

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL APPEAL NUMBER 161 OF 2011

TRANSPARES (K) LTD.....APPELLANT

VERSUS

KARIUKI WANG'ONDU.....RESPONDENT

(Being an appeal from the Judgment/Decree of Hon. S. Soita, Principal Magistrate, Molo delivered on 16th August, 2011 in Molo PMCC No. 7 of 2011)

JUDGMENT

The appeal before the court is against the award of general damages to the appellant in the sum of Kshs.300,000/= and Kshs.186,905/= in special damages following a road traffic accident involving the appellant and the respondents motor vehicles registration No KAP 877T and KBK 2352/ZD 2917. Liability was by consent settled when parties apportioned the same at the ratio 30:70 in favour of the Respondent.

While the trial court subjected the award of general damages to the agreed contributory negligence, it failed to subject the special damages of Kshs.186,905/= to the same ratio giving rise to this appeal.

When the appeal came up for hearing before me on the 31st March 2016, the respondent through counsel Mr. Ombui conceded to the appeal, that the award of special damages be subjected to the contributory negligence of 30% by the appellant.

That being the case, the appeal succeeds, and the special damages of Kshs.186,905/= shall be reduced by 30%, which is Kshs.56,071.50.

In the result, the Respondent is entitled to Kshs.130,833/50 in special damages.

The upshot of the above is that the appeal is allowed in the following manner.

- 1. That the trial court's award on special damages of Kshs.186,905 is reduced by 30% to Kshs.130,835.50.***
- 2. That the award of Kshs.210,000/= being 70% of the general damages awarded to the Respondent is upheld.***
- 3. That costs of the appeal shall be borne by the Respondent.***

Dated, signed and delivered in open court this 22nd day of September 2016

JANET MULWA

JUDGE