequate precaution for her own safety, failing to heed the instructions on safety precautions when travelling, failing to heed the traffic rules and regulations when travelling, failing to apply/use seatbelt for her, own safety, distracting the driver of motor vehicle KCH 342X Toyota Matatu by engaging him in endless banter and *volenti non-fit injuria*. He also denied the particulars of injuries as listed by the Claimant therein and prayed for the Court to dismiss the Claimant's claim with costs to him.
3. The matter proceeded for a full trial and judgement was entered on 15th May 2023 in favour of the Claimant as against the Respondent as follows:

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- a. Liability.....100%**
- b. General damages.....Kshs. 220,000/=**
- c. Special damages.....Kshs. 6,000/=**
- d. Costs**
- e. Interests on (b), (c) and (d) above, at Court rates from the date of this judgement until payment in full.**

4. The Appellant herein being dissatisfied with the judgement delivered on the 18th May 2023 by Hon R. Otieno (Adjudicator) appealed to this

Honourable Court against the said judgement on the issue of quantum vide a Memorandum of Appeal based on the following five (5) grounds: -

- a. *That the Learned Trial Magistrate erred in law and in fact by awarding Kshs. 220,000/= as general damages which award is inordinately high in view of the injuries sustained by the Respondent.*
 - b. *That the learned Trial Magistrate misdirected himself by failing to take into account the well-established principle requiring comparable awards to be made for comparable injuries sustained thereby falling into an error by awarding Kshs. 220,000/= which award is manifestly excessive.*
 - c. *That the sum of Kshs. 220,000/= as general damages which award is excessive in view of the injuries sustained by the Respondent thereby deviating from the principle of stare decisis requiring comparable awards being made for comparable injuries sustained.*
 - d. *That the Learned Trial Magistrate erred in law and in fact by failing to consider conventional awards for general damages in cases of similar injuries and awarded general damages for pain and suffering at Kshs. 220,000/= which is very high all circumstances and injuries considered.*
 - e. *That the Learned Trial Magistrate erred in law and in fact by disregarding and failing to appreciate the judicial authorities on quantum cited by the Appellant in his written submissions thereby making an award on general damages that is unreasonably high in the circumstances and connotes an erroneous estimate of the award on general damages in view of the injuries sustained by the Respondent.*
5. The Appellant sought the following prayers from his Memorandum of Appeal;
- a. *That the Appeal be allowed.*
 - b. *That the judgement delivered on the 18th May 2023 in Eldoret SCCC No. E172 of 2022 by Hon. R. Otieno (RM) on the issue of quantum be*

set aside and an order re-assessing the award on quantum downwards be made.

c. That the Appellant be awarded the costs of the Appeal.

6. The Appeal was canvassed by way of written submissions.

Appellant's Written Submissions

7. I note that at the time of writing this judgement, the Appellant has neither filed his written submissions in the Court's record nor has he filed them in the Case Tracking System (CTS). I will however determine this Appeal on its merits.

Respondent's Written submissions

8. The Respondent filed its written submissions dated 6th October 2025 through her Learned Counsel Mr. Keter who submitted only on issue for determination being: -

a. Whether the award of Kshs. 220,000/= in general damages is inordinately high to warrant interference by this Honourable Court.

9. The learned Counsel Mr. Keter submitted that the Appellate Court would only interfere if it is established that the Court acted on wrong principles of law or misapprehended the fact or has made a wholly erroneous estimate of damage and that the Appellants have not tendered any evidence to lay basis for their ground 1-5 of their memorandum. He went ahead to state that the trial Magistrate award of Kshs. 220,000/= in light of the injuries sustained by the Respondent cannot be termed as inordinately high to warrant interference by this Honorable Court and cited the case of ***Odinga Jackson Ouma Vs Maureen Achieng Odera [2016] eKLR.***

10. Counsel submitted that the trial Court had the benefit of hearing the Respondent, observing her, the physical injury as well as her demeanor, which benefit cannot be overlooked and that it is correct assessed the injuries sustained and in awarding damages, the trial Magistrate correctly

exercised his discretion factoring passage of time and inflation aspect. Counsel also submitted that an award of damages is always guided by the extent, nature and severity of the injuries sustained from the pleadings and documentary produced and also the oral evidence and that the injuries sustained were not contested by Dr. Steve Ochieng report on re-examination request by the Appellant save for the loss of consciousness. Counsel added that the injuries sustained by the Respondent were as follows: -

- a. Blunt injury to the forehead.
- b. Mild head injury with brief loss of consciousness
- c. Blunt injury to the back.
- d. Bruises on the left leg anterior.
- e. Blunt injury to both legs.

11. The learned Counsel further submitted that the Appellants did not adduce any contradictory medical evidence nor did they call any expert witness to testify on quantum of damages payable or to contest the injuries sustained. He also added that considering the gravity of the injuries and its effects in the respondent's daily life, the current economic situation obtaining in the country and effects of inflation and urged the Court review the evidence and be guided by the provisions of Order 42 Rule 32 of the Civil Procedure Rules in coming up with a finding that delivers justice in the circumstance of both parties. Reference was made to the following case laws: ***Embu HCCA No. 61 of 2017, Francis Ndungu Wambui & Another Vs Benson Maina Gatia; Robinson Njoroge Vs Daniel Ombasa (2021) eKLR; Wahinya Vs Lucheveleli Civil Appeal E045 of 2021 and Jyoti Structures Limited & Another Vs Charles Ogada Ochola [2022] eKLR.***

12. Counsel further noted that the case laws he cited give a guidance that with cases of such nature, the Courts have been awarding damages in the range of Kshs. 200,000/= - Kshs. 300,000/= that cannot be excessive. In conclusion, Counsel urged this Court to find that the award by trial

Magistrate was not inordinately high and uphold the same and also urged this Court to dismiss this appeal with costs because the Appellant had failed to justify all the grounds presented forth in the Memorandum of Appeal.

Analysis and Determination

13. This appeal is basically on assessment of quantum as premised in the memorandum of appeal which is the subject matter of this discussion. The law is now settled on the jurisdiction of an Appeal's Court faced with the impugned judgment of the trial Court on the subject matter of assessment of damages in personal injury claims. The following principles are properly articulated in the following authorities:

*(a) On the first appeal basically on assessment of damages only, the Court has to re-evaluate the evidence, assess it and make its own conclusions remembering that it has neither seen nor heard the witnesses and hence due allowance must be made for this. See **Selle v Associated Motor Boat Company Ltd [1968] EA 123 at 126; Williamson Diamonds Ltd v Brown [1980] EA 1.***

*(b) 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 that 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 wholly erroneous estimate of the damage. See **Kemfro Africa Limited t/a Meru Express Service, Gathongo Kanini v AM Lubia and Olive Lubia [1987] KLR 27 [1982-88] 1 KAR 727 at 730.** See also *Odunga's Digest of Civil Case Law and Procedures 3rd Edition Vol. 5-page 3681 par (a) & (b).* In the same limb the Court in **Dainty v Haji***

and Another [2004] 2 KLR 125; [2005] 1 EA 43 gave the following guidelines:

- (i) *That the appellate Court is only entitled to increase an award of damages made by the trial Court if it is so inordinately low that it represents an entirely erroneous estimate or the party asking 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. (Hassan v Nathan Mwangi Kamau Transporters [1985] LLR 250 (CAK)).*
- (ii) *Inordinately high awards should be avoided as they will lead to monstrously high premiums for insurances and hurt the body politic.*
- (iii) *The principles on which damages for lost years under the Law Reform Act is what the deceased would have likely to have made available to save, spend or distribute after meeting the costs of the living at a standard which his job and career prospects at the time of death would suggest was reasonably likely to achieve. Subtle mathematical calculations, based as they must on events or contingencies for life, which he will not live, are out of place. The Judge must make the best estimate based on the known facts and his prospects at the time of death. See Gammel v Wilson [1981] 1 All ER 578 at 593*

14. The Key principles for assessing damages in personal injury cases include that awards should compensate the victim without enriching them, be proportionate to the injuries, and consider comparable awards while acknowledging each case's unique facts. Assessment of general damages involves judicial discretion. Appellate Courts will only interfere with awards if incorrect principles were applied, evidence was misapprehended, or the amount is demonstrably erroneous. Inflation

should be considered when looking at past awards. Special damages (quantifiable losses) must be specifically pleaded and proven with evidence.

15. The assessment process involves proving four key elements of negligence: duty of care, breach of duty, causation, and remoteness of damage. Damages are generally divided into the following categories:

- **General Damages:** These compensate for non-monetary losses that are not precisely quantifiable.
- **Pain and Suffering:** Compensation for the physical and emotional distress caused by the injury.
- **Loss of Amenities/Enjoyment of Life:** Compensation for the inability to participate in activities and enjoy life as before the accident.
- **Future Losses:** This can include future loss of earning capacity and future medical expenses.
- **Psychiatric Damage:** Recognized psychological injuries are also compensated, considering factors like the ability to cope with life and work, the effect on relationships, and the prognosis.
- **Special Damages:** These cover specific, quantifiable monetary losses incurred up to the date of the trial or settlement.
 - **Past Medical Expenses:** Costs for treatment, medication, and rehabilitation already incurred.
 - **Past Loss of Earnings:** Documented income lost due to time off work.
 - **Other Out-of-Pocket Expenses:** Costs for travel, special equipment, or domestic help necessitated by the injury.

16. The assessment of damages is a complex process which involves exercise of judicial discretion. There are many factors which come into play besides what has been enumerated above. I have in mind the following factors which may affect the level of the award:

- Age;

- Reduction in normal life expectancy;
- Nature, extent and duration of treatment, e.g. surgery, chemotherapy, radiation or other medication;
- Impact on work,
- Interference with quality of life including social, familial and other relationships;
- Psychological sequelae including depression.

17. In the instant case there is no dispute on the nature of injuries suffered. The victim of the accident has tabulated in the Medical Report by Dr. Sokobe dated 22nd July 2022 which he opined as follows on the injuries sustained:

- *Blunt injury to the forehead.*
- *Mild head injury with brief loss of consciousness.*
- *Blunt injury to the back.*
- *Bruises on the left leg anterior.*
- *Blunt injury to both legs.*

18. It is trite in Kenya that when a Defendant has negligently injured the Plaintiff the law requires the Defendant to pay a sum of money to the Plaintiff to compensate him or her for any damages that is causally connected to the Defendant's negligence. The sum of money in the form of general damages to be paid to the Plaintiff is that sum which will put the Plaintiff so far as is possible in the same position as he or she would have been if he/she had not sustained the injuries in which he or she seeks compensation. In my considered view the Appellant is aggrieved that the sum of Ksh 220,000 is colossal and manifestly excessive and that Court should review it downwards. What is a reasonable sum for general damages for personal injuries cannot be measured and tested as a reasonable price can be by the experience of the market place of products. I have had the advantage of being involved in the practice of law involving personal injury claims arising out of road traffic accidents and there is this norm or canon of Courts being asked to use comparable

awards which to some degree is likely to occasion an injustice. I tend to concur with the persuasive decision in the case of **Planet Fisheries Pty Ltd v La Rosa (1969) CLR 118 at 125** in which the Court stated as follows:

“The fair and reasonable [sum] is to be proportionate to the situation of the claimant party, and not to the situation of other parties in other actions, even if some similarity between their situations may be supposed to be seen. What was sought to be done in this case by the appellant’s counsel, namely, to derive a norm or standard from a group of judgments of this Court reviewing awards of damages on appeal is erroneous. The same would be true if the same course were sought to be pursued in relation to awards of a Supreme Court or of a County or District Court. The judgment of a Court awarding damages is not to be overborne by what other minds have judged right and proper for other situations.

19. However notwithstanding this legal trajectory the award of damages must be commensurate with the nature and extent of injuries sustained. The reasons for this is that Courts should try to ensure that there is consistency so that similar injuries attract generally similar awards for non-pecuniary damages. This is to maintain consistency and fairness between category of Plaintiffs though their injuries arise from different circumstances but those injuries can be classified as similar by the trial Court hence the doctrine of the application of past awards as a guide in exercising discretion.
20. In the case at bar, I have reviewed the evidence presented before the trial Court and I find no error of fact or law in the exercise of discretion in which the Learned Trial Magistrate awarded the Respondent a sum of Ksh 220,000/= for pain and suffering arising out of a road accident which occurred on or about 12th July 2022. The appeal therefore lacks merit and the same is dismissed with costs to the Respondent.

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 14TH DAY
OF JANUARY 2026**

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**R. NYAKUNDI
JUDGE**