



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT HOMA BAY**

**CIVIL APPEAL NO.9 OF 2016**

**BETWEEN**

**ISAAC MASONI MAKOKHA.....APPELLANT**

**AND**

**MARY AKOTH ONYANGO.....RESPONDENT**

*(An appeal from the judgment and decree of Hon. J.S. Wesonga (RM)*

*in Oyugis PMCC No.113 of 2013 dated 24<sup>th</sup> March, 2016)*

**JUDGMENT**

1. The appellant ISAAC MASONI MAKOKHA has filed this appeal against MARY AKOTH ONYANGO (respondent). This matter was related to HCCA No.8 of 2016 (ISAAC MASONI MAKOKHA –VS- WYCLLIFE OTIENO ABWOR) where the respondent was a passenger in the same motor vehicle Registration No.KBK 641B, and which was hit by motor vehicle registration No.KBN 102T following the sudden entry of motor vehicle KBQ 943V from a feeder road onto the main road without stopping.
2. The trial court entered judgment in favour of the respondent as against the appellant on liability at 100% and awarded damages at Kshs.80,000/=.
3. The decision was contested by the appellant on grounds that the respondent failed to prove that she was involved in the accident, and that the quantum of damages awarded was excessive.
4. The arguments regarding liability were more or less similar to what was canvassed in HCCA NO.8 of 2016 and I adopt the same, *mutatis mutandis*.
5. As regards the quantum of damages, the appellant’s counsel submitted that the respondent confirmed to the trial court that on impact, she only hit her chest on iron bars in front of her and listed her injuries as injury to the chest, right head, left shoulder and left leg – these were described by the Doctor’s report as soft tissue injuries.
6. Appellant’s counsel argued that the award should have ranged between 20,000/= – 50,000/= citing cases decided in 1994, but also referring to a case of **SOKORO SAW MILLS –VS- GRACE NDUNGU (2006) e KLR**.

7. The respondent's counsel argued that the damages awarded were not excessive. I have considered the 2006 decision cited, and whereas it is relevant to the present case, it must be borne in mind that the decision was made 10 years ago. Ten years ago, the Kenya Shilling was much stronger, its value has since taken a nose dive and in my view taking into account the current financial trends, the sum awarded is commensurate with the injuries and not excessive.

8. Consequently the appeal has no merit and is dismissed with costs to the respondent.

**Delivered and dated this 21<sup>st</sup> day of December, 2016 at Homa Bay.**

**H.A. OMONDI**

**JUDE**

**Miss Aroni holding brief for Odero Okoyo for Respondent**

**Miss Masese holding brief for Mr. Otieno for Appellant**