



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**CIVIL APPEAL NO. 32 OF 2002**

(From original civil suit No.278 of 1999 of the CM's court at Kisii.)

**MOSES GERALD ODONGO ..... APPELLANT**

**VERSUS**

**JULIUS BIRUNDU MOKAYA ..... RESPONDENT**

**JUDGMENT:**

The appellant's appeal is against the award of quantum of damages by Senior Resident Magistrate Kisii in Kisii CMCC No.278 of 1999. In that case he was the plaintiff and the respondent was the defendant.

The appellant was on 16th June 1998 a passenger in motor vehicle No.KAE 465Q traveling to Nairobi from Oyugis. On reaching the molo junction along Eldoret Nakuru road the vehicle collided with m/v Reg. No.KAJ 175T owned by the defendant. The plaintiff sustained injuries and was taken to hospital. He told court that the driver of the defendant's vehicle was to blame for the accident.

The case proceeded for full hearing before Mrs. Owino SRM. Judgment was delivered on 28/2/02. The court found the defendant liable to the tune of 80% and 20% contribution negligence. She then awarded general damages for pain and suffering for the sum of sh.50,000/= . There was no award for special damages. The appeal is against the appeal of sh.50,000/= general damages.

It was submitted that the learned magistrate erred in awarding sh.50,000/= damages. The award was so inordinately low that it amounted to an error of principle. Mr. Ochillo went on to submit that the injuries suffered were serious and the defendant did not call any evidence to rebut them. In her judgment the magistrate did not indicate the factors she considered to arrive at the award. He submitted that the court should have awarded sh.150,000/= . Mr. Wesonga for the respondent submitted that the injuries were not serious and the award was proper.

According to medical report (Exh.3) by DR. J.O. ODONDI and P3 form – Exh.1 the appellant sustained a cut wound on the lower lip, loosening of two teeth, injuries on the chest and the lower limbs. The doctor assessed the injuries as moderately severe and concluded that the loose teeth can be treated. I concur with counsel for the respondent that the injuries were not serious. The magistrate in par.3 on page one of the judgment analyzed the injuries suffered, which shows she took them into consideration. She said she had considered the submissions and I would believe the authorities cited. True she did not indicate which particular authority she relied on but one cannot say that she plucked the figure of sh.50,000/= from the blues. The sum awarded in the light of the injuries was not so low to warrant this court to interfere with the same. Appellant did not loose any teeth or suffer any fracture.

In the circumstances I find appeal has no merit and the same is dismissed with costs.

**Dated 13th October 2004.**

**KABURU BAUNI**

**JUDGE**

**13/10/04**

**Mr. Oguttu H/B for Mr. Ochillo for applicant.**

**Mr. Minda for Muchui for the Respondent.**