



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 410 OF 2019

NJUGUNA BENSON.....1ST APPELLANT

JOSEPH NDUNGU KIBUBI.....2ND APPELLANT

VERSUS

STEPHEN IRUNGU MAINA.....REPPONENT

(Being an appeal of the judgment of the Hon. Senior Resident Magistrate

D. O. Mbeja (Mr.) in Milimani CMCC no. 5545 of 2016

delivered on 5th July, 2019)

JUDGEMENT

1. Stephen Irungu Maina, the respondent herein, filed a compensatory suit against Njuguna Benson and Joseph Ndungu Kibubi the 1st and 2nd appellants respectively for the injuries he sustained when he was knocked by the 1st appellant's motor vehicle registration no. KAX 175S while driven by the 2nd appellant along Jogo road/Likoni on 17.10.2015.

2. Hon. D. O. Mbeja, learned Senior Resident magistrate heard the case and gave judgment in favour of the respondent by awarding him ksh.233,500/= for both general and special damages. Being dissatisfied, the appellants preferred this appeal and put forward the following grounds;

i. THE learned trial magistrate erred in law and fact in holding the appellants 100% liable for the accident despite the weighty evidence tendered before the court by the appellants, which clearly established negligence on the part of the respondent.

ii. THE learned trial magistrate erred in law and fact by awarding an inordinately high amount for general damages for pain and suffering.

iii. THE learned trial magistrate erred in law and fact in ignoring the material evidence of the defence and the appellants' written submissions both on the issues of liability and quantum.

3. When the appeal came up for hearing, learned counsels recorded a consent order to have the same disposed of by written submissions. I have re-evaluated the case that was before the trial court. I have further considered the rival submissions plus the authorities provided.

4. The appeal revolves the twin issues of liability and quantum. On liability, it is the submission of the appellants that the trial magistrate erred when he found the appellants wholly liable yet the respondent had not presented credible evidence showing that the 1st appellant's driver was to blame for the accident.

5. It is also argued by the appellants that the respondent did not present independent evidence to corroborate his evidence.

6. The respondent on the other hand is of the submission that he presented evidence which clearly established that the 2nd appellant

negligently drove the 1st appellant's motor vehicle making it to veer off the road thus knocking down the respondent who was lawfully walking along Jogoo road.

7. The record shows that the respondent testified as P.W 3 before the trial court. PW 3 told the trial court that on 11.10.2015 he was walking off the road along Jogoo road as he approached Likoni road when motor vehicle registration no. KAX 175S veered off the road and knocked him causing him to sustain the injuries specified in the plaint. He denied the allegation that he was knocked down while crossing the road. The appellant summoned the evidence of the owner (1st appellant) of the motor vehicle.

8. The driver (2nd appellant) did not testify. The 1st appellant confirmed that the accident occurred on 11.10.2015. He also stated that he did not witness the accident since he was not at the scene of the accident. It is apparent from a re-evaluation of the evidence presented before the trial court that the appellants did not controvert the evidence of the respondent. The evidence of the respondent did not require any corroboration as suggested by the appellants. I am satisfied that the trial magistrate came to the correct finding on liability therefore he cannot be faulted.

9. The second issue is on quantum. The appellant is of the submission that the award of ksh.230,000 as general damages for pain and suffering is inordinately high.

10. The respondent is of the submission that the award is reasonable hence it should not be disturbed. It is apparent from the record that the learned Senior Resident Magistrate considered the injuries sustained and past decisions in assessing the appropriate award to make in this case. I am satisfied that the trial magistrate considered the relevant factors before assessing damages. I find the award as reasonable and commensurable with the injuries the respondent sustained.

11. This appeal is without merit. The same is ordered dismissed a with costs to the respondent.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 1ST DAY OF OCTOBER, 2021

.....

J. K. SERGON

JUDGE

In the presence of:

.....for the Appellant

.....for the Respondent