



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL SUIT NO. 57 OF 2015
JAMES NJENGA.....PLAINTIFF
VERSUS
COAST BUS (MOMBASA) LIMITED.....DEFENDANT

JUDGMENT OF THE COURT

1. The plaintiff commenced the suit herein vide a plaint dated **8th December, 2015** and filed herein on **9th December, 2015**. The plaintiff's case is that he was a lawful passenger in the defendant's motor vehicle registration number KAX 114S which was involved in an accident along Mombasa road near Machinery area due to the negligence of the defendant or its lawful agent in this case the driver of the aforesaid motor vehicle. The plaintiff particularized the elements of negligence and of damages he suffered as a result of the said accident, and claims the following;

- a. General damages for pain and suffering.
- b. Special damages of Kshs. 933,500/=.
- c. Costs of the suit.
- d. Interests on (a) and (b) at court rates from date of filing until payment in full.
- e. Relief.

2. The defendant was served with notice of suit but did not enter appearance nor file a defence to the suit subsequent to which interlocutory judgment was entered for the plaintiff on 20th April, 2016, and the suit listed for formal proof on **29th September, 2016**.

3. On the hearing date, the plaintiff was his sole witness. He adopted his witness statement filed herein on **9th December, 2015**. The witness recalled that on 4th October, 2014 he was co-driver to bus registration number KAX 114S belonging to the company. They were coming from Mombasa heading to Nairobi. On reaching Machinery area, while the plaintiff was seated at the co-driver's seat, they encountered two trucks from the opposite direction. One was overtaking the other. To avoid head-on collision their driver swerved off the road and the bus rolled several times before landing into a ditch. Immediately the plaintiff lost consciousness only to come to his senses at Makindu Sub-County Hospital where he was admitted until the following day. Thereafter the plaintiff was admitted at AIC Kijabe on several occasions and four surgical operations were performed in his small intestines. The plaintiff incurred treatment expenses to a tune of Kshs. 906,000= as per receipts. The plaintiff blames the driver of the vehicle registration number KAX 114S for not taking evasive measures to avoid the accident and driving at excessive speed.

4. The witness produced motor vehicle search as Plaintiff's exhibit No. 1 to show that the defendant was the registered owner of motor vehicle registration number KAX 114N. The plaintiff also produced treatment notes as exhibits Nos. 2 and 3, Invoice from the AIC Kijabe as exhibits No. 4, receipts from Miga Trading Limited as exhibit No. 5. Other exhibits produced were as follows;

- *Exhibit No. 6 - Receipts from AIC Kijabe*
- *Exhibit No. 7 - Taxi costs*
- *Exhibit No. 8 - Further treatment notes*
- *Exhibits No. 9 - Police Abstract*
- *Exhibits No. 10 - P3 Form*
- *Exhibits No. 11 - Medical Report by Dr. Okoth Okora who examined the plaintiff*
- *Exhibit No. 12 - Medication receipts from Kenyatta National Hospital*
- *Exhibit No. 13 - Demand Notice which the plaintiff sent to defendant*
- *Exhibit No. 14 - Statutory Notice to Direct line Insurance Co. Ltd*
- *Exhibit No. 15 - DOSH Form 1.*

5. The plaintiff's case was not controverted. Although the plaintiff's suit is based on negligence his testimony was based on injuries suffered at place of work. There should be no inconsistency in this regard since as an employee of the defendant, the plaintiff was also a lawful passenger in the said motor vehicle.

6. The plaintiff led evidence to prove not only that he was a passenger in the said motor vehicle, but also that the motor vehicle was negligently driven, had an accident causing the plaintiff to sustain the injuries stated and he also had to pay for the treatment as shown by the above exhibits. In my view the plaintiff has proved his case on a balance of probability. In cases of accidental injury, a claimant must show that the defendant was negligent. The plaintiff has proved on a balance of probability that the defendant was negligent and is liable for the pain and suffering caused to the plaintiff as well as the Special Damages suffered. The plaintiff is also entitled to General Damages for pain and suffering. The plaintiff proved Special Damages of Shs. 933,500=. As for General Damages, the plaintiff suffered

- Blunt abdominal trauma with small intestine perforation.

7. He was treated with exploratory laparotomy. Later he underwent three (3) more surgical operations. The medical report noted that the plaintiff has healed well and he suffers no complaints now. However there is a laparotomy scan along the linear alba and another lateral and on the right lower abdominal wall. The doctor's opinion and prognosis was that the plaintiff had suffered grievous harm.

For those injuries the plaintiff's counsel has submitted that Shs. 1,700,000= would be adequate for General Damages. They cited the cases of ***Hellen Atieno Oduor vs. S.S Mehta & Sons Ltd & another HCCC No. 188 of 2009***. In that case the plaintiff suffered far too many and far reaching injuries but was awarded Shs. 1,500,000= General Damages. This was an irrelevant case to rely on. The plaintiff's counsel did not assist the court in this respect. Although the plaintiff suffered huge medical expenses amounting to Shs. 906,000=, his injuries healed with no evidence of future negative implications. In my own assessment, General Damages herein should not exceed Kshs. 1,000,000=. In my discretion I award Shs. 900,000= for General Damages.

In the upshot, I enter judgment for the plaintiff against the defendant as follows:

- a. Special damages 933,500
- b. General damages 900,000
- c. Costs of the suit
- d. Interests (a) above at court rates from date of filing till full payment

e. Interest on (b) and (c) above at court rates from date of judgment till full payment.

THAT is the judgment of the court

DATED AND DELIVERED AT MACHAKOS THIS 22ND DAY OF NOVEMBER, 2016.

E. OGOLA

JUDGE

In the presence of:

Mr. Kyalo holding brief for Wangare Muchemi for plaintiff

Court Assistant – Mr. Munyao