



**Pascal v Kassim (Civil Appeal E014 of 2021)
[2025] KEHC 46 (KLR) (13 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 46 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CIVIL APPEAL E014 OF 2021
RL KORIR, J
JANUARY 13, 2025**

BETWEEN

AMOKE OTIENO PASCAL APPELLANT

AND

THARBET MOHAMED KASSIM RESPONDENT

(Being an Appeal from the Judgment of the Principal Magistrate, Muleka E. at the Principal Magistrate's Court at Sotik in Civil Suit Number 154 of 2019)

JUDGMENT

1. The Respondent (then Plaintiff) sued the Appellant (then Defendant) for general and special damages arising out of a road traffic accident on 21st August 2019. That the Respondent was aboard motor vehicle registration number KCS 022Q when the Appellant's driver, agent, employee or servant negligently drove it and caused it to lose to lose control and cause a road traffic accident.
2. The trial court conducted a hearing where the Respondent called one witness and the Appellant closed his case without calling any witness.
3. In its Judgment dated 11th May 2021, the trial court apportioned liability in the ratio of 90:10 in favour of the Plaintiff/Respondent. The trial court further awarded net damages of Kshs 195,165/= to the Plaintiff/Respondent.
4. Being aggrieved with the Judgment of the trial court, the Appellant filed his Memorandum of Appeal dated 9th June 2021 appealing against the assessment of damages and relied on the following grounds:-
 - I. That the learned Magistrate erred in law and fact in the assessment of quantum thereby giving an award on quantum on general damages of Kshs 200,000/= that was overly in excess in the circumstances of the case.



- II. That the learned Magistrate erred in law in failing to pay regard to decisions filed alongside the defendant's submissions that were guiding in the amount of quantum that is appropriate and applicable in similar injuries as the case he was deciding.
- III. That the learned Magistrate's exercise of discretion in assessment of quantum was injudicious.
5. My work as the 1st appellate court is to re-evaluate and re-examine the evidence of the trial court and come to my own findings and conclusions, but in doing so, to have in mind that I neither heard nor saw the witnesses testify. See *Chezlut Freight Limited v Misi & another* (Suing as the Administrators of the Estate of Patrick Mutie Misi (Deceased)) [2024] KEHC 14270 (KLR)

The Plaintiff's/Respondent's case.

6. Through his Complaint dated 1st November 2019, the Respondent stated that he was aboard motor vehicle registration number KCS 022Q when it was involved in a road traffic accident.
7. The Respondent stated that the Appellant being the owner of motor vehicle registration number KCS 022Q and which was under the control of the Appellant's driver was negligent in causing the accident. The particulars of the negligence were particularized in paragraph 4 of the Complaint.
8. That as a result of the accident, he suffered the following injuries:-
- i. Deep cut wound on the left parietal region.
 - ii. Chest contusion.
 - iii. Blunt trauma to the left knee.
 - iv. Blunt trauma to the left elbow.
 - v. Bruises on the left parietal region.
 - vi. Blunt trauma to the left arm.
9. The Respondent's claim against the Appellant was for special and general damages.

The Appellant's/Defendant's case

10. Through his statement of defence dated 30th January 2020, the Appellant denied that he was the registered owner of motor vehicle registration number KCS 022Q and further denied that the said motor vehicle was under its management and control.
11. The Appellant denied the particulars of negligence levelled against him. That if any accident happened, it was caused solely by the negligence of the Respondent. He particularized the negligence in paragraph 6 of his Defence.
12. On this Appeal, parties were directed to file submissions to canvass the Appeal.

The Appellant's submissions.

13. In submissions dated 15th April 2023, the Appellant submitted that the Respondent suffered soft tissue injuries and the award of Kshs 200,000/= as general damages was inordinately high. The Appellant proposed an award of Kshs 50,000/= as sufficient compensation and he relied on *HB (minor suing through mother & next friend DKM) vs Jasper Nchonga Magari & another* (2021) eKLR and *Rege v LA* (Minor suing through her father and next friend GAA) [2022] KEHC 16634 (KLR) where the court awarded Kshs 60,000/= and Kshs 80,000/= respectively for soft tissue injuries.



The Respondent's submissions.

14. Through his submissions dated 13th December 2023, the Respondent submitted that he sustained injuries as a result of the accident. That his injuries were confirmed by Dr. Peter Morebu. The Respondent further submitted that the Appellant did not avail any medical evidence to the contrary.
15. It was the Respondent's submission that the award of Kshs 200,000/= was not too high to warrant interference by this court. He relied on Charles Gichuki vs Emily Kawira Mbuba & another (2018) eKLR where the court awarded Kshs 300,000/= for similar injuries, and Michael Odiwuor Obonyo vs Clarice Odera Ogunde (2021) eKLR where the court awarded Kshs 200,000/= for blunt injuries to the head, neck, chest upper limbs, lower limbs, ribs and back.
16. I have gone through and carefully considered the Record of Appeal dated 24th January 2023, the Supplementary Record of Appeal dated 3rd February 2023 the Appellant's written submissions dated 15th April 2023 and the Respondent's written submissions dated 13th December 2023. The only issue for my determination was whether the award on general damages was inordinately high.
17. As per the Complaint, the Respondent suffered:-
 - i. Deep cut wound on the left parietal region.
 - ii. Chest contusion.
 - iii. Blunt trauma to the left knee.
 - iv. Blunt trauma to the left elbow.
 - v. Bruises on the left parietal region.
 - vi. Blunt trauma to the left arm.
18. The Respondent (PW1) testified that after the accident, he was treated at St. Claire's Kaplong Hospital and was later examined by a medical doctor. He produced the treatment notes as P.Exh 2 and the Medical Report as P.Exh 6. I have considered the two exhibits and they confirm the nature of injuries suffered by the Respondent.
19. The Appellant submitted that the Respondent's injuries were soft tissue injuries and an award of Kshs 50,000/= would be sufficient compensation. On the other hand, the Respondent submitted that the award on general damages was not excessive to warrant interference by this court.
20. From the above, it was evident that there was no dispute as to the type and nature of the injuries suffered by the Respondent, which were soft tissue injuries.
21. For this court to interfere with an award, it must be satisfied that the trial magistrate misdirected himself in some manner and as a result arrived at a wrong decision, or that it was clear from the case as a whole that the trial magistrate was clearly wrong in the exercise of his discretion and that as a result there has been a miscarriage of justice.
22. It is judicial practice that the general approach in awarding damages for injuries is that comparable injuries should as far as possible be compensated by comparable awards. The Court of Appeal in Stanley Maore vs Geoffrey Mwenda (2004) eKLR, held:-

“...we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be



that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases.”

23. I have considered the authorities presented by both parties and I have further found the following authorities helpful for comparative analysis:-
- I. In Equity Bank of Kenya Limited vs David Githuu Kuria (2020) eKLR, the court reduced an award of Kshs 400,000/= to Kshs 250,000/= for blunt injury (tender) anterior chest wall, cut wounds left knee and swollen tender left knee.
 - II. In Kiruma vs Chege [2024] KEHC 5998 (KLR), the court upheld an award of Kshs 250,000/= for bruises on the right hand, left knee, right side of the chest and on the right ear.
 - III. In ENA Investment Limited vs Onduso (Civil Appeal E092 of 2021) [2023] KEHC 23549 (KLR) (5 October 2023) (Judgment), the Respondent suffered right sub-conjunctival haemorrhage, deep cut wound to the face, deep cut wound to the right leg, deep cut wound to the left leg, chest contusion, bruises on the neck, bruises on the right elbow, blunt trauma on the lower back, blunt trauma on the right elbow, blunt trauma on the right knee and loss of one tooth. The appellate court upheld the award of Kshs 250,000/=.
24. I have considered the authorities above and the nature of the injuries suffered by the Respondent. I have also considered the current inflation rates and I find that the award of Kshs 200,000/= was reasonable and just in the circumstances. I uphold the same.
25. With regards to the special damages, the Respondent particularized the same as follows:-
- i. Medical Report Kshs 5,000/=
 - ii. Treatment and transport Kshs 10,755/=
 - iii. Fees for search Kshs 550/=
 - iv. Registration of demand Kshs 100/=
 - v. Doctor’s court’s attendance Kshs 6,000/=
26. The Respondent produced a bundle of receipts as P.Exh7 which had receipts for the Medical Report, treatment and transport, motor vehicle search and postage receipt all amounting to Kshs 16,405/=. I therefore uphold the trial court’s award of Kshs 16,405/= as special damages.
27. In the final analysis, I find no reason to interfere with the award of the trial court as the award on general and special damages was just and fair.
28. In the end, the Memorandum of Appeal dated 9th June 2021 has no merit and is dismissed with costs to the Respondent. The costs in the main suit shall remain as awarded by the trial court.

Orders accordingly.

JUDGEMENT DELIVERED, DATED AND SIGNED THIS 13TH DAY OF JANUARY, 2025.

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R. LAGAT-KORIR

JUDGE

JUDGEMENT DELIVERED IN THE ABSENCE OF THE PARTIES SIELE (COURT ASSISTANT).

