



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 615 OF 2012

RACHEL WANGUI.....APPELLANT VERSUS

1. MIRIAM WANGUI

2. PROMOTION WORLD LIMITED.....RESPONDENT

(Appeal from the judgment and decree of Hon. C. Oluoch in Kiambu PMCC No. 136 of 2011 delivered on 31st October, 2012)

JUDGMENT

1. This appeal is brought on the following grounds:-
 - i. ***That the learned trial magistrate erred in law and in fact in entering judgment in favour of the Respondent.***
 - ii. ***That the learned magistrate misdirected herself on the assessment of quantum of damages in the sum of KShs. 400,000/=***
 - iii. ***That the learned trial magistrate erred in law and in fact by disregarding the submissions by the Appellant's advocate***
 - iv. ***That the learned trial magistrate erred in law and in fact by failing to give reasons for her determination and finding***
2. The 1st Respondent sued the Appellant and 2nd Respondent claiming recovery of damages from an alleged road traffic accident that is said to have occurred on 9th August, 2011. It was alleged that the 1st Respondent was walking along the road when the Appellant who was driving the 2nd Respondent's vehicle number KAQ 029A drove carelessly that she hit the 1st Respondent. It was claimed that she sustained pain and tenderness on her left parietal scalp, pain and tenderness on both legs, pain and tenderness on the chest and back, wounds and bruises on the right elbow and dislocation of the symphysis pubis.
3. The parties filed a consent on liability which was agreed at the ratio of 20:80 between the 1st Respondent and the Appellant and 2nd Respondent. Special damages were also agreed at KShs. 5,840/=. Parties then agreed to file written submissions on quantum based on the medical reports of Dr. G.K. Mwaura dated 19th August, 2011 and that of Dr. Wambugu dated 18th January, 2012. It is on that basis that the trial magistrate assessed damages and awarded the 2nd Respondent KShs. 400,000/= subject to contributory liability.
4. The Appellant suggested a figure of KShs, 70,000/= while the 1st Respondent proposed KShs. 750,000/=.
5. This being a first appeal *I am guided by the principles laid down in **Peters v. Sunday Post (1958) E.A. 424 at 429** where it was stated:-*

' It is a strong thing for an appellate court to differ from the finding on a question of fact, of the Judge who tried the case, and who has had the advantage of seeing and hearing the witnesses. An appellate court has, indeed jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon that evidence should stand. But this is a jurisdiction which should be exercised with caution; it is not enough that the appellate court might itself have come to a different conclusion.'

6. I have considered the submissions tendered both before the trial court and this court together with the medical reports. The medical report of Dr. Mwaura confirmed the injuries of the 1st Respondent suffered as pleaded. By the time he was examining the 1st Respondent she was still recuperating and was on bed rest. The medical report of Dr. Wambugu too confirmed the 1st Respondent's injuries as pleaded. This appeal majorly being on quantum, it is my duty to assess whether or not the trial court acted on wrong principles and or misapprehended the law. See **Loice Wanjiku Kagunda -vs- Julius Gachau Mwangi C A No. 142 of 2003 (UR)** the Court held:-

"We appreciate that the assessment of damages is more like an exercise of judicial discretion and hence, an appellate court should not interfere with an award of damages unless it is satisfied that the judge acted on wrong principles of law or has misapprehended the facts or has for those or other reasons made a wholly erroneous estimate of the damages suffered. The question is not what the appellate court would award but whether the lower court acted on the wrong principles (See Mariga –vs- Musila (1984) KLR 257.)"

7. The injuries suffered by the 1st Respondent are basically soft tissue injuries, however, both doctors agree that he suffered an injury to the pelvis which doctor Wambugu termed it as a blunt trauma with disruption of the pubic symphysis and Dr. Mwaura described it as dislocation of the pelvic bone which is one and the same thing save that it has been expressed in different words. A dislocation is a more serious injury than the rest suffered by the 1st Respondent. In awarding damages, the court has to consider that the victim is sufficiently compensated. In my view, I see no error in principle or misapprehension of the law to render interference with the award of the trial court. In the circumstances this appeal fails. The trial court's judgment is upheld. The 1st Respondent shall have costs of the appeal.

Dated, Signed and Delivered in open court this 31st day of August, 2015.

J. J. K. SERGON

JUDGE

In the presence of:

.....for the Appellant.

..... for the 1st Respondent.

..... for the 2nd Respondent.