



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**CIVIL APPEAL NO.66 OF 2014**

**SYNOHYDRO CORPORATION LIMITED.....APPELLANT**

**VERSUS**

**HELLEN OMONDI .....RESPONDENT**

**[Appeal From Original judgment of Principal Magistrate Mr. Obina**

**in Kisumu CMCC No.146 of 2013.]**

**\*\*\*\*\***

**J U D G M E N T**

1. On 5.11.2012 along Kisumu-Nairobi Road, the respondent was a pillion passenger aboard a motorcycle Reg No.KMCG 370X Bajaj when at around Wells Petrol Station the appellant's motor vehicle Reg. No.KBH 719V Steys hit them from behind and as a consequence she suffered the following injuries:

- (a) Head injury with loss of consciousness;**
- (b) Injury on the chest; (c) Injury on the right leg with cut wound;**
- (d) Injury on the right ankle;**
- (e) Injury on the back.**

2. She was then taken to hospital by the appellant who also paid a bill of Kshs.10,000/=. The respondent then proceeded to file suit claiming inter-alia general damages for pain and suffering. In its judgment the trial court apportioned liability against the appellant wholly and awarded Kshs.200,000/= to her as well as Kshs.1500 being special damages.

3. The appellant being dissatisfied has filed this appeal citing generally the following grounds:

- a. The accident was wholly caused by the respondent;**
- b. That the driver of the motor-cycle was charged hence his culpability;**
- c. The court failed to appreciate the provisions of Section 4 of the Insurance (Motor vehicle Third Party Risks) Act Cap 405 Laws of Kenya.**

4. From the proceedings its evident that its only the respondent and her witnesses who testified. The appellant did not call any of its witness.

5. The respondent told the court that the appellant's driver had left its lane and moved to their side. She testified that:

**“The motor cycle was on the left side facing Nyamasaria. The lorry was on the left facing Kisumu. I heard a bang. The lorry had knocked us. We were behind another lorry. The driver had left his side. He hit a lorry we were following and also hit us. It had left its lane and came to our lane.”**

6. As earlier indicated she was admitted at the hospital from 5th to 14th November, 2012. She apportioned blame on the driver of the lorry.

7. **PW2 DR. WERE OKOMBO** produced the medical report on behalf of **the** respondent. **PW3 SGT. ANNE KOSGEI** produced the police abstract which showed that the motor cycle rider had been charged with the offence of having an expired licence and riding an uninsured motor cycle.

8. Having closed its case without calling any witness, the only evidence available was from the respondent and her witnesses. From the Memorandum of Appeal the appellant does not dispute the issue of quantum but only the question of liability.

9. From the evidence adduced it appears that the appellant's motor vehicle hit the motor-cycle as well as another vehicle Reg. No.KBK 596X. The respondent stated that it first hit the other vehicle they were following then hit them. This was corroborated by PW3 who when being cross-examined stated:

**“There was a 3rd vehicle KBK 596X was coming from the opposite direction. KBH 719V hit this motor vehicle and also hit a motorcyclist. The rider of the cycle has been charged with the traffic offence.”**

10. In light of the above undisputed evidence the court's apportionment of 100% liability against the appellant in my respectful view stands. Nothing was difficult for the appellant to have called its witness to testify on its behalf or for that matter any other eye witness.

11. On the question of the motorcyclist being charged with the traffic offence the offence stated did not deal with the aspect of accident but on the driving licence and the insurance. None of the charges dwelt on the question of the accident. I do not find as submitted by the appellant's counsel the question of the vehicle's insurance and the liability being correlated.

12. As regards the authority of **SALLY KIBII & ANOTHER VRS DR. FRANCIS OGARO (2012) eKLR**, the same is distinguishable as in the current matter the police abstract was produced by the police themselves and further the respondent was a victim of the accident. In the Sally Kibii's case the appellant was not the victim but the deceased's widow.

13. Finally as earlier stated the issue of quantum was not challenged and I do not find the award of Kshs.200,000/= too much viz-a-viz the injuries sustained by the appellant. However what is admitted by the respondent is that the appellant paid her hospital fees of Kshs.10,000/=. The amount ought to have been deducted from the general damages as it never came from the respondent's pocket.

14. In disallowing the appeal I shall consequently subtract the sum of Kshs.10,000/= from the general damages so that the sum of Kshs.200,000/= is reduced to Kshs.190,000/=. The respondent shall have the cost of the appeal.

Orders accordingly.

**Dated, signed and delivered this 27th day of April, 2016.**

**H. K. CHEMITEI**

**J U D G E**