



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

CIVIL APPEAL NO. 45 OF 2015

(An appeal arising from Judgement and Decree in Kitale

CMCC Case No. 138 of 2014 delivered by Hon. C. C. Kipkorir RM)

PAUL MORU LOMOLEN.....APPELLANT

VERSES

FLORENCE KAPTEN.....RESPONDENT

J U D G E M E N T

1. The appellant herein filed suit at the lower court seeking interalia general and special damages pursuant to a road traffic accident that occurred on the 15th June 2013 along Kitale – Bungoma road near museum junction involving the appellant who was a motor cycle rider and the Respondent who was driving motor vehicle registration number KAC 220K . The appellant was riding motor cycle registration number KMCY 911W.
2. As a result of the said accident the said accident the appellant sustained the following injuries:
 - a. The right leg was swollen and tender and
 - b. fracture of the right tibia and fibula
3. The respondent filed her defence denying the claim and shifted liability against the appellant.
4. When the matter came up for hearing the parties recorded consent on liability where the appellant shouldered 20% and the respondent 80%. The trial court thereafter awarded general damages to the appellant of Ksh 400000.
5. The appellant was dissatisfied with the said award hence this appeal which is basically premised on the fact that the award was too low in the circumstances considering the nature of the injuries sustained by the appellant.
6. The parties were advised to dispose the appeal by way of written submissions which I have had the occasion to peruse the same as well as the attached list of authorities.
7. It's now trite law that this court will interfere with the findings of the trial court if the award was excessive or manifestly too low or if it took into account extraneous matters in arriving at its findings.
8. Taking into account that the question of liability has been determined the issue therefore is whether the sum awarded to the appellant was too low as he claims in his ground of appeal.
9. Considering the injuries suffered by the appellant and the authorities relied by the trial court I respectfully disagree with the appellant herein. The authorities indicated that the injuries were serious in nature compared with those suffered by the appellant. In any case the same were almost of similar period to that of the appellant.
10. The authorities relied on by the appellant were way beyond what the appellant suffered and the injuries were more serious and infact multiple in the circumstances.

11. Consequently this court is satisfied that the trial court's award was neither too high nor too low in the circumstances. This court shall not interfere with the same.

12. The appeal is dismissed with no order as to cost.

Dated, signed sealed and delivered in open court this 13th day of May, 2019.

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H.K CHEMITEI

JUDGE

13/5/19

In the presence of:

Parties – Absent

Court Assistant – Kirong

Judgment signed in open court.