

IN THE HIGH COURT OF TANZANIA
AT DODOMA
(DC) CIVIL APPEAL NO. 6 OF 2006
(ORIGINATING FROM CIVIL CASE NO. 49 OF 2005 OF DODOMA
DISTRICT COURT OF DODOMA)

1. TITO KOMU
2. VALERIAN KAZIMOTO } APPELLANTS

Versus

HAMISI SEIFU RESPONDENT

8/9/2006 & 10/10/2006

J U D G M E N T

MASANCHE, J.:

The appellants, **Tito Komu** and **Valerian Kazimoto**, were condemned to pay, as compensation, for injuries, made to a minor called **Anuary Hamisi**. The child **Anuary** was knocked down by the first appellant, driving a car of the second appellant, on 21/3/2005, at 12.00 noon, at a place called **Nkhungu**, in **Dodoma Municipality**. The child got critically injured. In **Traffic Criminal Case No. 33/2005**, after a plea of guilty, the first defendant was sentenced accordingly. He was sentenced to a fine of **Shs. 15,000/=** on the first count of reckless driving, or two years imprisonment in default of the fine. On the second count of driving without

a valid license, he was sentenced to a fine of Shs. 10,000/= or 12 months imprisonment in default. He paid the fines.

The Civil Case No. 49/2005 that was opened by the respondent, ended up in the said order of payment of Shs, 3 – Million, as a result of the damages.

The appellants appeal, substantially, is that the award of Shs. 3,000,000/= has been on the “high side.”

I have scrutinized the traffic case record and the District Court Civil Case. The facts that emerge are that the first appellant, actually, had no licence to drive the vehicle at all. And, he drove at a terrific speed. Anuary, the minor, was a pupil in standard II at a school called Nkuhungu Primary School. After the accident, the pupil got hospitalised for two days:

My evaluation of the evidence, both in the traffic case trial, and in the Civil Case hearing, is that both the sentences meted out in the traffic case and the damages awarded in the Civil Case, were patently inadequate. The evidence on record shows that, as a result of the accident, the pupil is suffering constant headache and his performance at school has gone down, as a result of that accident. This, I think, is a fit case where an appellate court, the way I am sitting, should interfere. I have, however, decided not to interfere with the sentences meted out in the traffic case. But, I am certainly interfering with the award of damages. That, I can do. (see Davies v. Powell Duffryn Associated Collieries Ltd [1942] 1 All ER 657 pp 664, 665).

A passage in that case reads:

“In effect, the Court, before it interferes with an award of damages, should be satisfied that the judge has acted on a wrong principle of law or has misapprehended the facts, or has for these or other reasons made a wholly erroneous estimate of the damage suffered. It is not enough that there is a balance of opinion or preference. The scale must go down heavily against the figure attacked if the appellate court is to interfere, whether on the grounds of excess or insufficiency.”

That passage is also quoted with approval by Lord Guest in Kassam v. Kampala Aerated Water Co Ltd [1965] 2 All E.R. 875, 878.

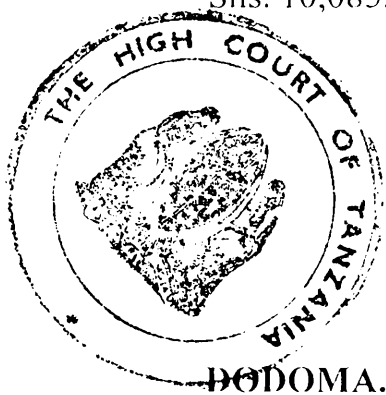
The Court sitting on appeal ordinarily, true, does not interfere with decisions of trial courts on damages. But, there are exceptions. The case of Flint v. Lovell [1935] 1 K.B. 354 has said this: that:

“The Court of Appeal will not reverse the decision of the trial judge on the question of the amount of damages unless it is satisfied either that the judge acted on some wrong principle of law or that the amount awarded was so extremely large or so very small as to make it an entirely erroneous estimate of the damage.”

That passage is quoted with approval in the case of Bull v. Vazquez and another [1947] 1 All E.R. 334 336 – Asquith CJ.

The minor had asked for Shs. 10,085,400/= as damages for the injuries sustained. That was, or, is, reasonable.

The appeals by Tito Komu and Valerian Kazimoto are dismissed with costs. The award of shs. 3,000,000/=, by the District Court, as damages arising from the accident, is set aside. Instead, the respondents are awarded Shs. 10,085,400/= as general damages. It is so ordered.



(J.E.C. MASANGHE)

JUDGE

10th October 2006.

Mr. Nyabiri for appellants

- appellants – Present
- Respondent – Present in person