



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

Civil Case 1304 of 2004

ARKIPO ODHIAMBO OTIENO PLAINTIFF

VERSUS

KENYA BUS SERVICES LTD. DEFENDANT

JUDGMENT

1: PROCEDURE

1. I notice an interesting trend amongst advocates when they file their pleadings. They do not disclose where a cause of action occurred. In this suit before me, the plaintiff herein Arkipo Odhiambo Otiemo was a passenger in the defendants motor vehicle bus (Kenya Bus services) on the 1.10.99. The plaintiff, whilst alighting the bus fell and fractured his right femur (thigh). He sued the defendant in Kisumu High Court when in fact the accident occurred in Westlands Nairobi. This fact was not disclosed in the plaint. Although the High Court has original jurisdiction, the trend in the subordinate courts continues. Section 15 of the Civil Procedure Act, for cases in the subordinate courts, require that a suit be filed within the jurisdiction of the court where practical. In order to facilitate this, the place where the accident occurred should be mentioned (the plaintiff has since changed advocates).

II: LIABILITY

2. When the parties came for hearing of this matter liability was conceded at 75% against the defendant and 25% against the plaintiff. I accordingly confirm this consent judgment.

III: QUANTUM

3. General Damages

a) Pain and suffering

The plaintiff as a result of falling out of the bus fractured his right femur and was taken to Kenyatta National Hospital and admitted for one month. He claims in his evidence that he was readmitted whilst in Kisumu to have the plate removed. This he did and appears to have been fully recovered. X-ray reports from M.P. Shah confirms there to be a complete union of the fractured mid-shaft femur. A medical report was prepared by:-

Dr. Martin Otiemo Oloo Physician specialists in STI and retroviral infections Date of report 9.5.05

The doctor should have been an orthopaedic specialist. In his "bullet point like" report consisting of one and a half brief pages states in his opinion (in one line put in by consent) as:-

“Arkipo Odhiambo Otieno suffered very serious injuries to his right thigh that has made it impossible to work and earn a proper livelihood”

There was no indication as to the extent of injuries and effects it has on the plaintiff. The plaintiff advocate prays I give award but had relied on no case law nor did he give any suggestions to this court on how much it should award. The advocate for the defendant recommends Ksh.180,000/-. Even then, the evidence before me on the medical evidence is wanting. I would award Ksh.150,000/- subject to apportionment on contributory negligence.

4. Special Damages

The parties agreed to a sum of Ksh.38,709/- subject to contribution on liability. I accordingly confirm this amount as agreed.

I accordingly enter judgment for the plaintiff on the proved sum.

In summary

5.1 Male adult passenger agreed 35 years in 1999

5.2 Passenger alighting from bus

5.3 Injury:-

Fracture of right femur

5.4 Liability (agreed)

75% against defendant

25% against plaintiff

5.4. Quantum

a) General Damages

Pain and suffering Ksh.150,000/-

b) Special Damages (agreed) Ksh.38,709/-

Total Ksh.188,709/-

Less 25% Ksh. 47,177.50

Net 75% Ksh.141,531.75

I award the costs of suit to the plaintiff. I award interest on General damages from the date of this judgment. Interest on Special Damages from the date of filing suit.

Dated this 6th day of July 2005 at Nairobi.

M.A. ANG'AWA
JUDGE

Nyawara & Co. Advocates for the plaintiff

Kantai & Co. Advocates for the defendant