



ORIGINAL

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**CIVIL CASE NO. 14 OF 2006**

**AHMED ABUBAKAR HASSAN.....PLAINTIFF**

**VERSUS**

**ATTORNEY GENERAL.....DEFENDANT**

**J U D G M E N T**

1). The plaintiff filed this suit seeking the following prayers against the defendant:

1. **General damages for pain and suffering and loss of amenities.**
2. **Special damages of Kshs. 1,373, 720/=.**
3. **Special damages for loss of use at Kshs. 10,000/= per day for 60 days.**
4. **Costs of this suit.**
5. **Interest on (i), (ii) and (iii) above.**

2). The plaintiff testified that on 11-8-2005 they were travelling from Mombasa along Ahero - Kisumu aboard motor vehicle Reg. No. T174 AFN Scania lorry which was driven by one Suleiman. He told the court that when they reached Ahero he saw a vehicle which had put on a spotlight. The time was around 7-8 p.m.

According to the plaintiff there was a dark object and when his driver attempted to move he heard a loud bang and the vehicle hit an electronic pole. Later he saw a caterpillar and their vehicle had rolled off the road. He concluded by squarely blaming the driver of motor vehicle Reg. No. GK G558 which apparently was carrying a caterpillar and which had not put any sign to warn other motorists.

3). The defendant did not adduce any evidence despite being granted an opportunity to do so. The plaintiff consequently as a result of the said accident sustained bodily injuries as follows:-

- a. **Mild tenderness on the left scapular area.**
- b. **Bruises on the left palm and the ring finger.**
- c. **Tenderness on the left joint with slight restriction and joint movement.**

4.) In proving his case the plaintiff produced several documents including vehicle accident assessment report dated 3-9-2005, police abstract and a P3 form as well as receipts from Medina Nursing home Co. Ltd.

The issues to be determined here are clear and straight forward namely:

- i. **Who was to blame for the accident?**
- ii. **Did the plaintiff prove negligence and liability as well as damages?**
- iii. **Who is entitled to costs?**

As earlier indicated the defence offered no evidence. What is therefore available is the evidence of the plaintiff. He did not call any witnesses.

5). My finding is that indeed an accident occurred based on the oral evidence by the plaintiff as well as the documentary evidence produced. The police abstract was produced as exhibit 3 clearly supports this position. As a matter of fact the defendant driver one Francis Kiprono Kiptoo was to be preferred charges.

The circumstances that led to the accident is solely based on what the plaintiff told the court. There is no sketch map or any other drawings from the traffic police department to support or corroborate this.

6). From my analysis the accident occurred at night and clearly both vehicles had their lights on. The plaintiff told the court that he saw a black object and told his driver to move aside. Whereas this could be true the said driver was not called to testify. Did he for example heed the advice from the plaintiff? Did he see the object and therefore attempted to avert the accident?

7.) It would have been prudent to get some information from the driver too. Matters were not made better by the defence who failed to call their witness. Taking the matter in totality and the fact that both vehicles had their lights on I do find that at least there was some degree of blameworthiness on the part of the plaintiff. Although the plaintiff said that his driver had reduced speed he did not explain any other step he took to avert the accident or at all. For the above reason, I do apportion liability at 90% against the defendant and 10% against the plaintiff.

8). Turning to the question of damages there is ample evidence that the motor vehicle was extensively damaged. The report by the Automobile Association of Kenya (AA) as well as the attendant photograph clearly shows the damage. The said report was produce by consent. Contrary to the submissions by the defendant I do find that the said report is believable.

9). There is no evidence though that the said vehicle was repaired although the pre accident value is given as Kshs. 1,200,000/=. The value of the salvage would be Kshs. 420,000/=.

Having found that, the said report is authentic I would award the plaintiff the sum of Kshs. 780,000/= being the cost of the pre accident value calculated as follows:

1. **Pre accident value Kshs. 1,200,000/=.**
2. **Less cost of salvage Kshs. 420,000/=.**

**Total Kshs. 780,000/=**

10). The plaintiff equally prayed for the cost of repairing the container. Unfortunately the same is not supported by any documentary proof. The AA report does not indicate neither did he produced any report to that effect. I would therefore disallow that prayers.

11). I shall allow the cost of abstract at Kshs. 100/= cost of the AA report at Kshs. 5,720/= and the towing charges at Kshs. 14,000/=.

Turning now to the damages as a result of the injuries, I do agree with the learned state counsel that there was no proof of the same. Apart from receipts from Medina Nursing Home as well as the P3 form, no medical-legal report was produced to support this assertion. I therefore decline to award any damages in the absence of any medical report.

