

Being dissatisfied by that judgment, the Appellant filed this appeal through Ocharo Kebira & Co. Advocates. He relies on four grounds of appeal which I will nonetheless not replicate for purposes of this judgment. Basically however, the appeal is premised on 2 limbs. Firstly, that the learned trial magistrate erred in finding that the appellant was vicariously liable for the said accident; and secondly, that the damages awarded to the Respondents were manifestly excessive. He expounded these grounds in his address to court. He urged the court to allow the appeal and set aside the judgment of the Lower Court and dismiss the suit. Alternatively, if this court finds that liability was proved, then it should interfere with the awards which he described as manifestly excessive.

Having considered the evidence before the trial court, the grounds of appeal and the address in court by both counsel, I make the following findings. On the issue of liability, I am satisfied that the learned Trial Magistrate arrived at the right finding. The appellant did not adduce any evidence before the trial court to support his claim that it was the conductor and not the driver who was driving the said motor vehicle as at the time of the accident. Further, that even if it was the conductor who was driving the said motor vehicle, that he did not have the authority of the owner to drive it, or that he was actually on a frolic of his own and was not running the Appellant's errands. The proceedings of the Traffic Court which were produced as exhibit before the trial court were of no evidential value whatsoever since there was no finding made on the count of driving a motor vehicle without the owners authority. My finding on the issue of liability is that the appellant was rightly found vicariously liable for the accident in question. That limb of the appeal must therefore fail. On the issue of quantum of damages, the law is clear on when an appellate court may interfere with an assessment of damages. The Court of appeal for East Africa in the case of KASSIM –V- KAMPALA AERATED WATER CO. LTD [1965] EA 587 held;

“In effect the court, before it interferes with an award of damages, should be satisfied that the Judge has acted on a wrong principle of law, or has misapprehended the facts, or has for these or other reasons made a wholly erroneous estimate of the damage suffered...”

In this case, I am inclined to interfere with the award of the learned trial magistrate for the reason that I feel that he *“made a wholly erroneous estimate of the damage suffered.”*

In the case before him, all the Plaintiffs admitted that they went to hospital, were treated and discharged on treatment. None of them was admitted in hospital even for observation. 1st and 2nd Plaintiffs had even healed within a week. None of them suffered anything more than superficial bruises and lacerations. There was no justification whatsoever for the amount of damages awarded by the learned trial magistrate – inflation or no inflation. Accordingly, my finding is that my intervention is called for in that area. I will therefore allow the appeal on the quantum of damages and set aside the general damages awarded to the Respondents and substitute thereof the following amounts;

1st Plaintiff Ksh.50,000.00

2nd Plaintiff Ksh.40,000.00

3rd Plaintiff Ksh.60,000.00

Special damages will remain the same. Each party to bear its own costs of this appeal. Orders accordingly.

W. KARANJA

JUDGE

13/2/2008

