



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CIVIL APPEAL NO. 89 OF 2015

MOIS BRIDGE QUARRY LIMITED.....APPELLANT

VERSUS

LEONARD MUYUNDO (Suing as father and Next friend

to SimonMuyundo..... RESPONDENT

JUDGMENT

(Being an appeal from the judgment and decree issued in Eldoret CMCCNo. 342 of 2012 delivered by Honorable C. OBULUTSA on 27th July 2015).

1. *MOI'S BRIDGE QUARRY LIMITED* hereinafter referred to as the Appellant is aggrieved by the judgment of the Resident Magistrate Eldoret in which the magistrate gave judgment in favor of the Respondent herein.
2. The appellant having been dissatisfied with the said judgment preferred an appeal before this court on grounds that:-
 - i. The learned trial magistrate erred in law and in fact in entering judgment in favor of the Respondent while there was evidence that the respondent was not injured while executing functions in the course of an employment contract with the Appellant.
 - ii. The learned trial magistrate erred in law and in fact in failing to appreciate that the appellant couldn't be liable in the case as the driver who asked the respondent to assist him in loading the lorry did so without the authority, knowledge and permission of the Appellant and therefore the doctrine of vicarious liability did not apply.
3. The Appellant prays that the decision of the trial magistrate be set aside, as well as the decree issued. The appeal was canvassed by way of written submissions.
4. The Appellant submitted that there was no evidence that the Respondent was injured while executing contractual obligations under employment with the Appellant.
5. Further, that no one witnessed the accident or the oral contract between the minor and the driver. This proves that there was no existing contract between the minor and the Appellant.
6. The Respondent submitted that from the circumstances of the accident, the plaintiff minor was engaged by the Appellant's driver to carry and load stones onto the lorry registration No. KCA 233P. The Appellant thus became vicariously liable for the happenings concerning the Respondent.
7. The Appellant's driver of the lorry registration No. KCA 233P suddenly and without notice to the Respondent started to drive the lorry and as a result the lorry overturned causing the Respondent to sustain injuries.
8. The Appellant's driver ought to have exercised due diligence while driving the said motor vehicle. The Appellant did not call any evidence to disapprove the allegations as stated by the Respondent and thus stood uncontroverted.
9. From the medical documents, the minor Respondent sustained the following injuries:-
 - a. Blunt trauma to the back which was tender.
 - b. Bruises on the left arm which was tender.

c. Bruises on the left leg which was tender.

10. The Respondent further submitted that in view of the injuries sustained, the sum of Kshs. 150,000 as general damages sufficed to compensate the respondents for injuries sustained.

11. The Respondent relied on the case of NRB Appeal No. 791 of 1999 Martin M. Mugi vs. Attorney General where the court awarded Kshs. 300,000 for a deep cut wound on the face, mild concussion and generalized soft tissue injuries.

12. The main issues for determination are whether the Appellant was liable for the accident and whether the amount of Kshs. 150,000 awarded by the trial court was excessive in the circumstance.

13. General damages are damages at large and the court should do the best it can in reaching an award that reflects the nature and gravity of the injuries.

14. In assessing damages, the general method of approach should be that comparable injuries should as far as possible be compensated by comparable awards but it must be recalled that no two cases are exactly alike as the Court of Appeal observed in Stanley Maore v Geoffrey Mwenda NYR CA Civil Appeal No. 147 of 2002 [2004]eKLR that:

“Having so said, 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”.

15. In the case of Channan Agricultural Contractors Ltd v Fred Barasa Mutayo [2013] eKLR the High Court reviewed downwards an award of Kshs. 250,000/ to Kshs. 150,000/= for “moderate soft tissue injuries that were expected to heal in eight months” time.

16. Also, in the case of Purity Wambui Muriithi v Highlands Mineral Water Company Ltd [2015] eKLR the Court of Appeal awarded Kshs. 150,000/= for injuries to the left elbow, pelvic region, lower back and left knee. Considering the said decisions, I do find that the general damages awarded to the Respondent were not excessive in any manner whatsoever.

17. As regards the liability, the Respondent testified in the lower court that Appellant’s driver of the lorry registration No. KCA 233P suddenly and without notice to the Respondent started to drive the lorry and as a result the lorry overturned causing the Respondent to sustain injuries.

18. Based on the above evidence, the trial court held the appellant vicariously liable. There is no reliable evidence to the contrary that would entitle the court to find otherwise on these facts. As the Court of Appeal held in Makube vs Nyamuro (1983) KLR 403 that:

“a court on appeal will not normally interfere with the finding of fact by a trial court unless it is based on no evidence, or on a misapprehension of the evidence, or the Judge is shown demonstrably to have acted on wrong principles in reaching his conclusion.”

19. The finding of the lower court on liability and its award in damages are justified given the evidence on record. There is no cause for interfering with it.

20. The appeal therefore lacks merit and is dismissed with costs to the respondent.

S.M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 17th day of September, 2020.

In the absence of:-

Mr. Maina for the appellant (present)

Mr. Mwinamofor respondent

Ms Gladys - Court assistant

Parties be notified of the delivery.

Mr. Maina:-

I pray for 30 days stay.

Court:-

The same is granted.

SIGNED

JUDGE