



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL APPEAL NO. 39 OF 2012

CALEB ONYANGO UYOGO.....APPELLANT

VERSUS

P A (a minor suing through W R K

as next friend).....RESPONDENT

J U D G M E N T

The respondent by a plaint dated 15-4-2010 sued the appellant seeking general and special damages pursuant to a road traffic accident that occurred on 6-1-2010 along Katito – Sondu road near a place called Kadinda. The appellant's motor vehicle registration number KAA 598Q allegedly veered off the road where it knocked the minor who was walking with the father. The respondent called several witnesses and closed her case. The appellant offered no evidence.

The trial court having heard the parties and their submissions awarded the respondent the sum of Kenya Shillings Three Hundred Thousand as well as special damages of Kenya Shillings Six Thousand Three Hundred as well as apportioning liability at 80:20. The appellant being dissatisfied with the said judgment has filed this appeal citing six grounds. The substance of the appeal is that the court did not take into consideration the appellant's evidence as well as their submissions; that the court did not analyse the facts and the law and that the award was inordinately high.

Having perused the proceedings it is not in dispute that the accident occurred at the place and time described in the plaint. **PW2, Paul Omollo Onyango** was the eye witness. He told the court that he was not far from the scene and that he could see the scene properly.

PW3, W R K was escorting her daughter to school. According to his testimony which corroborates that of PW2 they were on the left side of the road when they were knocked. He told the court that he tried shielding the child and in the process he was also injured.

PW1, Dr. David Olima produced the medical report which showed the nature of injuries as:

- a) Soft tissue injuries with a swelling of the face.**
- b) A fracture of the middle part of right femur.**
- c) Soft tissue injuries of the pelvis.**

From the evidence on record there is no doubt that the accident occurred. The appellant apparently did not call on evidence to the contrary. The exhibits produced including the police abstract all point out to the fact that the accident occurred.

As earlier stated there was no effort to controvert the respondent's evidence. On the face of it therefore the accident was well admitted by the appellant.

It is well settled now that this court shall interfere with the award of damages only if the trial court took into consideration irrelevant factors or left out such relevant factors or the award was inordinately high or low, see **Butt -VS- Khan [1982 – 88] KAR.**

I have perused the award and the reasoning of the trial court. Respectfully I do not find the award of Kshs. 300,000/= inordinately high or low. Coupled with the fact that there was a contribution on the part of the respondent as found by the trial court I find it very reasonable in the circumstances.

I do not respectfully find that the trial court exercised its discretion unfairly to warrant this court disturb its judgment.

In the premises I do not find any sufficient reason to allow this appeal. The same is dismissed with costs.

Dated, signed and delivered at Kisumu this 17th day of November, 2014.

H.K. CHEMITEI

JUDGE