



REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA

AT KISUMU

Civil Appeal 167 of 1996

RISPER ACHIENG ADEDEAPPELLANTS

AND

HAYER BISHAN SINGH & SONS..... RESPONDENT

**(Appeal from the Judgment of the High Court of Kenya at Kisumu(Justice Kuloba) dated 6th
December, 1995**

IN

H. C. C. A. NO. 53 OF 1994)

JUDGMENT OF THE COURT

This is an appeal by the plaintiff against the judgment of the superior court (Kuloba, J.) dated December 6, 1995 on appeal whereby he reversed the decision of the Principal Magistrate (Kanyangi, P.M.) and set the same aside.

The plaintiff sued the defendant for damages arising from a road accident on or about February 17, 1993. Her motor vehicle KAA 922R was being driven along Jomo Kenyatta Highway on its correct side when the defendant's motor vehicle entered the main road from the left without warning and without stopping at the junction. The principal Magistrate found for the plaintiff and entered judgment for her for Shs. 210,581/= being the cost of the repairs and Shs. 60,000/= for loss of user with costs and interest.

On appeal to the superior court by the defendant, the learned judge held that the defendant 's version of what happened at the accident was correct and that the plaintiff's suit should have been dismissed. On quantum, he held that special damages were not proven and reversed the decision of the Principal Magistrate.

It is against that judgment of the superior court that the plaintiff now appeals to this court. We have no hesitation in finding, as we do, that the facts of the case clearly established negligence on the part of the defendant's driver and there was no basis, in law, for the learned judge on first appeal to have interfered. In doing so, with respect, he erred . He also erred on the issue of the quantum. We are satisfied that there was credible evidence both as to the cost of repairs and the loss of user which had not been challenged and not cross-appealed. We find that the judgment of the Principal Magistrate was well founded in all

respects and did not warrant any interference. We may add that once again we found the judgment of the superior court, with respect, made strange reading.

Accordingly and, for the reasons above stated, the appeal is allowed. The judgment of the Superior Court is set aside and that of the Principal magistrate restored. The defendant shall also pay to the appellant the costs of this appeal and those of the Superior Court.

Dated and delivered at Kisumu this 20th day of November, 1996.

R.S.C OMOLO

.....

JUDGE OF APPEAL

A.A. LAKHA

.....

JUDGE OF APPEAL

G.S. PALL

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR