



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**Civil Case 110 of 2004**

**VICTOR RAMOGI RABURU .....PLAINTIFF**

**VERSUS**

**ELDORET EXPRESS CO. LTD ..... 1<sup>ST</sup> DEFENDANT**

**BENSON GITHINJI ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

Victor Ramogi Raburu, the plaintiff in this suit, instituted this action against Eldoret Express Company Limited, 1<sup>st</sup> defendant, the registered owner of motor vehicle registration number KAP 916Z and Benson Githinji, 2<sup>nd</sup> defendant, the driver of the subject motor vehicle. The plaintiff has sought for compensation for general damages for pain, suffering and loss of amenities, special damages and costs of the suit.

During the hearing of this matter, the plaintiff gave evidence and detailed how he was travelling abroad, Motor vehicle registration number KAP 916Z on 27<sup>th</sup> August 2004 as a fare paying passenger. The vehicle was travelling from Nairobi to Maseno, but when it reached Cheseon area along Kericho – Nakuru road, the vehicle rolled and as a result of the accident the plaintiff sustained the following injuries;

- Ø *Brain concussion with subsequent loss of consciousness*
- Ø *Fracture of the mandible*
- Ø *Contusion to the neck with injury to the left brachial plexus*
- Ø *Amputation of the right ear*
- Ø *Multiple cut wounds and lacerations to the scalp and face*
- Ø *Contusion injury to the eyes*
- Ø *Contusion to the month with loss of tooth*

The plaintiff blamed the driver of the accident for overspeeding and for permitting the vehicle to veer off

the road and to our turn as a result of his negligence.

The plaintiff produced the following documents in evidence and to support his claim:

- q P3 Form
- q Police abstract
- q Treatment notes
- q Medical report
- q Receipts in proof of special damages
- q Letter of demand
- q Search in respect of motor vehicle registration number KAP 916Z

Further evidence in support of the plaintiff's case was adduced by police constable Dan Omachode, PW2, who visited the scene of the accident and assisted the plaintiff who was injured to go to Kericho District Hospital. He confirmed that the plaintiff had sustained head injuries and the fracture of the arm. He produced the police abstract form which he completed.

The defence did not offer any evidence but their Counsel Mr. Oira filed written submissions. He urged the court to consider that the plaintiff suffered soft tissue injuries which have healed at the time of hearing this suit. He put forward the case of Rose Muthoni Mbutu –vs- Musa Muchiri Karima Nairobi HCCC No. 4287 of 1990 where the plaintiff was awarded a sum of Kshs.200,000 for similar injuries.

On the issue of liability, I am satisfied that by the evidence of the plaintiff and PW 2 which was not at all controverted, the accident occurred and the cause of the accident was through the negligence of the driver of the motor vehicle. The plaintiff sustained the injuries as per the medical report and thus the plaintiff has discharged the burden of prove to the required standard. The circumstance of the case give rise to the inference of negligence on the part of the defendant as it was held.

in the case of Embu Public Road Services Ltd -vs- Riimi [1968] E.A.L.R 22 the Court of Appeal when the court of appeal had the following to say:

*“Where circumstances of the accident give rise to the inference of negligence, then the defendant in order to escape liability has to show that there was a probable cause of the accident which does not connote negligence.”*

On page 24 of the same decision, *Sir Charles Newbold* stated that: -

*“The doctrine of res ipsa loquitor is one which a plaintiff, by proving that an accident occurred, in the circumstances in which an accident should not have occurred thereby discharges in the absence of any explanation by the defendant, the original burden by showing negligence on the part of the person who caused the accident. The plaintiff, in those circumstances, does not have to show any specific negligence, he merely shows that an accident of that nature should not have occurred in those circumstances, which leads to the inference, the only inference, that the only reason for the accident must therefore be negligence of the defendant.”*

As I stated earlier in this judgment the defence did not offer any evidence to displace the evidence given by the plaintiff and PW 2. On the issue of liability, I therefore find the defendant liable 100% for the accident and the injuries sustained by the plaintiff.

On quantum, the plaintiff gave evidence on the injuries that he suffered, which are confirmed by the

medical report by Dr. A.K. Ochieng dated 18<sup>th</sup> July 2005 and the discharge summary notes from the Kenyatta National Hospital.

Counsel for the plaintiff asked the court to award the plaintiff Kshs.1 million as general damages while relying on the case of John Mwangi Njoroge -Vs- Harrison Waweru Karanja & Another Nakuru No.501 of 1997 where the High Court awarded the plaintiff Kshs.700,000/- in general damages in January 2004. Considering the injuries sustained by the plaintiff which are slightly different from the above case, I hereby award the plaintiff Kshs.600,000/- as general damages.

As regards special damages, the plaintiff produced receipts for medical reports, medicines amounting to Kshs.6,770 which I hereby award. Accordingly, judgment is hereby entered for the plaintiff against the defendants jointly and severally in the following sums; -

*General damages*                      *Kshs.600,000/-*

*Special damages*                      *Kshs. 6,770/-*

*TOTAL*                                      *Kshs.607,770/-*

The plaintiff shall also have the cost of the suit.

It is so ordered.

Judgment read and signed at Kericho on 5<sup>th</sup> October 2006.

**MARTHA KOOME**

**JUDGE**