



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA**

CIVIL SUIT NO. 204 OF 2003.

JUSTUS NGETA MUSYOKA PLAINTIFF

VERSUS

ELDORET EXPRESS CO. LTD DEFENDANT

J U D G E M E N T

The Plaintiff filed suit as an employee of Defendant as Bus Conductor in a motor vehicle KAM 621T Isuzu Bus owned by the Defendant Company. He also sues as a passenger in the said bus.

On or about 7.1.2003 the Plaintiff was traveling in the said bus lawfully carrying on the duties of a bus conductor. The Plaintiff claims special and general damages out of injuries received by the negligent driving of the servant employee and or agent of the bus thereby causing accident. The Plaintiff also claims costs.

The Defendant filed an appearance and defence changed advocates once. In his defence the Defendant denied ownership of the motor vehicle and that it employed the Plaintiff. Defendant denies that Plaintiff was passenger and conductor in the bus. The Defendant denies the accident occurred and that his driver was negligent and the particulars of injury.

The Defendant blames a third party. He also pleads inevitable accident and the Doctrine of *Res Ipsa Loquitor* is not applicable. The Plaintiff's counsel drew up and filed issues and prepared a list of documents.

On the hearing date the Defendant did not appear or his advocates or representative. Counsel for Plaintiff had filed an affidavit of service and requested to be heard under Order 9B rule 3(a). The hearing therefore proceeded without the Defendant or his representative.

The Plaintiff Justus Musyoka gave evidence and produced exhibits. His evidence is that the vehicle belonging to the Defendant aforementioned hit another vehicle on the road which had a trailer from behind and was overtaking at a corner and was driving fast. The evidence before court confirms that although Defendant blamed another part he did not take out third party proceedings although Defendant denies ownership of the vehicle.

Kenya Revenue Authority copy of records exhibit shows that the vehicle was shown as owned by Defendant as on 7.1.2003 and a police abstract shows that the accident did happen on 7.1.03 on Naivasha – Nairobi Road and that the Plaintiff did receive grievous harm. In the circumstances I believe the evidence of the Plaintiff and I find the Defendant liable on 100% basis.

On the issue of quantum the injuries are:

1) Severe crush injury of left lower leg

2) Deep wound on the left groin

He was in hospital for one week and thereafter out-patient. One left leg was amputated below the knee lever and he was fitted with artificial leg in March 2003. He did not return to work.

He has healed scar and because of loss of left leg below the knee he walks with use of a clutch. At the time of accident the Plaintiff was aged 27 years and was earning 16,000/= per month. The Doctor says that with his emputed leg he cannot perform duties of bus conductor now. His advocate submits for Sh. 1,600,000/= for General Damages. On evidence on record and considering all the loss suffered by the Plaintiff I am of the view that sum Sh. 1,600,000/= is adequate to compensate for all pain and suffering and loss of amenities. I award the same.

Regarding Special Damages only Sh. 2,100/= was pleaded and proved. I also award the same.

Judgement is therefore entered against Defendant for Plaintiff in the sum of Sh. 1,602,100/=. The Plaintiff shall have costs and interest at court rates.

The damages will carry interest from date of judgement. The special damages from the date of filing suit.

Dated the 4th June 2005/

J KHAMINWA

JUDGE