



IN THE COURT OF APPEAL

AT MOMBASA

CORAM: KWACH, LAKHA & OWUOR J.J.A

CIVIL APPEAL NO. 220 OF 1996

BETWEEN

JAYENDRA KUMAR HARIA.....APPELLANT

AND

ABDULRASUL HUSSEIN.....RESPONDENT

(Being an Appeal from the Judgment of Honourable Mr. Justice Mbogholi Msagha dated at Mombasa this 30th day of January, 1996

in

H.C.C.C. NO. 112 OF 1993)

JUDGMENT OF THE COURT

This is an appeal by the plaintiff from the decree and judgment of the superior court (Mbogholi Msagha, J) given on January, 30, 1996 whereby he entered judgment in favour of the plaintiff for Ksh.100,000/= general damages and Ksh.16,920/= by way of special damages with costs and interest.

On October 27, 1992 the plaintiff was a fare paying passenger in the defendant's vehicle KWT 306 travelling between Mombasa and south Coast along Ukunda/Mombasa road.

While at Ngombeni on the main road it left the road and violently hit a tree thus causing the plaintiff to suffer injuries to his person. The plaintiff sued the defendant claiming general and special damages. In paragraph 3 of the plaint it was pleaded that the collision occurred as a result of the negligence of the defendant's driver. By his defence, the defendant denied negligence.

At the trial, the plaintiff gave evidence in support of his claim and two medical reports were put in evidence as to the plaintiff's injuries. The defendant led no evidence. The learned judge found for the plaintiff on the issue of liability and there is no appeal on this aspect of the case. He awarded to the plaintiff as earlier stated Kshs.100,000/= by way of general damages and Kshs.16,920/= special damages. From the award of general damages the plaintiff has now appealed to this court.

The main and the only ground of complaint was that the award of general damages is so low that it calls for interference by this court.

We have carefully considered and evaluated all the evidence as is our duty as the first appellate court. The learned judge, as Mr. Kiarago for the appellant concedes and, in our view, rightly that the learned judge was fair in his inference that the disability was minimal. The appellant himself said in his evidence:-

"I draw with right hand. I still can design with right hand as before"

In these circumstances we do not find that there was any misdirection by the learned judge. We do not find that the learned judge committed any error of principle. Nor are we persuaded that the award is so inordinately low as to presume any error on his part.

The principles on which an appellate court will interfere with an award of damages are now well settled. This court must be satisfied that the judge either took account an irrelevant factor or left out of account a relevant one, or that, short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.

We are satisfied that there was no misdirection on the part of the learned judge. We are not persuaded that there is any ground which warrants an interference by this Court.

Accordingly, the appeal fails and is dismissed with costs.

Dated and delivered at Mombasa this 29th day of January, 1999.

R. O. KWACH

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JUDGE OF APPEAL

A. A. LAKHA

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JUDGE OF APPEAL

E. OWUOR

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR