



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 145 OF 2012

TERESIA NJERI NGIGE.....APPELLANT

VERSUS

1. PETER MUTERU KIMAMO

2. ROBERT NJERU NDATHU.....RESPONDENTS

(Being an appeal from the Judgment and decree of Hon. C.A. Otieno-SRM

delivered on 2nd March, 2012 in Kikuyu PMCC No. 56 of 2010)

JUDGMENT

1. This is an appeal from the judgment and decree in Kikuyu PMCC No. 56 of 2010.

2. The facts giving rise to the trial are that on 11th May, 2009 at about 5:15 am, the appellant while standing at the Kangemi bus stage along Waiyaki way was knocked down by motor vehicle registration number KAP 190Y Toyota Corolla. As a result of the said accident, the appellant sustained injuries as follows:

- a. Displaced mid shaft fracture of the right humerus.
- b. Blunt trauma to the head.
- c. Blunt trauma to the chest.
- d. Cut wound on the right orbit at the eyebrow.
- e. Cut wound on the right hand.
- f. Cut wound on the right knee.

3. The appellant and her witness PW4 testified that the appellant was knocked off the road. PW3, PC Samuel Ngugi Njenga on the other hand testified that the appellant got to the centre of the road then decided to turn back and was hit as the driver of the suit motor vehicle swerved to avoid hitting her. The appellant sought judgment against the respondents jointly and severally for:

- a. KShs. 64,172 as special damages
- b. General damages
- c. Costs of the suit
- d. Future medical expenses KShs. 90,000/-
- e. Interest on the above

4. Judgment was sought on grounds that the respondents the 1st respondent was the owner and the 2nd respondent the driver of the suit motor vehicle at the material time; that the 2nd respondent drove the motor vehicle negligently and the particulars were given; that the 1st respondent being the owner of the vehicle was vicariously liable for the negligence of the 2nd respondent.

5. The respondents filed a defence dated 19th July, 2010 denying the contents of the appellant's claim. Ownership of the motor vehicle, occurrence of the accident, liability for the accident, particulars of injuries and loss and damage suffered were particularly denied. The respondents alleged sole negligence on the part of the appellant.

6. At the hearing of the suit, the appellant gave evidence and called witnesses to give an account on the occurrence of the accident as stated above and on the injuries sustained whereas the respondents offered no evidence.

7. In a judgment delivered on 2nd March, 2012, the trial court dismissed the appellant's claim with costs to the respondents on the basis that the appellant failed to prove the respondents' negligence on a balance of probability.

8. Aggrieved by the said judgment and orders, the appellant filed this appeal and cited six (6) grounds of appeal as follows:

- 1. That the learned trial magistrate erred in law and fact in failing to properly consider the issue before him and thereby reaching a decision based on the wrong principles.**
- 2. That the learned magistrate erred both in law and fact in failing to find that the doctrine of res ipsa loquitur applied to find negligence on the part of the respondents.**
- 3. That the learned trial magistrate erred in law and fact in failing to hold that the respondents owed a duty of care to other road users.**
- 4. That the learned trial magistrate erred both in law and fact in writing a judgment which fails to meet the criteria set out in the Civil Procedure Rules.**
- 5. That the learned trial magistrate erred both in law and fact by holding that the evidence adduced did not prove negligence on the part of the respondents.**
- 6. That the trial magistrate erred in law and fact by failing to hold that the owner of a motor vehicle on a public road was liable in negligence when the said owner did not offer any evidence to explain the circumstances of an accident.**

9. The grounds cited can be summarized that the learned trial magistrate misdirected herself in treating the evidence and submissions on liability superficially.

10. The appeal was opposed by the respondents and the parties consented to disposing it by way of written submissions.

Miss Karani h/b for P.G. Wainaina for the Appellant

N/A A.F. Gross for the Respondent