



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

HCA NO. 81 OF 2012

FRANCIS ODHIAMBO.....APPELLANT

AND

KENNETH GITHINJI.....RESPONDENT

JUDGMENT

This is an appeal preferred by Francis Odhiambo against the judgment arising out of Isiolo – SPMCC No. 130 of 2006 on the grounds:-

1. The learned Trial Magistrates erred in law and fact in entering judgment on liability at 100% against the defendants in the absence of any evidence to prove that the material accident was solely caused by the negligence of the appellant.
2. That the learned trial magistrate erred in law and fact holding and end for reason that she held that the accident was solely caused by the negligence of the appellant.
3. The learned trial magistrate erred in law and fact in entering judgment on liability against the defendant whereas the plaintiff did not prove that the accident was solely caused by the negligence of the appellant.
4. That the learned trial magistrate erred in law and in fact in awarding the Respondent a sum of Kshs. 174,000/= for loss of user whereas the said sum of Kshs. 174,000/= was not specifically pleaded and particularized in the further amended plaint.
5. The learned trial magistrate erred in law and fact in award of the sum of Kshs 174,000/- for loss of user whereas the plaintiff did not mitigate the loss.
6. The appellant said the judgment was against the weight of the evidence. The appellant sought that the trial court judgement be set aside and the respondents suit be dismissed with costs and in the alternative to prayer (a) above the trial courts judgement be set aside and the court do opposition liability between the appellant and the Respondent;

That the honourable court do set aside the award for loss of user and accordingly reduce special damages awarded to the Respondent. He further prayed that costs of appeal to be given to him.

The appellant filed a defence but did not come to court and testify and as such the plaintiff/Respondents case uncontroverted. I have looked at the entire proceedings in the trial magistrates court and established that the trial magistrate considered the evidence presented as well as the supporting exhibits and in fact found that some claims for special damages in regard to assessed damages and found that contrary to the claim of Kshs 277,820/= the receipts produced only amounted to Kshs 229,300/= which was awarded. The defendant didn't attend court to controvert the claim that the Respondent remained without the use of the damaged car for 4 months and the trial magistrates decision to find that a period of 4 months for loss of user was reasonable. This appeal does not have merit and same is dismissed with costs.

HON. A.ONG'INJO

JUDGE

Judgement Signed, Delivered and Dated this 10TH Day of MAY 2018.

HON. A.ONG'INJO

JUDGE

In the presence of:

C/A:

Appellant:-M/s J.G.Gitonga Advocate for Appellant

Respondent: - Ms Maina holding brief for Mbaabu M'Inoti Advocate for Respondent.

Ms Maina

I pray that we be supplied with a copy of the judgement.

Order

A copy of judgment to be supplied at Respondents cost. Notice of Judgement to issue to appellant and counsel.

HON. A.ONG'INJO

JUDGE