



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OMOLO, LAKHA, J.J.A & BOSIRE, AG.J.A.)

CIVIL APPEAL NO. 61 OF 1997

BETWEEN

GEOFREY MAINA KIARIE.....APPELLANT

AND

JUSTINOUS PETER LANDO.....RESPONDENT

(Appeal from the Judgment of the High Court of Kenya at
Nairobi (Justice Juma) delivered on the 24th day of
September, 1996

in

H.C.C.C. NO. 4490 OF 1992)

JUDGMENT OF THE COURT

This is an appeal from the judgment of the superior court (Juma, J.) whereby he held that the appellant was entitled to 30% of the award arising from the accident which occurred on 21st September, 1991 when he was injured.

We are satisfied on all the material before us that the appellant is entitled to be paid 60% of the award as, in our opinion, the respondent was more to blame for the accident. Doing the best we can we allow the appeal and find the appellant guilty of contributory negligence to the extent of 40% only. We find nothing to interfere with the damages awarded.

Accordingly, the appeal is allowed with costs and the judgment of the superior court is set aside and we substitute therefor a sum equivalent to 60% of the award with costs and interest.

Dated and delivered at Nairobi this 30th day of October, 1997.

R.S.C. OMOLO

.....

JUDGE OF APPEAL

A.A. LAKHA

.....

JUDGE OF APPEAL

S.E.O. BOSIRE

.....

AG. JUDGE OF APPEAL

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

DEPUTY REGISTRAR