



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL SUIT NO. 555 OF 2007**

**BONFACE MUGENDI NJIRU .....PLAINTIFF**

**VERSUS**

**MR. OCHIENG T/A TOHEL AGENCIES .....1<sup>ST</sup> DEFENDANT**  
**AMON NJEMO GUNI .....2<sup>ND</sup> DEFENDANT**

**JUDGEMENT**

The Plaintiff filed the Complaint claiming damages for injuries and loss sustained as a result of a road accident along Nairobi-Mombasa Road on 6<sup>th</sup> August, 2005. As per the evidence the unregistered motor vehicle owned by the 1<sup>st</sup> Defendant tried to overtake a motor vehicle on the opposite side of the motor vehicle driven by the Plaintiff. Despite the presence of his motor vehicle, the oncoming motor vehicle attempted to overtake with speed and hit the motor vehicle driven by the Plaintiff head on.

He lost consciousness and found himself in the Voi Hospital, and was later transferred to Kenyatta National Hospital and stayed there upto 30<sup>th</sup> September, 2005.

As per the medical report as well as P3 form produced (P Exhibit 5 and P Exhibit 2) the Plaintiff suffered following injuries:-

1. Blunt head injury with loss of consciousness for over 24 hours.
2. Loss of four upper incisor teeth.
3. Fracture of the shaft of right femur.

4. Compound fracture of the right tibia with loss of soft tissues including tendons.

The accident was described as a life threatening one.

According to Dr. Gikonye, the permanent incapacity was assessed at 15 per cent. The metal implant needed to be removed would cost Kshs.100,000/=. Due to head injury, the Plaintiff does stand a small risk of developing post-injury epilepsy.

As per P3 form also the injuries were assessed as “grave injuries”.

The Plaintiff did produce the receipts for medical charges in the sum of Kshs.331,768.90/= as pleaded.

He also claims damages for reduced earning capacity as he could no longer work as a driver. He averred and deponed that he was earning salary of Ksh.25,000/= per month at the time of the accident.

The 1<sup>st</sup> Defendant who was the owner of the motor vehicle which was unregistered, but was having chassis bearing no. KZN 130 – 9072037 was duly served but failed to enter appearance and hence an interlocutory judgment was entered against him.

From the uncontroverted evidence of the Plaintiff, it has been established on balance of probability that the 2<sup>nd</sup> Defendant who was the authorized driver/agent of the 1<sup>st</sup> Defendant was negligently driving the vehicle in question which caused the accident with head-on collision with the motor vehicle the Plaintiff was driving. In the premises, I shall find that the 1<sup>st</sup> Defendant is vicariously liable for the injuries and loss sustained by the Plaintiff and I do hereby find so.

The Plaintiff has proved the special damages of Kshs.331,768.90 as per the required standard of proof in respect of special damages by producing receipts and invoice from Kenyatta National Hospital.

I have considered the authorities cited by the learned counsel for the Plaintiff. The injuries in both the cases so cited were more serious than the one suffered by the Plaintiff in this case. I would however, consider the age of those cases and the circumstances of the present one.

Doing the best I can, I do award a sum of Kshs.1,000,000/= including the reduced capacity and permanent loss of four teeth.

The upshot of all the above is that there shall be judgment in favour of the Plaintiff against the 1<sup>st</sup> Defendant in the sum of Kshs.1,331,768/= made up as under:-

General damages	Kshs.1,000,000/=
Special damages	<u>kshs.331,768/=</u>

**TOTAL** **Kshs.1,331,768/=**

The 1<sup>st</sup> Defendant shall also pay costs and interest as per law.  
Orders accordingly.

**Dated, signed and delivered** at Nairobi this 22<sup>nd</sup> day of **March, 2011**

**K. H. RAWAL**

**JUDGE**

**22.03.2011**