REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

Civil Appeal 83 of 2004

CHARLES IRUNGU MAINA…….APPELLANT

VERSUS

JOSEPH NJERU KARANJA……...……...…RESPONDENT

***(From the decree and orders of Ndungu H.N. (Miss), SRM in Kajiado SRMCC No.153 of 2001*)**

JUDGMENT

The appellant herein was the defendant in Kajiado, SRMCC No. 153 of 2001 in which the present respondent through Wandungi & Co. Advocates, claimed a specific sum of Kshs. 79,350/= being the costs incurred in repairing his motor vehicle Registration No. KAD 403 D which, he claimed, had been damaged in a motor accident after being knocked by the appellant's motor vehicle Registration No. KAG 813 G. He had averred that the accident took place on 4.10.2001 along Nairobi- Mombasa road and that the cause of the accident was the appellant's careless and/or negligent driving. He also had averred that due to the damage so caused, he had been forced to repair his said motor vehicle, thereby spending Kshs.79,350/= to do so.

The lower court found for the respondent and awarded Kshs.79,350/= plus 3,500/= assessment fees and 10,000/= court attendance fee for the mechanic and assessor, totalling Kshs.102,850/=.

The appellant appeals against the findings on liability and quantum. His case from the evidence is that he was driving his car registration No. KAG 813 G along Mombasa- Nairobi road when the respondent's motor vehicle registration No. KAD 403 D which the respondent was driving in his immediate front, suddenly stopped. The appellant applied his brakes but due to the fact that he was too close behind the respondent, he rammed into the respondent's motor vehicle. This accident damaged the respondents motor vehicle on the front bumper and rear bumper. He denied causing any more damage. He in particular denied damage to the respondent's motor vehicle's windscreen, radiator and the front grill. The appellant had also testified that he was not at the relevant time driving fast but drove at about 60 kph and kept adequate distance between his car and that of the respondent. He further testified that he had properly braked and exercised due care and attention

The appellant's grounds of appeal include a challenge to liability, questioning the special damages awarded which he avers were not pleaded or proved ,and lack of adequate evidence to prove the case on the balance of probability.

I have carefully perused and considered the evidence on record adduced by both sides. On liability I am persuaded that the respondent clearly proved that the appellant was negligent and that he drove without due care and attention. To start with, it was the appellant/defendant who rammed into the respondent/plaintiff's motor vehicle from behind. The record of evidence shows that the respondent had successfully stopped behind another motor vehicle in front which itself had suddenly stopped and in response of which the respondent stopped.

Had the respondent been driving in a high and uncontrollable speed, he could not have managed to safely stop without ramming into the motor vehicle in front of him. The act of safely stopping indicates that he

was not driving fast and that he drove carefully and with due care and attention.

The situation reflected by the appellant is different. He could not manage to safely and in good time, stop behind the respondent's motor vehicle when the latter stopped, whether suddenly as the appellant claimed, or otherwise. Nor can appellant's claim that he was not driving fast or that he drove carefully or with due care and attention, be supportable from the depicted scenario. It can only be logically concluded for example, that he failed to manage or bring to a stop, his motor vehicle because he was driving too fast. And also he could not avoid ramming into the respondent's motor vehicle from behind because he had not kept a sufficient and safe distance. To his credit, the appellant admitted that he could not bring his car to a stop before ramming into the respondent's vehicle because the latter stopped suddenly. That in my view, may be correct, but that is what it takes to be a careful on the one hand or careless on the other. A careless driver like the appellant, drove too close behind respondent's car as he admits, but failed to appreciate the option that the front driver, may due to the circumstances prevailing then, stop suddenly.

In conclusion, the circumstances of this case prove that the appellant was negligent and should therefore be liable as the lower court found.

As to quantum of damages, the respondent had claimed a specific amount of Kshs. 79,350/= being based on the assessors report as the costs of repair. He paid Kshs. 3500/= as assessors fees and proved the same by producing a receipt. The respondent had taken the car for repairs and when it was repaired he paid the repair charges which incorporated the cost of spare parts. He produced, three receipts totalling Kshs.79,350/=. He also had produced a receipt for Kshs. 5000/= through the assessor who was his witness and who demanded the same as his court attendance compensation which respondent needed to pay him or had paid him.

I have considered the relevant evidence. I am satisfied, as was the trial magistrate, that respondent had proved his case on the balance of probability. This appeal therefore hold no merit.

Having reached the above conclusion, I however find the judgment figure of Kshs. 102,850/=, not tallying with the figures on record. They are Kshs. 79,350/=, 3500/= + 5000/= which total Kshs. 87,850/=.

The result of this appeal accordingly is that the appeal is dismissed with costs to the respondent both here and below. The sum allowed however is Kshs 87,850/= plus costs and interest. It is so ordered.

Dated and delivered at Machakos this 4th day of October, 2006.

D.A. ONYANCHA

JUDGE