



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL APPEAL NO. E278 OF 2023

ROSE NDUKU NDETI.....

.....APPELLANT

VERSUS

EMMACULATE MBATHA MUTHIANI.....

RESPONDENT

***(Being an appeal from the judgment of the Hon P.Wechuli (PM)
delivered on 05.10.2023 in KITHIMANI PMCC NO 196 OF 2021)***

JUDGMENT

1. This appeal is against the quantum of damages awarded to the Respondent for personal injuries sustained while she was lawfully travelling in a motor vehicle registration number KCB186 C Subaru belonging to the Appellant. The accident is said to have occurred along Matuu -Thika road at Farrow area.
2. Initially the Appellant denied the particulars of negligence attributed to her in the plaint and put the plaintiff to strict proof. However, in a consent recorded by counsel for the parties the Appellant conceded liability at 90 percent leaving the

Respondent to shoulder 10 percent liability. The issue of the quantum of damages was then left to the learned magistrate.

3. After hearing the parties and considering their submissions the court below awarded damages as follows:

- | | |
|------------------------------------|----------------|
| a. Liability | 90:10 |
| b. General damages | Kshs 1,500,000 |
| c. Future medical treatment | Kshs 170,000 |
| d. Special damages | Kshs 18,000 |
| e. Less 10 % | |
| f. Costs and interest | |

4. Being aggrieved by the award the Appellant preferred this appeal. The same is premised on grounds that;

“a. The learned trial magistrate erred in law and in fact by failing to take into consideration the evidence tendered by the appellants.

b. The learned trial magistrate erred in law and in fact by awarding kshs. 1,500,000 as general damages for pain, suffering and loss of amenities which is very high for the injuries suffered and not in line with the precedents.

c. The learned trial magistrate erred in law and in fact by failing to consider conventional awards for general damages in cases of similar injuries

and awarded general damages for pain and suffering which were very high.

d. The learned trial magistrate erred in law and in fact by awarding kshs 170,000 on account of future medical expenses. The said sum were excessive as to amount to erroneous estimate of damages payable to the respondent for future medical expenses.

e. The learned trial magistrate erred in law and in fact by failing to consider the appellant's submissions and judicial authorities on quantum thereby arriving at an erroneous figure on quantum.

f. The learned Trial magistrate erred in law and in fact by applying the wrong and or did not apply the correct law, tests, doctrines and principles relating to evidence tendered by the appellant thereby arriving at an erroneous decision."

5. The Appeal was canvassed by way of written submissions.

APPELLANTS SUBMISSIONS

6. Learned Counsel for the Appellant submitted that the awards for general damages and for future medical expenses were inordinately high and not in line with comparable awards. Counsel placed reliance on the case of **Waweru (Suing as the Legal Representative and Administrator of the Estate of**

Brian Waweru Mwaura (Deceased)) v Bonafide Clearing and Forwarding Company Limited & another (Civil Appeal E506 of 2023) [2025] KECA 620 (KLR) (4 April 2025) (Judgment), Mbaaru & another v Kenya Bus Services Limited also known as Stage Coach Bus International & another (Civil Appeal 244 of 2013) [2024] KECA 432 (KLR) (26 April 2024) (Judgment) Kigaragari vs. Aya (1982-1988) 1 KAR 768 as cited in Kerandi & another v Okong'o [2024] KEHC (KLR).

7. In regard to the award for general damages for pain suffering and loss of amenities, Counsel urged this court to be persuaded by the following recent cases; **Kerandi & Another v Okong'o Civil Appeal No E028 of 2023[2024] KEHC 3823 (KLR)** where the respondent sustained fractures of the ribs, tibia and fibula and dislocation of the wrist and was awarded Kshs 450,000 by the appellate court; **Sammy Mugo Kinyanjui & Another v Kairo Thuo (2017) eKLR** where the respondent had slight tenderness in the forehead, neck, chest, abdomen, right knee and both legs; fracture of the right tibia; fracture of the left tibia and fibula and where the court concluded that the injuries were very severe but had healed and reduced the award of general damages from Kshs.1,000,000 to Ksh.600,000; and **Tirus Mburu Chege & Another v JKN & Another (2018) eKLR** where the respondent suffered fractures on the tibia and fibula on both legs, blunt injury on the forehead,

broken upper right second front tooth, nose bleeding and consistent loss of consciousness and on appeal the court reduced the award for general damages from Kshs. 800,000 to Kshs. 500,000.

8. For the Respondent, it was submitted that the instant appeal was fatally defective as there was no decree annexed. Learned Counsel for the Respondent relied on the case of **Lucas Otieno Masaye v Lucia Olewe Kidi [2022] eKLR**, the case of **Bwana Mohamed Bwana vs Silvia Buko Bonaya & 2 Others [2015] eKLR** and the case of **Chege vs Suleiman [1988] eKLR**.
9. Counsel further contended that during trial the respondent adduced evidence of the extent of her injuries proving they were serious injuries to the head and a compound fracture of the tibia and fibula. Counsel reminded this court that it can only interfere with the award of damages if the trial court applied irrelevant factors or left out relevant factors in arriving at its decision but not merely for reason that it could have awarded a higher amount.
10. Counsel urged this court not to disturb the award of the trial court but instead uphold the same and dismiss this appeal with costs to the Respondent.

Analysis and determination

11. I have considered and re-evaluated the evidence adduced in the court below, the grounds of appeal, the rival submissions, the authorities cited and the law. The issue for determination is whether the appellant has made a case to warrant this court to disturb the quantum of damage as awarded by the trial court.
12. The principles which should guide a court in considering whether or not to disturb an award of damages by a lower court were settled in the case of **Kemfro Africa Limited t/a “Meru Express Services (1976)” & another v Lubia & another (NO.2)[1985]KECA137(KLR)** to be that **“either the court took into account an irrelevant factor, or left out a relevant one, or that, the amount of damages is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.”** It is also a tenet of the law that similar injuries should attract comparable awards albeit taking the issue of inflation into account
13. According to Dr. W. M. Wokabi’s medical report dated 4th April 2022, the Respondent herein suffered; facial lacerations and compound (open) fractures of the left tibia and fibula. The fractures united well after surgery and there was no likelihood of permanent disability. The doctor also opined that the Respondent would require kshs 80,000 to remove the metal implant in a medium cost hospital.
14. Comparing the above injuries to those in the cases cited by Counsel for the parties, I am persuaded that, even considering the passage of time, the award of kshs 1,500,000 is high and an

award of kshs 1,000,000 would be reasonable and adequate for pain, suffering and loss of amenities. The award for future medical expenses is however not excessive as it is within the range proposed by the doctor. The special damages were specially pleaded and proved and shall also not be disturbed.

DISPOSITION

15. In the upshot, the appeal succeeds partially and judgment is entered as follows;

a. Liability	90:10
b. Damages:	
i Pain suffering and loss of amenities Kshs 1,000,000/-	
ii. Future medical treatment	Kshs
170,000/-	
c. Special damages	Kshs
18,000/-	
d. Less 10% Contribution	Kshs
118,800/-	
e. Total	
<u>Kshs 1,069,200/-</u>	
f. Costs of the appeal and in the court below and interest at court rates with interest on the specials being from the date of filing suit and for general damages being from the date of the judgment in the court below.	

Orders accordingly.

**Judgment signed, dated and delivered virtually on this
14th day of November 2025.**

E N MAINA

JUDGE

IN PRESENCE OF:

Mr. Kyalo for Njihia Advocate for the Respondent

Ms Odero for the Appellant

C/A: Geoffrey