

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 371 OF 2011

PETER IRIANI MWALE APPELLANT

VERSUS

GEDION KYALO NZIOKIRESPONDENT

An appeal from the Judgment and Decree of Hon. C. Obulutsa (Mr.) Principal Magistrate in Milimani CMMCC No. 8749 delivered on 19th day of July, 2011)

JUDGMENT

The respondent was injured in a road traffic accident that took place on 27th December, 2005 along Airport North road, Nairobi. He brought this suit against the appellant for damages resulting therefrom. The lower court after the trial gave judgment in his favour to the tune of Kshs. 500,000/= general damages which was reduced by 30 % contributory negligence on this part leaving a balance of Kshs. 350,000/=.

The lower court also awarded 200,000/= for future medical treatment and Kshs. 35,280/= special damages. The appellant was aggrieved by the said judgment and filed this appeal. As required of me I have made a review of the evidence adduced before the lower court. In my judgment apportionment of liability was correct and the trial court cannot be faulted in view of the evidence on record.

Going by the injuries sustained by the appellant however, the award of Kshs. 500,000/= general damages was excessive. Comparable decisions should have guided the court. The cited authorities reflected more serious injuries and the awards therein were justified in view of that fact. The same is reduced by Kshs. 100,000/= making the award Kshs. 400,000/= which shall be reduced by Kshs. 120,000/= being 30% contributory negligence leaving a balance of Kshs. 280,000/=.

The award of Kshs. 200,000/= for future medical expenses is contested and for good reasons. The latest report by doctor Wokabi placed the respondent's degree of permanent incapacity at 8% while the first one by doctor Moses Kinuthia placed the degree of permanent incapacity at 35%. The first report was after 3 months following the accident, while the last report was after 2 years. According to the last report by doctor Wokabi the respondent had recovered well and would not require the surgery recommended. He had what the doctor called acceptable outcome. Further the doctor did not observe loss of extension of the thumb contrary to what had been stated in the earlier report.

With respect I agree and there is no reason whatsoever why that award should be allowed. It is therefore set aside.

The award of special damages shall also be subject to contributory negligence. It shall therefore be reduced by Kshs. 10,584/= leaving a balance of Kshs. 24,696/=. In the end this appeal is allowed, and in place thereof there shall be judgment for the respondent in the sum of Kshs. 280,000/= general damages and Ksh. 24,696/= special damages.

Each party shall bear their own costs of the appeal.

Dated, signed and delivered at Nairobi this 15th Day of February, 2017

A. MBOGHOLI MSAGHA

JUDGE