



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII
CIVIL CASE NO.47 OF 1999

PHILIP KIPKEMOI NGENO PLAINTIFF

VERSUS

MODERN CONST. BUILDERS & CONTRACTORS LTD RESPONDENT

JUDGMENT

PHILIP KIPKEMOI NGENO the plaintiff was employed by MODERN COAST BUILDERS & CONTRACTOR LTD the defendant as a turn boy. On 2nd September 1998 he was travelling in the defendants m/v KAG 556K a lorry from Tombe Tea factory to Mombasa. The lorry was carrying tea. Before reaching Kericho the vehicle overturned. Plaintiff was injured and admitted to Kericho Nursing Home for 2½ months.

Judgment was entered by consent and liability settled at 80% - 20% in favour of the plaintiff. What is at issue now is damages.

Plaintiff gave evidence. The only receipt produced to prove special damages claim is one for shs.3000/= for medical report. No documents produced to prove the other claims. I will therefore award shs.3000/= special damages.

Two medical reports were produced and both concur on the injuries suffered by the plaintiff. He suffered head injuries and was unconscious for two days. He had a fracture of the femur. He was in hospital for over 2½ months. The injuries are now healed with no marked permanent disability. However the injuries were not minor and the plaintiff suffered for all that period he was in hospital. He lost one tooth and others are loose.

In the case of MUKESH PARMER & ANOTHER VR KENYA TRANSPORTERS NBI HCCC.NO.861 OF 1991 plaintiff was in coma for 2 months. In this case he was in coma for 2 days. He lost one tooth. I feel a sum of shs.600,000/- is fair sum for pain and suffering and I award the same.

In the circumstances I enter judgment for the plaintiff against defendant as follows:

- 1. Special damages shs. 3,000/=
- 2. General damages shs.600,000/=

Total shs.603,000/=

Less 20% contribution 120,600/=

Total 482,400/=

The plaintiff will also have costs of the suit and interest.

It is so ordered.

Signed, dated and delivered at Kisii on 22nd March 2004.

KABURU BAUNI

JUDGE.

22.3.04

Mr. Soire H/B for Gross for Defendant N/A for plaintiff.

KABURU BAUNI

JUDGE