

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT VOI

HCCSCA NO. E002 OF 2025

ABDISALAM

QUMANE

OMAR.....

.....**APPELLANT**

=VERSUS=

ZAKARIA

MWANDOE.....

.....**RESPONDENT**

**(Being an appeal from the Judgment of Hon. F. M. Muthama
(Adjudicator/RM) in Taveta SCCC No. E021 of 2025 delivered on
11th July 2025)**

JUDGMENT

1. The Appellant was the Respondent in Taveta SCCC No. E021 of 2025 where the Respondent in this appeal was the Claimant.
2. The Respondent was seeking general damages and special damages for injuries he incurred on 6th April 2025 while he was travelling as a pillion passenger aboard motor cycle registration number KMFP 107F along Nairobi - Mombasa road when it was hit by motor vehicle registration number KAY 410N at Kasarani area.
3. The case proceeded under Section 30 of the Small Claims Court Act by way of written submissions.

4. The trial court found that the motor vehicle was responsible for the accident by failing to keep distance.

5. The Respondent sustained the following injuries:-

(i) Soft tissue injuries in the left shoulder.

(ii) Tenderness on the right knee.

(iii) Blunt injuries on the left foot.

6. The trial court assessed damages as follows:-

(i) General damages Kshs. 180,000/=

(ii) Future medical expenses Kshs. 20,000/=

(iii) Special damages Kshs. 5,550/=

Total Kshs. 205,550/=

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

(i) The learned Adjudicator erred in law by holding the Appellant 100% liable for the accident on 6th April 2025 without sufficient evidence to establish negligence by the Appellant's driver, contrary to Section 107 of the Evidence Act, Cap 80.

(ii) The learned Adjudicator erred in law by adopting the liability finding from SCCC/E021/2025 without independent analysis of evidence in SCCC/E022/2025

thereby breaching the rules of natural justice under Article 50 of the Constitution of Kenya, 2010.

- (iii) The learned Adjudicator erred in law by failing to consider whether the Respondent as the rider of motor cycle KMFP 017F, contributed to the accident through negligent riding, misapplying the principles of contributory negligence under Section 3(1) of the Law Reform Act, Cap. 26.**
- (iv) The learned Adjudicator erred in law by relying on the police's intention to charge the Appellant's driver under Section 49(1) of the Traffic Act without corroborative evidence, such as a police abstract, contrary to the principles in Hahn v. Singh (1985) KLR 716.**
- (v) The learned Adjudicator erred in law by awarding excessive general damages of Kshs. 180,000 for soft tissue injuries, which are inconsistent with established decisions from superior courts.**
- (vi) The learned Adjudicator erred in law by proceeding under Section 30 of the Small Claims Court Act 2016, without ensuring the Appellant's defense was adequately tested, prejudicing the Appellant's right**

to a fair trial under Article 50 of the Constitution of Kenya, 2010.

8. The parties filed written submissions as follows:- The Appellant submitted that this appeal arise a judgment delivered on 11th July 2025 by the Small Claims Court at Voi, which held the Appellant 100% liable for a road traffic accident and awarded the Respondent Kshs. 180,000 in general damages and Kshs. 20,000 for future medical expenses.
9. The Appellant challenges both liability and quantum, arguing that the trial Adjudicator erred in law and fact.
10. On liability, the Appellant contends that the Respondent failed to prove negligence sufficiently and that the defence of contributory negligence was not properly considered, as the Respondent did not demonstrate taking reasonable care for his own safety, such as wearing protective gear.
11. The Appellant relies on several authorities to argue that liability should be apportioned, proposing at least 50% contributory negligence by the Respondent, citing cases where courts apportioned liability in ratios such as 70:30.
12. Regarding quantum, the Appellant submits that the award for future medical expenses lacks evidentiary basis because no receipts or medical estimates were produced to prove the

claimed Kshs. 20,000, and special damages must be strictly proved with actual receipts, not invoices or estimates.

13. Finally, the Appellant criticises the procedure adopted by the trial court, arguing that the matter was determined solely on documents under Section 30 of the Small Claims Court Act without oral testimony, which was inappropriate for a fact-sensitive dispute over liability where credibility and competing narratives needed to be assessed.

14. The Appellant thus prays that the appeal be allowed, liability be apportioned, the awards be set aside or reduced, and costs be awarded to the Appellant.

15. The Respondent's written submissions oppose an appeal filed by the Appellant against a judgment of the Voi Small Claims Court delivered on 11th July 2025.

16. The dispute arose from a road traffic accident on 6th April 2025, in which the Respondent, a lawful rider of a motorcycle, was hit from behind by a motor vehicle owned by the Appellant.

17. The Respondent sustained multiple soft tissue injuries, including blunt injuries to the shoulders, right knee joint, and lower back, as well as bruises and cut wounds to the limbs.

18. The claim initially proceeded undefended, but the Appellant later set aside the default judgment and filed a response

admitting ownership of the vehicle but denying the occurrence of the accident and blaming the Respondent instead.

19. The matter was heard by way of documentary evidence under section 30 of the Small Claims Court Act, after the Appellant's counsel proposed that procedure and the Respondent's counsel agreed.
20. The trial court found the Appellant 100% liable and awarded Kshs. 180,000 in general damages and Kshs. 25,550 in special damages. The Appellant appealed on six grounds, essentially challenging the finding on liability, the quantum of damages, the use of the documentary procedure, and the trial court's acceptance of the Respondent's account of the accident.
21. The Respondent argues that the Appellant presented no rebuttal evidence.
22. On liability, the Respondent cites settled law that a driver who hits another vehicle from behind is presumed negligent, and the police abstract confirmed the Appellant's blame.
23. On quantum, the Respondent submits that the awards are reasonable and consistent with comparable cases for soft tissue injuries, and the special damages were properly pleaded and supported by documents.
24. Regarding the procedure under section 30, the Respondent contends that the Appellant consented to that mode of hearing

and cannot later challenge it, and that the Small Claims Court is statutorily designed to proceed informally and on documents.

25. Finally, the Respondent argues that the trial court was entitled to accept the unchallenged evidence of the Respondent, as the Appellant failed to adduce any contrary evidence.

26. The Respondent concludes that the appeal lacks merit and urges the court to dismiss it with costs.

27. This is an appeal from the Small Claims Court at Voi, and this court's jurisdiction is circumscribed by Section 38(1) of the Small Claims Court Act, which limits appeals to this court to matters of law only.

28. This court cannot delve into matters of fact unless the decision is perverse or the trial court considered matters it should not have considered, or failed to consider matters it should have considered.

29. Bearing that important limitation in mind, this court has carefully considered the record of appeal, the judgment of the learned Adjudicator, the grounds of appeal, and the written submissions filed by both parties.

30. On the issue of liability, the Appellant contends that the learned Adjudicator erred in holding the Appellant 100% liable for the accident without sufficient evidence to establish negligence by the Appellant's driver.

31. However, the evidence on record shows that the Respondent was travelling as a pillion passenger aboard a motorcycle when the motor vehicle belonging to the Appellant hit the motorcycle from behind along Nairobi-Mombasa road at Kasarani area.
32. The trial court found that the motor vehicle was responsible for the accident by failing to keep distance.
33. In this regard, the law is well settled that a driver who hits another vehicle from behind is presumed to be negligent.
34. The Respondent produced a police abstract which confirmed the occurrence of the accident, and the Appellant presented no rebuttal evidence whatsoever to challenge the Respondent's account of how the accident occurred.
35. The Appellant chose not to call any witness or produce any documentary evidence to controvert the Respondent's case. In the absence of any contrary evidence, the trial court was perfectly entitled to accept the Respondent's version of events.
36. The principle in **Hahn v Singh [1985] KLR 716**, cited by the Appellant, stands for the proposition that a police abstract is not conclusive proof of liability, but that does not mean it has no evidential value.
37. In this case, the police abstract was not the sole piece of evidence; it was corroborated by the Respondent's witness

statement and the fact that there was no rebuttal from the Appellant.

38. The trial court's finding on liability was therefore sound.

39. The Appellant further argues that the Adjudicator failed to consider whether the Respondent contributed to the accident through negligent riding, such as failing to wear protective gear.

40. This court finds no merit in that submission. There was absolutely no evidence led by the Appellant to suggest any negligence on the part of the Respondent as a pillion passenger.

41. The Respondent was not the rider of the motorcycle; he was a passenger.

42. The allegation of contributory negligence was pleaded in the defence, but it was never proved.

43. The burden of proving contributory negligence rests on the party alleging it, as provided under Section 107 of the Evidence Act, Cap 80.

44. The Appellant failed to discharge that burden. The trial court was therefore correct in finding no contributory negligence and apportioning liability at 100% against the Appellant.

45. Regarding the procedure adopted by the trial court, the Appellant complains that the matter proceeded under Section 30 of the Small Claims Court Act without oral testimony, thereby

prejudicing his right to a fair trial under Article 50 of the Constitution.

46. The record shows that the Appellant's counsel proposed that the matter proceed by way of written submissions under Section 30, and the Respondent's counsel agreed.

47. Having consented to that mode of hearing, the Appellant cannot now turn around and complain about the very procedure he advocated for.

48. Moreover, Section 32 of the Small Claims Court Act expressly excludes the application of strict rules of evidence, recognizing that the Small Claims Court is designed to handle disputes informally, expeditiously, and at reduced cost.

49. The trial court did not breach any rules of natural justice by adopting the documentary procedure with the parties' consent.

50. On quantum, the Appellant challenges the award of Kshs 180,000 as general damages for soft tissue injuries, arguing that it is excessive.

51. The injuries sustained by the Respondent were: soft tissue injuries in the left shoulder, tenderness on the right knee, and blunt injuries on the left foot. These are soft tissue injuries.

52. An appellate court will only interfere with an award of general damages if the trial court acted on wrong principles, or the award

is so inordinately high or low as to represent an entirely erroneous estimate.

53. In **Kemfro Africa Limited t/a Meru Express Services & Another v A.M. Lubia and Another (No.2) (1982-88) L KAR 727**, the Court of Appeal held that an appellate court should be slow to interfere with the trial court's discretion on quantum.

54. Comparable awards for soft tissue injuries in recent Kenyan decisions range between Kshs 150,000 and Kshs 250,000.

55. Considering the nature of the injuries sustained by the Respondent, the passage of time, and inflationary trends, this court finds that the award of Kshs 180,000 is not excessive at all, it is reasonable, moderate, and consistent with comparable awards.

56. The trial court properly exercised its discretion, and this court sees no reason to disturb that award.

57. However, the award of Kshs 20,000 for future medical expenses stands on a different footing.

58. The Respondent pleaded future medical expenses but did not produce any medical report, letter from a doctor, or any other evidence to demonstrate that he would require future medical treatment as a result of the accident and the estimated cost thereof.

59. It is trite law that special damages, including future medical expenses, must be specifically pleaded and strictly proved.
60. In this case, there is no evidence at all supporting the claim for Kshs 20,000 in future medical expenses.
61. No medical report was produced, no estimate from a hospital or doctor, and no receipt. The claim is therefore unsubstantiated.
62. The trial court erred by awarding this amount without any evidentiary basis.
63. Consequently, this court sets aside the award of Kshs 20,000 for future medical expenses.
64. Regarding the special damages of Kshs 5,550, the Appellant did not seriously challenge this award, and this court finds that the same was properly pleaded and proved with receipts as required by law.
65. In the final analysis, this appeal partly succeeds. The judgment of the trial court is upheld on liability and on the award of general damages and special damages.
66. The award of Kshs 20,000 for future medical expenses is set aside for lack of proof.
67. The trial court's judgment is therefore modified as follows;

(i) General damages Kshs 180,000/=

(ii) Special damages Kshs 5,550/=

Total award Kshs 185,550/=

68. The Appellant shall pay costs of the appeal to the Respondent

Dated, signed and delivered this 22nd day of April 2026 in open court at Voi High Court.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent/Mabishi

..... **for the Appellant**

..... **for the Respondent**