

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
CIVIL APPEAL NO. E087 OF 2022

SBI INTERNATIONAL HOLDINGS APPELLANT
- VERSUS -
CALEB OTIENO OLIECH RESPONDENT

(Being an appeal from the judgment and decree of Hon. R.K. Sang SRM delivered on the 19/07/2022 in Nyando SPMCC No. 46 of 2019, Caleb Otieno Oliech v SBI International Holdings)

J U D G M E N T

1. The respondent filed the primary suit before the trial court vide an amended plaint dated **13/06/2019** seeking general and special damages for injuries sustained following a road traffic accident that occurred on or about the **29/9/2018**.
2. The appellant entered appearance and filed a statement of defence dated **8/9/2020** in which it denied the respondent's claim and pleaded contributory negligence on the part of the respondent.
3. The matter proceeded to trial and by a judgment delivered on **20/01/2025**, the trial court decreed: -
 - a) *Liability 50:50 between the appellant and respondent.*
 - b) *General damages Kshs. 1,500,000/-.*
 - c) *Special damages Kshs. 9,314/-*
 - d) *Total award Kshs. 1,509,314/-.*

e) Less 50% contribution Kshs. 754,657/-

f) Grand Total Kshs. 754,657/-

g) Costs and interest at court rates.

4. Being dissatisfied with the said judgment/decree, the appellant lodged this appeal vide the Memorandum of Appeal dated **17/2/2022** and raised five (5) grounds of appeal as follows: -

a) The quantum of general damages for pain and suffering and loss of amenities is inordinately high erroneous, oppressive and punitive and amounts to miscarriage of justice.

b) The learned trial magistrate ignored the appellant's submissions, paid lip service and made no reference to all the precedent on general damages cited before him, thus coming to a wrong decision on quantum.

c) The learned trial magistrate erred in fact and in law in failing to appreciate the principles governing the award of damages, namely that like cases attract similar awards, and ignoring completely the appellant's submissions thereon.

d) The learned trial magistrate erred in law and in fact in making an award of Kshs. 1,500,000/- for general damages without giving any reason for such an award and thus made an award that was arbitrary, capricious and inordinately high, erroneous and which amounts to a miscarriage of justice.

e) The honourable magistrate's decision is plainly wrong and is against the weight of evidence.

5. The appeal was disposed of by written submissions. The appellant submitted that an award of **Kshs. 450,000/-** would fairly and adequately compensate the respondent considering the nature of injuries. Reliance was placed on the following cases;

a) **Miriam Njeri Murimi v Kenya Broadcasting Corporation (2009) eKLR** where an award of **Kshs. 450,000/-** was made for injuries of fractured ribs, fracture dislocation of the hip joint with the degree of permanent incapacity assessed at **12%**.

b) **Mwavita Jonathan v Silvia Onunga (2017) eKLR** where the Court of Appeal made an award of **Kshs. 400,000/-** where the claimant sustained blunt chest injury, dislocation of the right knee joint, sprains at the cervical spine and commuted intertrochanteric fracture of the left hip.

c) **Jitan Njaga v Abidnego Nyandusi Oigo (2018) eKLR** where the Court reduced an award of **Kshs. 1,000,000/-** to **Kshs. 450,000/-** for a respondent who sustained injuries of lacerations on the occipital area, deep cut wound on the back, right knee and lateral lane, bruises at the back, blunt trauma to the chest, compound fracture of the right tibia/fibula amongst other injuries.

6. On his part, the respondent urged the Court not to interfere with the award made by the trial court as the same was proven. Reliance was placed on the cases of;

a) **John Mutunga Kamau v Kanini Haraka Enterprises Limited [2019] eKLR** where an award of **Kshs. 1,500,000/-** was substituted with one of **Kshs. 2,400,000/-** for injuries of fracture of the right femur, right acetabula fracture, deep cut wound on the forehead, loss of one upper

- incisor tooth, deep cut wound on the right hip joint leading to severe soft tissue injuries and severe soft tissue injuries of the right wrist joint.
- b) **Cold Car Hire Tours Limited v Elizabeth Wambui Matheri [2015] eKLR** where the respondent suffered a comminuted fracture of the right acetabulum and a dislocation of the right hip joint resulting in a total hip replacement. The court awarded **Kshs. 1,400,000/-** as general damages which was upheld by the High Court.
- c) **Kennedy Ooko Ouma Dachi v Joseph Maina Kamau & Another [2018] eKLR** where the court substituted an award of **Kshs. 1,000,000/-** with **Kshs. 1,400,000/-** for a fracture to the acetabulum with the court noting the grievous nature of a hip fracture.
- d) **Geoffrey Maraka Kimchong v Frechiah Hugiru [2020] eKLR** where the court found an award of **Kshs. 1,000,000/-** to be fair and reasonable for a fracture of the right acetabulum and other injuries with the court noting that there was no indication of a hip replacement.
- e) **Kimathi Muturi Donald v Kevin Ochieng Aseso [2021] eKLR** where an award of **Kshs. 1,500,000/-** was substituted with **Kshs. 1,000,000/-** where the plaintiff suffered a fracture of the upper right tibia and a fracture of the floor of the socket of the left hip joint (acetabulum.)
7. This being a first appeal, the Court is duty bound to evaluate the evidence before the trial court afresh and come to its own independent findings and conclusions. See **Selles & Anor v Associated Motor Boat Co Ltd & Others [1968] EA 123.**

8. In Gitobu Imanyara & 2 others v Attorney General [2016] eKLR, the Court of Appeal held that: -

“This being a first appeal, it is trite law, that this Court is not bound necessarily to accept the findings of fact by the court below and that an appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect.”

9. Before the trial court, the respondent testified as **Pw1**. He adopted his amended statement filed on the **13/6/2019** as his evidence in chief. He testified that as a result of the accident he was injured on the head, chest, both arms and left knee.
10. **Pw2 Dr. Mannaseh Onyimbi** testified that he examined the respondent and compiled a medical report. That the respondent had a history of having been involved in a road accident where he sustained multiple fractures and soft tissue injuries. It was his testimony that the respondent sustained injuries in the nature of grievous harm and that he suffered incapacitation of **75%** that would heal within 2 – 3 years.
11. **Pw3 Fred Apinda** a clinical officer at Nyakach County Hospital testified that he examined the respondent and filled a P3 Form on his behalf. That on examination, he noted that the respondent had sustained a deep cut wound on the left chin next to the eye, multiple tender swellings on both hands, a

dislocation of the left knee and ankle joints. That the respondent had severe difficulty in breathing with chest pains.

12. In cross-examination, he told the court that he examined the respondent himself and that he sustained no fractures but rather had a dislocation which may have healed at the time of the trial.

13. **Pw4 No. 81569 PCW Selly Oloo** produced the police abstract over the accident that involved the respondent. That she was not the investigating officer who had passed away. That the respondent had sustained grievous harm. The respondent subsequently closed his case and the appellant similarly closed its case without calling any witness.

14. From the foregoing, the grounds of appeal may be summarized into one, viz, ***‘that the trial court misdirected itself in ignoring the evidence, submissions, authorities and principles applicable on quantum and consequently came to a wrong conclusion on damages which were too high’.***

15. The appellant’s appeal is basically on quantum, which they deem to be inordinately high. The general rule is that assessment of damages lies in the discretion of the trial court and an appellate court will only interfere with an award of damages where it is inordinately high or low as to represent an erroneous estimate.

16. In **Butt v Khan (1977) I KAR**, the Court of Appeal held that: -

“An appellate court will not disturb an award for damages unless it is inordinately high or low as to entirely represent an 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.”

17. The injuries pleaded and supported by the medical evidence on record are as follows:

- a) **Deep cut wound on the left chin next to the left eye**
- b) **multiple tender swellings on both arms.**
- c) **dislocation of the left knee and ankle joints.**
- d) **Severe chest injuries**
- e) **Fracture of the hip joint.**

18. The said injuries were provided in the P3 that was produced by **Pw3** who initially examined the respondent. Despite the fact that **Pw3** insisted that the respondent sustained no fractures, the detailed medical report produced by **Pw2** as well as the subsequent treatment notes supported the respondent's averments that he sustained fractures to the hip joint and femur.

19. The appellant impugned the judgment on the grounds that the award of **Kshs.1,000,000/-** was too high. It did not dispute the injuries sustained by the respondent. In **Motex Knitwear limited v Gopitex Knitwear Mills limited Nairobi (Milimani) HCCC No., 834 of 2002**, Lessit, J (as she was then) citing the case of ***Autar Singh Bahra and another v Raju Govindji, HCCC No. 548 of 1998*** appreciated that: -

“Although the defendant has denied liability in an amended Defence and counterclaim, no witness was called to give evidence on

his behalf. That means that not only does the defence rendered by the 1st plaintiff's case stand unchallenged but also that the claims made by the Defendant in his Defence and counter-claim are unsubstantiated. In the circumstances, the Counter-claim must fail.”

20. In this case, the injuries pleaded were not disputed. They were proved through the respondent's oral testimony, the police abstract and other medical record produced in court.

21. The Court of Appeal in **Dakianga Distributors (K) Ltd v Kenya Seed Company Limited [2015] eKLR** stated: -

“Since the plaintiff did not object to that evidence being adduced and allowed the said cheques to be introduced in evidence and are therefore on record, this court cannot simply ignore or overlook them.”

22. In this regard, a look at the medical record presented by the respondent revealed that in addition to the soft tissue injuries sustained he also sustained fractured of the hip joint.

23. In considering comparable awards, I have examined the decisions cited by both parties and find that those relied on by the respondent are more comparable whereas those cited by the appellant relate to less serious injuries.

24. I further draw persuasion from the case of **Gichuhi v Nzuve & another [2024] KEHC 9290 (KLR)** where the court upheld an award of **Kshs.**

1,000,000/- for fracture of the Pelvis, fracture of the Hip Joint, Scrotal injury and Multiple Fracture of the left femur.

25.The trial court awarded the respondent general damages of **Kshs. 1,500,000/-**. Upon review of the decisions mentioned above, it is clear that the damages were not inordinately high, as to suggest application of a wrong principle.

26.Accordingly, this Court finds no reason to interfered with the award of **Kshs. 1,500,000/-** considering the nature of the injuries sustained. The award of costs and interest remain undisturbed.

27.The appeal therefore lacks merit and is hereby dismissed with costs.

It is so decreed.

DATED and **DELIVERED** at Kisumu this 5th day of **February, 2026**.

A. MABEYA, FCI Arb
JUDGE