



REPUBLIC OF KENYA

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

**Civil Case 895 of 2004**

**RONGAI WORKSHOP AND TRANSPORTERS LIMITED.....PLAINTIFF**

**VERSUS**

**KENBLEST BAKERY LIMITED.....DEFENDANT**

**JUDGMENT**

**1: PROCEDURE**

This is a fairly old matter the cause of action having arisen on the 18.6.93. The reasons for the delay of this appears to be not being able to get hearing dates.

It finally came for hearing on the 15.10.03 before Ouna J I was out of the country during the time when Ouna J dealt with the running down portfolio. He heard the evidence of two witnesses, then adjourned to 16.10.03. Ouna J was not available to proceed on with this trial. The duty judge (Rawal J) placed the file before me. On 16.5.05 the court directed the hearing to proceed for trial under order 17 r 10 CPR; namely, where the proceedings has been undertaken by one judge, that said judge must complete the proceeding. If he is unable to do so for good cause, then the case proceeds from where it was left.

I further heard the evidence of the remaining witnesses and concluded the suit.

**II BRIEF BACK GROUND**

The plaintiff company operate a transport business. They have in the past ran this business of taking tea and other goods from up country to the coast.

On the material morning of the 18.6.93, a driver and turn boy were travelling in lorry trailer reg. No. KLY 460 ZA9155 belonging to the plaintiff. They were on their way to Rongai-Nairobi from Mombasa. As they reached Athi River area near the weigh bridge, the driver stopped the vehicle at 4.30 a.m. The circumstances was that, he had approached to enter the usual turn off from the weigh bridge. A vehicle was parked on the said side of the exit road heading to Nairobi. The plaintiff driver parked in the entrance going towards the weigh bridge. This was indeed as a result of obstruction that, an on coming vehicle coming at a high speed to enter into the weigh bridge, collided into the plaintiffs vehicle when it was parked stationary and knocked an electrical pole and over turned. The vehicle No. Reg. KZP 288 was a smaller vehicle van. The diver sustained injuries.

The driver and turn boy of the plaintiffs vehicle were not injured.

The plaintiffs sued the defendant for material loss by way of repairs costs of recovery operations. The costs of investigating the accident and loss of user. I will first look at the issue of liability.

I: LIABILITY

The time was 4.30 a.m. It was dark. It is without a doubt that the said plaintiff's driver had parked on the wrong side of the road at a feeder road. This most certainly was an obstruction. The said driver was to be charged but according to the investigator PW1, he then had talked to the police not to actually press charges.

The defendants vehicle was over speeding. It did not expect to find a vehicle parked in the feeder road. The impact of over speeding resulted in the collision over turning of the defendants vehicle. It is clear that the accident would not have occurred if both parties took due care in observing the traffic rules on obstruction and over speeding respectively.

I hereby compute and find liability at 50% against the plaintiff and 50% against the defendant who are liable for the acts of their agent and or servants.

III: QUANTUM

The investigator appeared to court and gave evidence. He produced a report showing the pictures of the said vehicle. The claim before the court is one of repairs. An assessor, one Collin Patrick Macnaughton (aged over 80 years now retired) stated 10 years ago he inspected the vehicle. He came up with his report which he produced to court. He confirmed the damages sustained to the vehicle.

PW4, the operations Manager said they ran their own workshop and she was able to show the court how the repairs done under their supervision was. It is further noted that the vehicle earned a certain amount of earnings. The loss of user was also discussed by the manager.

It was clarified that the method of work covered the engine/head of the vehicle. The vehicle would detach and as such would have the travelling at different times to the body of the vehicle. This explanation allowed this court to know the required loss of user.

I find that the plaintiff had produced the required calculation to the said vehicle expenses which is summarized as follows:-

i)	Costs of repairs	Ksh.97,842/-
ii)	Costs of recovery operations	Ksh.24,000/-
iii)	Costs of investigating accident	Ksh.8,507/56
iv)	Loss of user	
-	18.6.93 to 7.8.93	
@ 67,000/- per week	<u>Ksh.469,000/-</u>	
Total		Ksh.599,349/50
Less 50%		Ksh.299,674.75

Net total Ksh.299,6764.75

I hereby enter judgment for the plaintiff on the above sum. I award interest on Special Damages from the date of filing suit (7.3.94) (that is Ksh.299,674/75).

Dated this 31<sup>st</sup> day of May 2005 at Nairobi.M.A. ANG'AWA

JUDGE

O.P. Nagpal & Co. Advocates for the plaintiff

Shah & Parekh Advocates for the defendant