



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 1150 of 2001

**ANTHONY MWONDU MAINA.....
.....PLAINTIFF**

VERSUS

**SAMUEL GITAU NJENGA.....
.....DEFENDANT**

JUDGMENT

The claim arises out of traffic road accident which occurred on or about 11th July 1994 along Thika Road involving motor vehicle registration No. KXA 360 in which the plaintiff was traveling as a fare paying passenger.

As a result of the said accident the plaintiff sustained the following injuries:-

Head injuries and concussion with loss of consciousness for one week, laceration on the forehead and occipital region, compound fracture of the radius and ulna of the left arm, fracture of the olecranon process of the left elbow, impacted fracture of surgical neck on left humerus bone and fracture of the cromion process of the left clavicle and on the blade of the scapula bone. The plaintiff brought this suit against the defendant for both special and general damages.

The plaintiff in his evidence told the court that he is a resident of Makueni District and works with CCF Christian Children Fund. On 11th July 1994 he was traveling in motor vehicle registration No. KXA 360 Nissan Matatu as a fare paying passenger from city centre to Simaman. On the way the said matatu was involved in a road accident. The accident occurred due to negligence of the driver who drove at a high speed and failed to control the said motor vehicle. The driver was reckless. As a result of the said accident he sustained injuries as stated above. He became unconscious and was rushed to Aga Khan Hospital where he was admitted in ICU for 4 days. He was finally discharged from the hospital on 29th July 1994 after 18 days confinement. Several X-rays were taken while he was in hospital. He underwent an operation internal fixation and tension wiring for the ulna/radius fractures and the olecranon fracture respectively. A U-slap was used on the left shoulder and arm. Surgical toilet, and stitching of the open wounds was done. He was put on oral medications antibiotics, analgesics and haematinics. He also got blood transfusion – 3 units. Upon his discharge from hospital, he obtained a P3 form from the police which he produced as Pexh.1. He also obtained police abstract Exh..2. He also carried a search at the Registrar of Motor Vehicle and the record showed that the registered owner of the said motor vehicle KXA 360 was Samuel Gitau Njenga the defendant herein.

The treatment bill amounted to Shs.317,670/= which were paid by his employer. He produced receipts of payment to support the payments. He further told the court that although his employer had paid the bills he was made to refund. Payment receipts Ex.3. He produced a letter in which he was made to sign promising to refund the said amount Exh.7. He also produced a pay slip which showed that the amount was being deducted from his salary.

The injuries sustained by the plaintiff were confirmed by PW2 DR. MAINA RUGA who examined the plaintiff on 9th December 1994 and prepared a medical report which he produced as Pexh.7 and he charged a fee of Shs.1250/= payment receipt produced as Exh.8. The defence did not call any evidence.

After considering the evidence adduced by the plaintiff and that of Dr. Ringa, I am satisfied that the claim on liability has been proved.

The next issue is the assessment of damages. Special damages were proved at Shs.317,670.75. On general damages Mr. Kimanathi suggested a figure of Shs.2m and relied on the case of **SYLYVANO NYAGA & ANOTHER VS. JOSEPH NGOTHO & OTHERS – HCC NO.95 OF 2002 (NYERI)** whereby the plaintiff was awarded Shs.2m. Whereas Mr. Kariuki for the defendant relied on five authorities:

1. **DONALD MWANGI MAINA VS. STAGE COUCH CO. LTD – HCC NO.112 OF 1998.** in which the plaintiff was awarded Shs.100,000/= general damages.
2. **JANE NYOKABI VS. NJUGUNA MURO – HCC NO. 187 OF 1985** in which the plaintiff was awarded Shs.50,000/= damages for pain suffering and loss of amenities.
3. **BENARD OUNDO ODERO VS. JOHAH A. BETT** in which the plaintiff was awarded Shs.160,000/= general damages for pain suffering and loss of amenities.
4. **DOGLAS MAINA VS. ELIUD GACHOHI – HCC NO.1316 OF 1991** where plaintiff was awarded Shs.160,000/= general damages for pain suffering and loss of amenities.
5. **MARY WANGUI VS. EPHANTUS MUCHIRA – HCC NO.2012 OF 1990** where the plaintiff was awarded Sh.160,000/= general damages for pain suffering and loss of amenities.

Having considered the injuries sustained by the plaintiff and compared with the injuries sustained by the plaintiffs in the quoted authorities and the damages awarded, I am of the considered opinion that an award of Sh.1,200,000/= general damages for pain suffering and loss of amenities would be adequate compensation for the plaintiff.

The figures may be brought forward as follows:

1. Special damages	Shs.317,670/=
2. General damages	<u>Shs.1,200,000/=</u>
Total	<u>Shs.1,517,670/=</u>

Accordingly, there shall be judgment for the plaintiff against the defendant for Shs.1,517,670/= plus costs and interest.

Dated and delivered at Nairobi this 13th day of September 2006.

J.L.A. OSIEMO

JUDGE