



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL APPEAL NO. 142 OF 2012

HAMID ABDULRAHMAN ABDALLA..... 1ST APPELLANT

ALI FAIZ SAID 2ND APPELLANT

V E R S U S

JAMES KASILA MWAKONDI RESPONDENT

(An appeal from the Judgment and Decree of the Honourable Senior Resident Magistrate given at Kilifi on 8th August, 2012 in SRMCC 282 of 2010)

JUDGMENT

1. **JAMES KASILA MWAKODI** was injured while travelling as a passenger in motor vehicle Probox KBJ 493J which vehicle was involved in a collision along Mombasa/Malindi Road on 6th May 2010. There was one fatality in that accident and others that were injured. Parties injured in that accident sued the driver of both vehicles in Kilifi Senior Magistrate Court. Parties agreed that one of those cases being **Kilifi SRMCC No. 281 of 2010** be a test suit. That suit was also subjected to an appeal in this Court being **Mombasa Civil Appeal No. 141 of 2012**. I have considered liability in that case and my finding on liability in that case shall abide in this case. Accordingly I uphold the trial Court's finding on liability, that is, that I hold the Appellants to be 100% liable for the accident.
2. The only other issue that remains for consideration in this appeal, therefore is on quantum. Appellants submitted that trial Court's award of general damages was excessive.
3. Mwakodi had the following injuries-
 - **Fracture of the left clavicle.**
 - **Blunt abdominal trauma.**
 - **Several lacerations on both shins.**

Those injuries were described by the Doctor as both bone and soft tissues injuries. Mwakodi was taken to theatre, when he was admitted and had an implant put to enable the healing of the fracture. The doctor estimated that he would in future need to spend Kshs. 70,000/- to have that implant removed. His injuries left him with several scars.

4. The trial Court awarded Mwakodi Kshs. 250,000/- in general damages and Kshs. 2,000/- special damages.
5. In the case **CATHOLIC DIOCESS OF KISUMU –Vs- SOPHIA ACHIENG TETE – KISUMU CIVIL APPEAL NO. 284 OF 2001** the Court of Appeal gave directions on the guiding principle that should be considered by an Appellate Court as follows-

“It is trite law that the assessment of general damages is at the discretion of the trial Court and an Appellate Court is not justified in substituting a figure of its own for that awarded by the Court below simply because it would have awarded a different figure if it had tried the case at first instance. The appellate Court can justifiably interfere with the quantum of damages awarded by the trial Court only if it is satisfied that the trial Court applied the wrong principles (as by taking into account some irrelevant factor or leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to represent an entirely erroneous estimate.”

6. Bearing that guiding principle in mind and having considered the parties submissions I can find no basis of interfering with the award in general damages by the trial Court. The Respondent in my view suffered severe injuries which injuries match the award of the trial Court.

CONCLUSION

7. Accordingly this appeal is dismissed with costs to Respondents.

DATED and DELIVERED at MOMBASA this 26TH day of FEBRUARY, 2015.

MARY KASANGO

JUDGE