



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL 422 OF 2015

DAVID KAMAU MBUGUA.....1ST APPELLANT

GICHUHI STEPHEN.....2ND APPELLANT

VERSUS

DAVID KINUTHIA KARANJA.....1ST RESPONDENT

SOLOMON MUTURI NJAU.....2ND RESPONDENT

JUSTIN PETER.....3RD RESPONDENT

(Being an appeal from the judgment of Hon.S.K.Arome,Resident Magistrate delivered on 13 August 2015 in Kiambu CMCC No.28 of 2014)

JUDGMENT

This is an appeal arising from the lower court judgment delivered on 13th August, 2015 whereby the 1st respondent had sued the appellants alongside two other parties who however have not lodged any appeal. Those two other parties were the 3rd and 4th defendants in the lower court.

After hearing the evidence from the witnesses who testified, the court apportioned liability equally between the appellants and the 3rd and 4th defendants in the lower court. In so doing the court said as follows,

“On the evidence on record both parties blamed each other. There is no measure to ascertain to what degree each contributed to the accident. in all fairness justice demands both parties bear 50:50 blame for the reason that this was a collision by both vehicles. The owners of the said vehicles are vicariously liable.”

On quantum, the lower court referred to two decided cases and made an award of Kshs. 300,000/= general damages. Special damages pleaded and proved amounted to Kshs. 9,920/=. The appellants were aggrieved by the lower court judgment and lodged this appeal.

The Memorandum of Appeal relates to both liability and quantum, but the submissions by the appellants appear to point only to the subject of quantum. Indeed, it has been submitted that four grounds of appeal were raised but can be limited to the main issue, namely quantum.

On liability, based on the evidence, the trial court could not have reached a different conclusion and I agree that faced with the evidence that was presented, the apportionment of liability equally between the two drivers and their employers was the only option.

The award of damages was based on the treatment notes and the medical report prepared by Dr. George Kungu Mwaura, almost three months after the accident. The conclusion in the medical report was that the respondent suffered moderate soft tissue injuries. It is important however to note that, he had a blunt injury to the scalp, head concussion, deep cut wound, right leg calf, two deep cuts to the left leg, blunt injuries to both arms and a blunt injuries to the chest.

In his evidence recorded on 23rd October, 2014 the respondent told the court under cross-examination that he is fully healed, and this was about one year from the date of the accident which took place on 25th November, 2013.

In assessing general damages payable to a party for personal injuries, the court is guided by the medical reports and comparable awards. The

learned trial magistrate said as follows in his judgment,

“In awarding damages in personal injury claim, I must as much as possible consider the nature of injury sustained and comparable awards in similar cases.....

Each case should be guided by the nature of injuries. The injuries sustained by the plaintiff are comparable to the injuries sustained by the plaintiff in the case of Catherine Wanjiru Kingori and three others.”

The exercise of assessing and awarding damages is at the discretion of the trial court which may only be disturbed by the appellate court, if the trial court took into account irrelevant matters and failed to take into account relevant factors. An award may also be disturbed if it is inordinately high or low so as to portray an erroneous estimate thereof.

I have taken note of the submissions of the parties on record. The accident in question took place 5 years ago and the appeal was lodged 4 years ago. Considering the time that has gone by, and the depreciation of currency I am not persuaded that the award should be disturbed. The principles applied and the approach used by the trial court cannot be faulted. I uphold the findings of the lower court both on liability and quantum. This appeal is therefore dismissed with costs to the 1st respondent.

Dated, signed and delivered at Nairobi this 20th Day of December, 2018.

A.MBOGHOLI MSAGHA

JUDGE