



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO 24 OF 2012**

**WOCHE HUSSEIN HIRBO .....1<sup>ST</sup> APPELLANT**

**DARO CHATO .....2<sup>ND</sup> APPELLANT**

**VERSUS**

**ROSE KHAUSI ..... RESPONDENT**

*(Being an appeal against the judgment of Honourable A.K. Ndungu, Chief Magistrate, delivered in Nairobi CMCC No. 7437 of 2008 on the 11<sup>th</sup> January, 2012)*

**JUDGMENT**

The plaintiff was injured in a road traffic accident involving a motor vehicle Reg. No. KAN 522 H owned by the 2<sup>nd</sup> appellant and driven by the 1<sup>st</sup> appellant. She brought a suit against both appellants claiming damages for the said injuries. After a full trial the court found in her favour and awarded Kshs. 1,000,000/= general damages, Kshs. 250,000/= future medical costs, Kshs. 1,411,200/= loss of earnings and Kshs. 183,870/= special damages. The total sum added to Kshs. 2,845,070/= which was discounted by 10% contributory negligence on the part of the respondent, leaving a balance of Kshs. 2,560,563/=.

The appellants were aggrieved by that judgment and filed this appeal. In the memorandum of appeal they complain that the award of general damages was excessive and that the respondent did not prove the costs of future medical care. The appellant also faulted the lower court for awarding loss of future earnings which was not proved.

It is my duty to go over the evidence adduced in the lower court and arrive at independent conclusions. The decision on liability depends on the facts, the evidence and the discretion of the court. The lower court addressed the evidence adduced by the respondent. He looked at the medical report and considered decided cases on similar injuries. My own assessment of the doctor's reports and the said injuries persuade me that the said award was not excessive.

The doctors also gave the estimate of what would be required for the respondent to undergo future medical intervention. The sum of Kshs. 250,000/= was therefore justified.

On the subject of loss of earning and earning capacity, the lower court observed that the respondent testified on oath that she worked as a house servant and later a dry cleaner. That evidence, the court observed, was not controverted or even shaken under cross examination. The court believed her evidence. I also do.

At the age of 42 the lower court adopted a multiplier of 12 years; and using a modest pay of Kshs. 350/= per day calculated the sum due and payable for loss of earnings. Again, I am persuaded that the court followed the right indicators. It is worth noting that all these damages were pleaded in the plaint dated 8<sup>th</sup> October, 2008. Special damages amounted to 183,870/=. These were also proved.

I have seen no reason to fault the trial court and therefore this appeal is dismissed with costs to the respondent.

***Dated, signed and delivered at Nairobi this 14<sup>th</sup> Day of December, 2016.***

**A. MBOGHOLI MSAGHA**

**JUDGE**