

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT GARISSA
CIVIL APPEAL NO. E025 OF 2024

PLANET COACH LIMITED.....1ST

APPELLANT

BENJAMIN NGAO.....2ND

APPELLANT

VS

JOYCE MBOGA KAYONGO.....

.....RESPONDENT

(Being an appeal from the judgment and decree of Hon. J. Omwange (P.M.) delivered on 13.11.2024 in CMCC No. E037 of 2023 at Garissa).

JUDGMENT

1. By a plaint dated 01.08.2023, the respondent moved the trial court averring that on or about 01.05.2022, the respondent was lawfully a fare paying passenger in motor vehicle registration number KDB 148D Scania Bus/Coach along Garissa – Mwingi road at chuma market when the said motor vehicle owned by the 1st appellant was negligently, recklessly and/or carelessly driven by the 2nd appellant the 1st appellant’s driver, servant, agent or employee at a high speed and without due regard to other road users consequences whereof it rammed onto another motor vehicle Reg. No. KBD 004D thereby causing a road traffic accident as a result of which the respondent sustained serious injuries for which she claimed damages. Consequently, the respondent suffered pain and suffering.
2. The particulars of negligence and injuries were set out as follows:

- i. Driving motor vehicle Regn.number KDB 148D Scania Bus/Coach in a careless manner.**
 - ii. Driving at an excessive speed in the circumstances of the road.**
 - iii. Failure to slow down, brake, swerve or act in any other reasonable manner to avoid the said accident.**
 - iv. Failure to keep proper lookout of other road users.**
 - v. Driving in a zigzag manner in the circumstances**
 - vi. Driving on the wrong side of the road.**
3. The appellants entered appearance and consequently filed a statement of defence dated 16.09.2023 wherein the 2nd appellant denied the occurrence of the accident on the material day and further, that the 1st appellant was not the owner of the suit vehicle. They also denied the particulars of negligence as pleaded by the respondent. That without prejudice and in the alternative to the foregoing, the occurrence of the accident was beyond the control of the appellants herein.
4. Additionally, the 1st appellant denied being vicariously liable for the negligent acts of the 2nd appellant. That the doctrine of res ipsa loquitor was not applicable in the circumstances herein and instead, the appellants would rely on the doctrine of volenti non fit injuria.
5. The particulars of the plaintiff's negligence were listed as follows:
 - i. Failing to take any or adequate precaution for her own safety.**
 - ii. Failing to heed the instructions on safety precautions when travelling.**

- iii. **Failing to heed to traffic rules and regulations when travelling.**
6. The particulars of the 2nd appellant's negligence were listed as follows:
- i. Failing to have any or any sufficient regard for the safety of the users of the said road by driving without due care and attention.
 - ii. Failing to keep any proper look out for other vehicles that might reasonably have been on the said road.
 - iii. Endangering (the lives of) other road users in his manner of driving.
 - iv. Failing to have due care and skill expected of a competent driver.
7. The trial court found the appellants 100% liable and awarded the respondent general damages of Kshs. 600,000.00/-, special damages of Kshs. 3,550, costs and interest to run from the date of judgment until full payment.
8. The appellants being dissatisfied with the judgment particularly on quantum filed the appeal herein on grounds that:
- i. **The learned trial magistrate erred in law and fact by disregarding established legal precedent and thereby erroneously arriving at a wrong conclusion on quantum.**
 - ii. **The learned trial magistrate erred in law and fact when he failed to consider the applicants' submissions on quantum.**

- iii. **The learned trial magistrate erred in law and fact in not making an award which was within limits of already decided cases of similar nature.**
- iv. **The learned trial magistrate erred in law and fact in awarding judgment for soft tissue injuries without demonstrating how he arrived at those figures and in total disregard of the submissions of the defendant on the issue of quantum.**

9. It was prayed thus that:

- i. **The whole judgment by the trial court be set aside.**
- ii. **The appeal be allowed.**
- iii. **The costs of this appeal and that of the trial court be awarded to the appellant.**
- iv. **Such further orders as may be made by this Honourable Court.**

10. The appeal was canvassed by way of written submissions.

11. The appellants in their submissions dated 11.07.2025 urged that the award of Kes. 600,000.00/- for soft tissue injuries was inordinately high and not supported by the nature of injuries sustained - namely cut wounds and bruises without severe complications. To support the foregoing, reliance was placed on the case of **Hassan Farid vs Sataiya Ene Mepukori (2018)** - where the plaintiff sustained soft injuries and was awarded Kes. 120,000 for similar injuries; **Justine Nyamweya Ochoki vs Jumaa Karisa (2020)** where on appeal, the court set aside an award of Kes. 300,000 and substituted it with an award of Kes. 150,000; and the case of **Edward Mutevu Maithya vs Edwin**

Nyamweya (2022)eKLR where the plaintiff sustained cut wounds on the scalp, bruises on the back, bruises on the right upper limb and bruises on the left lower limb in which the court revised the award downwards to Kes. 100,000.00/-

12. On costs, it was urged that section 27 of the Civil Procedure Act empowers the court to exercise its discretion in the award of costs. In the end, this court was urged to award the appellants costs of the suit herein.
13. The respondent on the other hand filed submissions dated 13.10.2025 urging that the appellants did not demonstrate any legal or factual error warranting interference by the appellate court. To buttress the fact that an appellate court may disturb a discretionary decision, reliance was placed on the case of **United India Insurance Co. Ltd vs East African Underwriters (Kenya) Ltd [1985] KLR** where it was held that an appellate court only interferes if the trial court misdirected itself in law, misapprehended facts, considered irrelevant matters, ignored relevant considerations, or made a plainly wrong decision; and **Nina Mweu t/a Sassma Farm vs Muus Kenya Ltd & Another [2015] eKLR** where it was held that no point of law or substantial procedural error had been raised by the Appellants to warrant interference.
14. This court was therefore urged to find that the trial magistrate acted within the law and properly exercised discretion in awarding damages. Consequently, this court was urged to dismiss the appeal in its entirety with costs, as the appellants have failed to meet the threshold for appellate interference.

15. Upon careful consideration of the record of appeal, the judgment of the trial court, the grounds set out in the Memorandum of Appeal, and the written submissions by both parties, this Court identifies the issues that fall for determination as follows.
- i. **Whether the trial court's award of Kes. 600,000 was inordinately high and should be set aside.**
 - ii. **Who should bear the costs of the appeal.**
16. The principles governing interference with awards of damages are well settled. In **Gitobu Imanyara & Others vs AG [2016] eKLR and Butt v Khan [1981] KLR 349**, it was held that an appellate court will only interfere if the award is based on wrong principles or is so inordinately high or low as to represent an erroneous estimate.
17. From the record, the respondent suffered the following injuries; cut wounds on the face, blunt injuries to the anterior chest wall, blunt injuries to the right elbow with bruises and blunt injuries to the right thigh.
18. In assessing injuries arising from a road traffic accident, consistency in the award of damages is necessary for judicial predictability and certainty. This is achieved through awarding similar injuries with similar or relatively similar damages. The Court of Appeal in the case of **Odinga Jacktone Ouma vs Moureen Achieng Odera [2016] eKLR** stated that "comparable injuries should attract comparable awards."
19. The principle on the award of damages is settled. In the case of **Charles Oriwo Odeyo vs Appollo Justus Andabwa &**

Another [2017] eKLR the court set out the principles which guide the court in the assessment of damages in a personal injury case. The considerations include but not limited to;

- i. An award of damages is not meant to enrich the victim but to compensate such victim for the injuries sustained.**
- ii. The award should be commensurable with the injuries sustained.**
- iii. Previous awards in similar injuries sustained are a mere guide but each case be treated on its own facts.**
- iv. Previous awards to be taken into account to maintain stability of awards but factors such as inflation should be taken into account.**
- v. The awards should not be inordinately low or high.**

20. In the case of **Poa Link Services Co. Ltd & Another vs Sindano Boaz Bonzemo (2021) eKLR**, the court upheld general damages of Kes. 350,000.00/- for the plaintiff, who had sustained blunt injury to the chest, bruises to the lower abdomen, bruises of the right hip joint, bruises of the thigh; and bruises on the knee.

21. In **Samwel Martin Njoroge Kamunyu vs Mildred Okweya Barasa (2020) eKLR**, the plaintiff sustained; two deep cut wounds on the forehead horizontally, bruises and lacerations on the right cheek, blunt injury to the shoulder and chest, blunt injury to the pelvis, deep cut wounds on right and left legs. The High Court awarded of Kes. 300,000/= as general damages.

22. In the case of **Marube & Another vs Nyambogo (Civil Appeal E011 of 2023) [2024] KEHC 3395 (KLR) (12 March 2024)** (Judgment), the court upheld the award of Kes. 350,000/= for the following injuries; blunt trauma to the neck, chest contusion, bruises on the right upper limb, bruises on the left upper limb, bruises on the left lower limb, bruises on the right lower limb and cut wounds on the right lower limb.
23. Upon review, the injuries pleaded and proved were cut wounds and bruises without severe complications. Taking into account the rate of inflation and comparative case law referred to herein, I am of the opinion that the award of kshs 600,000/= is on the higher side. This court is persuaded that the award was inordinately high and warrants adjustment to Kshs 350,000/=.
24. Regarding the award of special damages, the same was properly established. As regards costs, the general rule is that costs follow the event. Therefore, I have no reason to interfere with the same.
25. In the end, the orders that are commendable to me are as follows:
- i. The appeal succeeds in part.**
 - ii. The award of general damages of Kes. 600,000.00/- is set aside and substituted with an award of Kshs 350,000/=**
 - iii. Special damages of Kes. 3,550, costs, and interest awarded by the trial court remain undisturbed.**

iv. Each party to bear own costs in respect of this appeal.

Dated, signed and delivered virtually this 19th day of January 2026

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J.N.ONYIEGO
JUDGE