



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MILIMANI**  
**CIVIL APPEAL NO. 553 OF 2003**

**STAN MUSYOKA MANTHI ..... APPELLANT**

**VERSUS**

**AMINA ABDI .....RESPONDENT**

**JUDGMENT**

The appellant was the defendant while the respondent was the plaintiff in the lower court. The respondent was injured in a road traffic accident that took place on 21<sup>st</sup> December, 1999 along Mbagathi way involving motor vehicle registration No. KAA 298H owned and driven by the appellant at the time of the accident.

As a result she sued the appellant for injuries sustained. She blamed the appellant for the said accident alleging that the motor vehicle was driven at excessive speed and without due care and attention. Further that the appellant did not exercise or maintain any sufficient or adequate control of the motor vehicle and failed to slow down, swerve or stop to avoid the accident.

She also alleged that the appellant drove in a manner which was dangerous to other road users. The respondent suffered injuries particulars of which included segmental fracture of the right tibia and fibula, fracture of the left clavicle and fracture of the left distal radius. The defendant denied all the allegations set out in the plaint in addition to blaming the respondent for the accident. It was contended in the defence that the respondent was negligent by dashing on to the road without ascertaining it was safe to do so and failed to heed the presence of motor vehicles on the road and particularly the defendant's motor vehicle.

The respondent was also blamed for failing to heed the defendant's warning of imminent danger and also crossing the road carelessly and blindly at undesignated area and also failing to heed road signs and traffic regulations. Particulars of injuries were denied.

After a full trial the learned trial magistrate found that the appellant was liable to the respondent to the extent of 85% while the respondent contributed 15% to the accident. He awarded the respondent Kshs. 480,000/= general damages plus Kshs. 80,900/= special damages. Both awards were subject to 15% deduction being the respondent's contributory negligence.

The evidence adduced by the plaintiff was that she was crossing the road when the defendant's motor vehicle which was being driven very fast knocked her. She denied that she was to blame and after the accident the defendant did not stop. She lost consciousness and found herself in hospital. Two witnesses that gave evidence were her two sons in addition to the police officer who visited the scene.

The defendant admitted that the accident took place but denied that he was fast and blamed the respondent for the accident. There was a dispute as to whether or not the respondent is the same person who was involved in this accident, considering that the name in the police accident abstract produced by the defendant bore the name Amina Kite while the respondent is known as Amina Abdi.

I have looked at the two police accident abstract produced in evidence. The abstract produced by the police officer Corporal John Wanyonyi P.W. 4 is dated 17<sup>th</sup> April, 2000 and bears Number 412211; the name of the respondent is Amina Abdi. The one produced by the defendant is dated 29<sup>th</sup> December, 1999. It bears number 414941: the name of the respondent is Amina Kite. The serial numbers of the two police abstract accident raise some curiosity. It is not possible that the abstract issued to the defendant earlier than the one produced by the police officer could have a higher serial number than the latter which is supposed to have been issued later. It is reasonable to conclude that the abstract produced by the defendant was tailored to defeat the respondent's case which it has failed.

In finding for the plaintiff the learned trial magistrate said as follows,

**“The plaintiff was consistent that she was knocked when completing the crossing of the road. She checked and saw the defendant's motor vehicle at the far distance. The defendant's motor vehicle then came at a high speed crushing her. The plaintiff had a duty to patiently wait until the motor vehicle had passed before crossing. Yet the defendant had a bigger duty to ensure that he did not crush the plaintiff who was finalising the crossing of the road. He drove at a speed and caused the accident. The evidence that the plaintiff crossed the road suddenly is unbelievable. It is because the plaintiff was knocked when finalising the crossing and not starting. Indeed P.W. 3 does confirm this.... based on the above evidence therefore I do apportion liability between the plaintiff and the defendant at 85-15% for the plaintiff .”**

As the first appellate court, it is my duty to go through the entire evidence adduced before the trial court and come to independent conclusions. This I have done. The learned trial magistrate had the advantage to see and hear the witnesses an advantage I do not have at this stage. He believed the plaintiff's case in arriving at the conclusions that he did. The evidence of the respondent was corroborated by her son P.W. 3 who had escorted her to cross the road.

On the other hand, after the accident it is alleged that the appellant did not stop after the accident. Proof in cases of this nature is on a balance of probabilities. The conclusion I have reached is that the plaintiff proved her case to the required standard against the appellant.

On quantum the learned trial magistrate relied on the medical report produced by Dr. Wokabi P.W. 1. For this court to interfere with the award of damages it has to be established that the trial court relied on erroneous principles and that the award is either too high or too low to attract the interference of the court.

Going by the injuries sustained the award of Kshs. 480,000/= in the year 2003 when the lower court judgment was delivered cannot to be said to be excessive. Special damages should be specifically pleaded and strictly proved. At the beginning of the trial the counsel for the respondent applied to amend the plaint by stating that in addition to special damages listed at paragraph 2, other particulars would be furnished at the hearing. This was on the basis that he got some documents relating to treatment expenses of the plaintiff.

The appellants counsel opposed that move but the court allowed the amendment **“in the interest of justice”**. During the trial, receipts were produced to proof special damages that were awarded. I see no reason to depart from that award.

At the end I find that the appeal is lacking in merit and therefore dismissed with costs to the respondent.

Orders accordingly.

***Dated, signed and delivered at Nairobi this 29<sup>th</sup> day of September 2016.***

**MBOGHOLI MSAGHA**

**JUDGE**