



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CIVIL APPEAL NO. 27 OF 2016

(Being an appeal arising from Judgment in Kitale Original Civil suit No. 5 of 2012 delivered by C.C. Kipkorir Resident Magistrate on 5/10/2016.

EKATOROT LONGORIA LOTUI.....APPELLANT

VERSUS

GEORGE POWON CHEDOTUM.....RESPONDENT

J U D G M E N T

1. The appellant was dissatisfied with the decision of the trial court which dismissed his case. The cause of action had arisen as a result of a road traffic accident that occurred on 24/3/2010 along Kitale -Kapenguria road at Kipsaina Trading Centre. In the said accident the appellant sustained injuries as enumerated in the plaint.

2. The appellant testified and called the clinical officer who produced the medical legal report. PW3, the traffic officer produced the police Abstract form.

3. The Respondent did testify but he did not call any witness.

4. Essentially, there was no dispute regarding the occurrence of the accident. The injuries sustained by the appellant were also not disputed.

5. The crux of the appellant appeal is on both liability and quantum. The appellant in his grounds state that it was wrong for the trial court to apportion liability against him 100%. The Respondent of course supports the findings of the trial court.

6. The appellant told the trial court that;

“ I was at the market. On my way back I was about to cross the road a car came and it hit me. There was a corner and it was a slope.”

According to him he was hit before he crossed the road.

7. **PW3** the traffic officer produced the police abstract on behalf of P.C. Metto. He said that according to Metto the pedestrian tried crossing the road without being careful. The investigating officer however did not blame anyone.

8. The Respondent on his part stated that it was raining as he got to Kipsaina and someone simply crossed the road suddenly and he hit him. He said that he tried breaking or swerving but it was too late. He said further that the pedestrian was drunk.

9. From the evidence on record, I find that in the absence of a sketch map of the scene by the traffic police, it becomes the appellant's word against the Respondent. None of them called any eye witnesses.

10. In my view the liability ought to be shared. There was no evidence from the Respondent that the appellant was drunk. There was evidence that it was raining and the place was a trading centre. Naturally and as expected the Respondent ought to have been on a low speed capable of controlling the vehicle especially in a densely populated spot like Kipsaina trading centre.

11. On the other hand the appellant should have been much careful when crossing a busy highway. Being an adult, it is expected that he would exercise caution. He did not call any eye witness too to explain the point of impact.

12. Taking the above conclusion I shall apportion liability at 50:50 basis. The order dismissing the suit is therefore set aside.

13. On quantum, the injuries sustained by the appellant are serious in nature. I appreciate the authorities relied on by the trial court save to add that they were relatively similar to some extent. I would however enhance the general damages to Kshs 700,000/= and the liability apportionment taken into account.

14. In the premises and having read the submissions by both parties herein together with the attendant authorities I do order that;

- a) **The lower court decision dismissing the suit is set aside.**
- b) **Judgment on liability is hereby entered against the appellant on 50:50 basis.**
- c) **General damages of Kshs 700,000/= is entered against the Respondent to be settle on the above ratio, and for avoidance of doubts kshs 350,000/=.**
- d) **Special damages of kshs 5360/=**
- e) **½ costs of this appeal and the court below to the appellant.**
- f) **Interest on general damages from the date of the lower court judgment till payment in full.**

Orders accordingly.

Delivered, signed and dated at Kitale this 1st day of November 2018.

H.K. CHEMITEI

JUDGE

1/11/18

In the presence of:

Teti for Wanyonyi for Respondent

No appearance for Appellant

Kirong – Court Assistant

Judgment read in open court.