

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT VOI**

**CIVIL APPEAL NO. E005 OF 2025**

**DREAMLINE EXPRESS LIMITED.....**

**APPELLANT**

**=VERSUS=**

**HUMPHREY LOWO GODFREY.....**

**.....RESPONDENT**

**(Being an appeal from the judgment of Hon. T. N. Sinkiyian (PM) in Voi CMCC No. E111 of 2022 delivered on 28<sup>th</sup> May 2024)**

**JUDGMENT**

1. The Respondent filed Voi CMCC No. E111 of 2022 against **SCANIA CREDIT SOLUTION (PROPRIETARY) LTD** and the Appellant in this case **DREAMLINE EXPRESS LTD** as the 1<sup>st</sup> and 2<sup>nd</sup> Defendants respectively.
2. The Respondent was seeking general damages for pain and suffering, special damages for injuries he sustained on 22<sup>nd</sup> December 2021 at Maneaters Area along Nairobi-Mombasa Road when the Respondent was a lawful passenger in motor

vehicle registration No. KCU 965C was driven at a high speed and it caused the Respondent to be flung off the motor vehicle onto the road-side causing him serious injuries.

3. The Appellant filed a defence dated 24<sup>th</sup> May 2022 denying the Respondent's claim.

4. The Appellant stated in their defence that if the accident occurred, it was solely caused or substantially contributed to by the negligence of the other vehicles registration number KBB 032Z/ZB 2436 and motor vehicle registration number KBU 359D/ZE 3023.

5. The Respondent pleaded the following injuries:-

- (i) Compound comminuted/segmented fracture left radius/ulna bone.**
- (ii) Dislocation of left radial head from elbow joint.**
- (iii) Fracture of left clavicle bone.**
- (iv) Posterior dislocation of right hip joint.**
- (v) Right acetabulum fracture.**
- (vi) Cut wound on the left temporal/parietal side of the head.**
- (vii) Blunt trauma to the chest.**

6. The trial court held that the issue of liability was determined in Voi CMCC No. E072 of 2022 in the case of Solomon Grampton =Versus= Dreamline Express Ltd which was delivered on 18<sup>th</sup> August 2023.

7. In the said case the court held that the driver of the Scania bus KCU 965C one Abdul Kaful (deceased) who died in the accident was negligent.

8. The Appellant was consequently held vicariously liable for the negligence of its servant and/or agent.

9. The trial court assessed damages as follows:-

<b>(i) General damages for pain and suffering</b>	<b>Kshs.</b>
<b>3,500,000</b>	
<b>(ii) Loss of earning capacity</b>	<b>Kshs.</b>
<b>900,000</b>	
<b>(iii) Cost of future medical expenses</b>	<b>Kshs.</b>
<b>179,500</b>	
<b>(iv) Special damages</b>	<b><u>Kshs.</u></b>
<b><u>4,550</u></b>	
<b>Total</b>	<b><u>Kshs. 4,584,050</u></b>

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

- (i) The learned Magistrate erred in law misdirected herself when she failed to consider the Appellants submissions on both points of law and facts.**
- (ii) That the learned Magistrate's decision was unjust, against the weight of evidence and was based on misguided points of fact and wrong principles of law and has occasioned a miscarriage of justice.**
- (iii) The learned Magistrate erred in law and fact in awarding the Respondent Kshs. 3,500,000/= for general damages hence arriving at a wrong finding as regards the nature of injuries sustained by the Respondent.**
- (iv) The learned trial Magistrate misdirected herself and erred in law and fact by assessing and awarding unreasonable, excessive damages for 'Loss of earnings/diminished earning capacity' at Kshs. 900,000/- which is so inordinately high as to represent an entirely erroneous estimate and against the weight of evidence, while there was no evidence or basis at all in law or fact in support of such an unjustifiable award.**

- (v) The learned trial Magistrate erred in law and fact by awarding the Respondent an inordinately high quantum as damages in the circumstances of this case.**
- (vi) The learned Magistrate erred in law and fact in awarding the Respondent a sum that was an excessive as to an amount that is erroneous as to the estimate of general damages suffered by the Respondent.**
- (vii) The learned Magistrate erred in fact and in law in failing to consider the Appellant's submissions on Quantum and legal authorities relied upon in support thereof.**
- (viii) The learned Magistrate erred in law and fact by overly relying on the Respondent's submissions which were not relevant and without addressing his mind to the circumstances of the case.**
- (ix) The learned Magistrate erred in fact and in law in failing to consider conventional awards in cases of similar nature.**

11. The parties filed written submissions as follows:- The Appellant submitted that this is an appeal against the quantum of damages awarded to the respondent following a road traffic accident.
12. The appellant contends that the trial magistrate's award of Kshs. 3,500,000 for general damages for pain and suffering was inordinately high and not commensurate with the injuries sustained, which included a compound comminuted fracture of the left radius/ulna, a fractured clavicle, a dislocated right hip with an acetabulum fracture, blunt chest trauma, and a head laceration.
13. The appellant argues that based on comparable awards in cases involving similar or more severe injuries, an award in the range of Kshs. 400,000 to Kshs. 800,000 is more appropriate, and invites the court to substitute the award with Kshs. 500,000.
14. The appellant further challenges the award of Kshs. 900,000 for loss of earning capacity, submitting that this head of damages, being a special kind of general damage, requires proof of actual loss or diminution of capacity, which the respondent failed to provide by not tendering any documentation to substantiate his alleged earnings as a tour

guide or to demonstrate that his future earning prospects had been compromised.

15. The appellant relies on settled principles that an appellate court should not interfere with a trial court's discretion on quantum unless the award is based on wrong principles or is so high or low as to be an erroneous estimate.

16. It urges the court to set aside both the general damages and the award for loss of earning capacity, and to grant the costs of the appeal.

17. The 1st Respondent's written submissions oppose the appeal filed by Dreamline Express Limited against the trial court's judgment delivered on 28th May 2024 in Voi Civil Suit No. E111 of 2022.

18. The 1st Respondent, Humphrey Lowo Godfrey, was a passenger in a Dreamline bus on 22nd December 2021 when the accident occurred, hurling him from the vehicle and causing severe injuries including multiple fractures to his left arm, dislocation of his right hip, a fractured clavicle, a head wound, and chest trauma, which have left him with a 50% permanent disability and diminished capacity to work.

19. The submissions set out the background of the case, noting that the Appellant raised several grounds in the Memorandum

of Appeal, particularly challenging the quantum of damages awarded.

20. The 1st Respondent provides a summary of the facts, explaining that he was travelling from Mombasa to Kisumu when the bus, being driven at high speed, crashed resulting in the driver's death. He was initially treated at Moi County Referral Hospital before being transferred to Coast Teaching and Referral Hospital where he underwent surgery including open reduction and fixation of fractures with plates and screws.
21. The medical evidence from Dr Kiema confirmed the extent of his injuries and future medical needs, including the likelihood of hip replacement surgery.
22. The main issue for determination is whether the damages assessed by the trial court were commensurate to the injuries suffered.
23. The 1st Respondent relies on established legal principles from cases such as *Butt v Khan* and *Kariuki Kiboi v Attorney General*, which hold that an appellate court should not disturb an award of damages unless it is so high or low as to represent an erroneous estimate, or where the trial judge proceeded on wrong principles.

24. The burden rests on the Appellant to demonstrate that the award warrants interference.
25. Regarding general damages, the 1st Respondent argues that the trial court's award of Kshs 3,500,000 was appropriate given the severity of injuries, which included compound fractures, dislocation, loss of limb functionality, and the doctor's opinion that he is predisposed to post-traumatic arthritis, limb shortening, and future points of weakness.
26. The submissions cite comparable cases including *Maina v Kenya Wildlife Services* where Kshs 4,000,000 was awarded for multiple fractures with 40% disability, *Andrew Kimani Mwaura v Nyagute Moraa Verah* where Kshs 3,200,000 was upheld for pelvic and multiple fractures, and *Kenya Power & Lighting Co Ltd v Emmanuel Shapil Ndege* where Kshs 3,000,000 was awarded for injuries with 65% permanent disability.
27. The 1st Respondent maintains that the trial court's award aligns with these precedents and should be upheld.
28. On loss of earning and future earning capacity, the 1st Respondent notes that he worked as a tour guide earning Kshs 500 per day, as corroborated by a letter from his employer.

29. His doctor testified that his injuries have diminished his capacity to work due to affected mobility. At 65 years old at the time of the accident, the trial court applied a multiplier of 5 years, calculating Kshs 15,000 per month for 12 months over 5 years, totaling Kshs 900,000.
30. The 1st Respondent submits that this award was reasonable given his age and the nature of his work which depended on accumulated knowledge and skill.
31. Regarding special damages and future medical expenses, the 1st Respondent notes that these limbs were not disputed by the Appellant in the grounds of appeal.
32. He provided proper documentation through hospital receipts and receipts for medical reports, and the claim for future medical expenses was supported by his medical reports and physical condition.
33. In conclusion, the 1st Respondent submits that the Appellant has failed to prove that the trial court's award was inordinately high or incomparable to similar cases.
34. The Appellant's suggested comparators involve less severe injuries and would be unjust to apply in these circumstances. The 1st Respondent prays that the appeal be dismissed in its

entirety, that the trial court's judgment be upheld, and that costs of the appeal be awarded to the 1st Respondent.

35. his appeal by Dreamline Express Limited challenges the quantum of damages awarded to the respondent, Humphrey Lowo Godfrey, by the trial court in Voi CMCC No. E111 of 2022.

36. The respondent, a passenger in the appellant's bus on 22nd December 2021, suffered catastrophic injuries when he was flung from the vehicle during an accident along the Nairobi-Mombasa Road.

37. The injuries sustained were severe and life-altering: a compound comminuted fracture of the left radius and ulna, dislocation of the left radial head from the elbow joint, fracture of the left clavicle bone, posterior dislocation of the right hip joint with a concomitant right acetabulum fracture, a cut wound on the left temporal-parietal region of the head, and blunt trauma to the chest.

38. Medical evidence presented at trial confirmed that these injuries have left the respondent with a 50% permanent disability and have significantly diminished his capacity to work as a tour guide, a profession he had pursued with demonstrated earnings of approximately Kshs. 500 per day.

39. The trial court, having determined liability based on a related case where the appellant's driver was found negligent, proceeded to assess damages in the sum of Kshs. 4,584,050, comprising general damages for pain and suffering at Kshs. 3,500,000, loss of earning capacity at Kshs. 900,000, future medical expenses at Kshs. 179,500, and special damages at Kshs. 4,550.
40. The appellant now invites this court to disturb these awards, principally contending that the general damages were inordinately high and that the award for loss of earning capacity lacked proper evidentiary foundation.
41. This being a first appeal, this court's mandate is to re-evaluate the evidence and draw its own conclusions, while always bearing in mind that the trial court had the advantage of seeing and hearing the witnesses testify.
42. The principles governing appellate interference with an award of damages are well settled in our jurisprudence.
43. Turning to the first ground of appeal concerning general damages for pain and suffering, this court has carefully considered the nature and extent of the respondent's injuries.
44. The medical evidence paints a picture of profound physical trauma involving multiple fractures, a dislocated hip with

acetabular involvement, and the prospect of future complications including post-traumatic arthritis and the likely need for hip replacement surgery.

45. The respondent underwent significant surgical intervention including open reduction and fixation of fractures with plates and screws, and the medical opinion confirms that he is predisposed to limb shortening and future points of weakness.
46. In assessing what constitutes reasonable compensation, the court must be guided by the principle that comparable injuries should attract comparable awards, while also taking into account the diminishing value of money over time.
47. The respondent's counsel at trial placed reliance on several authorities including *Maina v Kenya Wildlife Services* where Kshs. 4,000,000 was awarded for multiple fractures with 40% disability, *Andrew Kimani Mwaura v Nyagute Moraa Verah* where Kshs. 3,200,000 was upheld for pelvic and multiple fractures, and *Kenya Power & Lighting Co Ltd v Emmanuel Shapil Ndege* where Kshs. 3,000,000 was awarded for injuries with 65% permanent disability.
48. The trial court's award of Kshs. 3,500,000 falls squarely within this bracket and cannot be said to be inordinately high.

49. The medical evidence in this case, which the trial court properly considered, indicated that the respondent's injuries have resulted in a 50% permanent disability that affects his mobility and his ability to continue working as a tour guide.
50. The appellant's suggestion that an award in the range of Kshs. 400,000 to Kshs. 800,000 would be appropriate fails to appreciate the severity of these injuries and the lasting impact they have had on the respondent's quality of life.
51. The present case involves far more extensive and debilitating injuries involving multiple fractures and joint dislocations, justifying the higher award.
52. Regarding the award for loss of earning capacity, the appellant contends that this head of damages, being a special kind of general damage, requires proof of actual loss or diminution of capacity which the respondent failed to provide.
53. The respondent testified that he worked as a tour guide earning Kshs. 500 per day, and this was corroborated by a letter from his employer. The trial court accepted this evidence and, considering that the respondent was 65 years old at the time of the accident, applied a multiplier of 5 years, calculating Kshs. 15,000 per month for 12 months over 5 years to arrive at Kshs. 900,000.

54. The trial court was entitled to accept the respondent's oral testimony regarding his earnings, particularly as it was supported by a letter from his employer.
55. The trial court properly treated the claim as one for diminished earning capacity and applied the multiplier approach reasonably. The appellant's reliance on *Gerald Nzoia Ndonga v Susan Mukoma & another* [2019] KEHC 11938 (KLR) is instructive, as that case demonstrates that where earnings are variable, the court may adopt an average figure to establish the salary.
56. The trial court's adoption of Kshs. 15,000 per month based on earnings of Kshs. 500 per day for 30 days is reasonable and supported by the evidence. The multiplier of 5 years, given the respondent's age of 65 years, is also reasonable and reflects the reduced working years available to him.
57. In this case, there was evidence of actual earnings, and the trial court was entitled to rely on it. The appellant has not demonstrated that the trial court took into account irrelevant factors or left out relevant ones in arriving at this award.
58. The sum of Kshs. 900,000 for loss of earning capacity cannot be said to be inordinately high given the 50% permanent

disability and its impact on the respondent's ability to continue working as a tour guide.

59. The appellant also raised grounds concerning the trial court's alleged failure to consider its submissions and reliance on irrelevant authorities.

60. However, the trial court's judgment demonstrates a careful consideration of the evidence and the applicable legal principles.

61. The mere fact that the trial court preferred the respondent's authorities over those cited by the appellant does not amount to an error of law or a failure to consider the appellant's case.

62. In the result, this court finds that the appellant has failed to discharge the burden of demonstrating that the trial court's award was based on wrong principles or was so inordinately high as to represent a wholly erroneous estimate of damages.

63. The trial court properly directed itself on the law, considered the nature and extent of the respondent's injuries, and arrived at awards that are reasonable and commensurate with comparable decisions

64. The appeal on quantum is therefore devoid of merit. The judgment of the trial court is upheld in its entirety, and the appellant shall bear the costs of this appeal.

65. Orders to issue accordingly.

**Dated, signed and delivered this 5<sup>th</sup> day of March, 2026 in open court at Voi High Court.**

**ASENATH ONGERI**

**JUDGE**

**In the presence of:-**

**Court Assistant: Millicent/Mabishi**

.....**for Appellant**

.....**for Respondent**