

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIVASHA
HIGH COURT CIVIL APPEAL NO. E061 OF 2024

ZIPPORAH WANJIKU IHUGO

----- **APPELLANT**

-VERSUS-

TITUS MUTUA MUNYWOKI ----- **1ST**
RESPONDENT

SAMUEL MWANGI KARERI ----- **2ND**
RESPONDENT

MARY WAITHERA GITAHU ----- **3RD**
RESPONDENT

***(Being an Appeal from the Judgment and Decree
delivered by Hon. J. Ndeng'eri, (SRM) on 31st May 2024
in Naivasha in CMCC No. 478 of 2019)***

JUDGMENT

1. The Appellant, who was the Plaintiff before the trial court, instituted a suit vide Plaint dated 21st June 2019 seeking damages for negligence arising out of a road traffic accident that occurred on 25th August 2018 along the Naivasha-Nairobi Road at Karai area.
2. The Appellant pleaded that the 2nd Respondent, as the authorised driver of motor vehicle Registration No. KBX 494Q which was owned by the 1st Respondent, negligently drove the said motor vehicle and caused it to collide with motor vehicle Registration No. KBR 392G in which the Appellant was lawfully travelling as a passenger. The 3rd

Respondent, who was the registered owner of motor vehicle KBR 392G later died and the suit against him was dismissed by consent.

3. By consent recorded on 27th April 2021, liability was apportioned at 80:20 in favour of the Appellant against the 1st and 2nd Respondents.
4. After hearing the matter, on quantum, the trial court made the following award: -
 - a) **General damages - Kshs. 600,000/=**
 - b) **Special damages - Kshs. 125,095/=**
 - c) **Future medical expenses - Kshs. 80,000/=**

Less 20% contribution, resulting in a net award of Kshs. 644,076/=.

5. Aggrieved by the trial court's assessment of damages, the Appellant lodged the present appeal contending that the award was inordinately low and that the trial court failed to properly analyse the medical evidence.
6. As a first appellate court, this Court is obligated to re-evaluate the evidence and arrive at its own independent conclusion. In ***PIL Kenya Ltd vs. Oppong [2009] KLR 442***, the Court of Appeal held: -

“It is the duty of the Court of Appeal, as a first appellate court, to analyse and evaluate the evidence on record afresh and to reach its own independent decision, but always bearing in

mind that the trial court had the advantage of hearing and seeing the witnesses and their demeanour and giving allowance for that.”

7. The sole issue for determination is whether the trial court properly assessed quantum of damages.

Principles on Interference with Quantum

8. The principles governing the trial court when considering whether it should interfere with the quantum awarded by the trial court were restated in ***Kivati vs. Coastal Bottlers Ltd, Civil Appeal No. 69 of 1984*** as follows: -

“The Court of Appeal should only disturb an award of damages when the trial Judge has taken into account a factor he ought not to have or failed to take into account something he ought to have or if the award is so high or so low that it amounts to an erroneous estimate.”

9. It is also settled that comparable injuries should attract comparable awards. In ***Harun Muyoma Boge vs. Daniel Otieno Agulo [2015] eKLR***, Majanja J. stated:

“The assessment of general damages is not an exact science and the court in doing the best it can, takes into account the nature and extent of injuries in relation to awards made by the

court in similar cases. It ensures that the body politic is not injured by making excessively high awards and that the claimant is fairly compensated for his or her injuries.”

Analysis and Determination

General Damages

10. The Appellant sustained the following injuries: -

- i) ***Displaced fracture of the left humerus***
- ii) ***Displaced fracture of the left ulna***
- iii) ***Comminuted fracture of the right femur***
- iv) ***Comminuted fracture of the right tibia***

11. Medical evidence showed permanent disability assessed at between 20% and 30%.

12. Comparable authorities considered included:

- a) ***Swalleh C. Kariuki & another vs. Violet Owiso Okuyu [2021] KEHC 4863 (KLR)*** - Award reduced to Kshs. 1,500,000/= for multiple fractures including femur and ulna.
- b) ***Ngare vs. Kiai [2023] KEHC 24212 (KLR)*** - Award of Kshs. 2,000,000/= for compound bilateral tibia/fibula fractures.
- c) ***James Gathirwa Ngugi vs. Multiple Hauliers EA Ltd & Another*** - Award of Kshs. 1,500,000/= for compound comminuted fractures with 10-20% disability.

13. In the instant case, I find that considering the severity of injuries that the Appellant suffered in the accident in question and the resultant disability rating, the award of Kshs. 600,000/= was inordinately low. I therefore set the said award aside and substitute it with an award of Kshs. 1,500,000/=.

Loss of Earning Capacity

14. The distinction between loss of earning capacity and loss of future earnings was explained in **Butler vs. Butler [1984] KLR 225** as follows: -

“A plaintiff’s loss of earning capacity occurs where, as a result of his injury, his chances in the future of any work in the labour market or work, as well paid as before the accident, are lessened by his injury. ... It is a different head of damages from an actual loss of future earnings which can readily be proved at the time of the trial. The difference was explained in this way: compensation for loss of future earnings is awarded for real accessible loss proved by evidence. Compensation for demotion of earning capacity is awarded as part of the general damages. ...”

The court further stated that: -

“...Damages under the heads of loss of earning capacity and loss of future earnings, which in

England were formerly included as an unspecified part of the award of damages for pain, suffering and loss of amenity, are now quantified separately and no interest is recoverable on them. Loss of earning capacity can be a claim on its own... Loss of earning capacity or earning power may and should be included as an item within general damages but where it is not so included, it is not improper to award it under its own heading."

15. The record shows that the Appellant continued working post-accident. I therefore find that there was no proof of actual future income loss and that the trial court properly declined the invitation to make an award under this head.

Future Medical Expenses

16. Dr. Kiamba estimated implant removal costs at Kshs. 300,000/= while Dr. Wokabi estimated that it would cost Kshs. 150,000/=.
17. I find that the award of Kshs. 80,000/= lacked evidential basis and that a reasonable average of Kshs. 225,000/= will be appropriate.

Special Damages

18. Special damages must be specifically pleaded and strictly proved. The Appellant pleaded Kshs. 126,895/= but proved Kshs. 125,095/=. The trial court's award of Kshs. 125,095/= is therefore upheld.

Disposition

19. Having regard to the findings and observations that I have made in this judgment, I find that the appeal on quantum succeeds. The judgment of the trial court is hereby set aside and substituted as follows: -

- a) ***Liability: 80:20 in favour of the Plaintiff***
- b) ***General Damages - Kshs. 1,500,000/=***
- c) ***Future Medical Expenses - Kshs. 225,000/=***
Subtotal - Kshs. 1,725,000/=
- d) ***Less 20% contribution - Kshs. 345,000/=***
Net - Kshs. 1,380,000/=
- e) ***Add Special Damages - Kshs. 125,095/=***
Total Award - Kshs. 1,505,095/=

20. The Appellant shall have costs of the suit in the lower court and costs of this appeal.

21. Interest on the total award shall accrue from the date of this judgment until payment in full. Interest on special damages shall accrue from the date of filing suit.

DATED, SIGNED AND DELIVERED AT NAIVASHA THIS 5TH DAY OF MARCH, 2026.

HON. W. A. OKWANY
JUDGE
05/03/2026

FOR APPELLANT Miss Kiberenge

FOR RESPONDENT Ochang

COURT ASSISTANT Karani

30 days stay of execution is granted

ORIGINAL