



- 1) Running Down Cause (personal injury; material damage loss)
- 2) Motor vehicle collision between two vehicles
- 3) Male adult driver aged 31 years old in 2002
- 4) Injuries:
 - a) Crushed right leg compound fracture to the right tibia and fibula
 - b) Fracture of the 1st ,2nd 3rd and 4th Martatarsal of the right foot
 - c) Superficial wounds over right arm.
- 5) Liability: (agreed)
 - 1) General Damages
20%:against the plaintiff
80% against the defendant
- 6) Quantum:-
 - 1) Special Damages
(Agreed)
 - a) Pain and suffering Ksh.150,000/-
 - b) Search motor vehicle Ksh. 200/-
 - II) Material Loss claim
Pre accident value Ksh.150,000/-
Less salvage Ksh. 30,000/-
(Agreed) Ksh.120,000/- Ksh120,000/-
 - III) Future Medical Costs Ksh.150,000/-
 - IV Medical expenses not proved Ksh.556,240/-
 - V) Special damage claims abandoned
 - a) Assessors fee Ksh. 2,500/-

b) Medical report Ksh. 1,200/-

c) Certified copies of

Traffic proceeding Ksh. 250/-

Total Ksh.420,300/-

Less 20% Ksh.334,240/-

7) Case Law:- Nil

8) Advocates:-

D.N. Malobe Advocate for the plaintiff

T.O. Okundi Advocate for the defendant

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 870 OF 2002

SAMUEL MUNGAI NJAU PLAINTIFF

VERSUS

WANAINCHI SANITARY & HARDWARE LTD DEFENDANT

JUDGMENT

Together with his wife and children, Samuel Mungai Njau was driving his motor vehicle Reg. No.155266 along the Kabete road, when a motor vehicle Reg. Number KAG 7592 owned by the defendant company and driven by their servant and or agent left its lane and came towards the plaintiffs vehicle. The time was 12.30 a.m. on the 3.2.02. The vehicle had a collision. The plaintiff lost consciousness and was rushed to the M.P. Shah hospital.

He sued the defendants for damages under the personal injury claim of tort and under the material damage claim for the damaged sustained to his vehicle.

The defendant entered appearance and filed defence. On the day fixed for hearing the parties agreed on liability.

I: LIABILITY

Judgment was duly entered on liability at 20% against the plaintiff and 80% against the defendant.

II: QUANTUM

i) The General Damages

a) Pain and suffering

As a result of the accident the plaintiff sustained injuries.

He was examined by:-

Dr. Modi M.Y.

M.B.B.S. M.S Orthopaedics Consultant Orthopaedic Surgeon Date of report 25.3.02 Injuries:

“Crushed right leg with compound fracture right tibia-fibula.

Wound over right leg was extensive with exposed broken bone and crushed muscles with skin loss.

Viability of leg and foot was doubtful. The wound was oozing blood.

Fracture of 1st,2nd 3rd and 4th metatarsal of right foot with swollen foot Superficial multiple wounds over right arm” The doctor confirmed that the plaintiff sustained the said injuries. The leg would have been amputated but they managed to save it. Dr. M.V. Shah, Consultant treated an infection of the chest. The plaintiff was readmitted to hospital on 21.2.02. Both advocates did not refer to me any case law.

The injuries sustained is a fracture to the right tibia and fibula. The plaintiff is most fortunate to have his leg in tact. He was able to walk to court albeit with a limb and help of a crutchet. I would assess the damages under the head of pain and suffering at Ksh.150,000/- as being fair in the circumstances.

ii) Special Damages

(agreed)

The parties agreed to the following special damages. a) Police abstract fee Ksh.100/- b) Search for motor vehicle certificate Ksh.200/- Total Ksh.300/- This is subject to apportionment. iii) Material loss claim The plaintiff made a claim for material loss and damage to his motor vehicle. The pre-accident value being Ksh.150,000/- Less salvage Ksh. 30,000/- Total Ksh.120,000/-

The parties agreed to this sum. I accordingly enter for the plaintiff, judgment subject to apportionment. iv) Future medical costs

This was agreed at Ksh.150,000/-

v) Medical expenses Ksh.556,240/-

The plaintiff was unable to prove this claim. This was due to technicalities which objection I uphold. This claim is hereby dismissed.

v) Special damages claims that have been abandoned

a) Assessors fee Ksh. 2,500/-

b) Medical report Ksh.1,200/-

Certified copies of traffic

Court proceeding Ksh.3,950/-

The same stands dismissed.

I accordingly enter judgment for the plaintiff on the proved claim. In Summary

1) Personal injury claim and material loss claim

2) Male adult driver aged 31 years old in 2002

3) Injuries:

a) Crushed leg, compound fracture of the right tibia and fibula

b) Fracture of 1st, 2nd, 3rd and 4th metatarsal of right foot.

c) Superficial wounds over right arm.

4) Liability:- (agreed).

20% against the plaintiff

80% against the defendant

5) Quantum:

1) General Damages

a) Pain and suffering Ksh.150,000/-

II) Special Damages (agreed)

a) Police abstract fee Ksh.100/-

b) Search motor vehicle Ksh.200/-

III) Material Loss Claim

Pre-accident value Ksh.150,000/-

Less salvage Ksh. 30,000/-

(agreed) Ksh.120,000/-

IV) Future medical costs Ksh.150,000/- (agreed)

IV) Medical expenses

(Not proved dismissed) Ksh.556,240/-

Total Ksh.420,300/-

Less 20% Ksh. 84,060/-

Total Ksh.336,240/-

I award the cost of this 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 27th day of May 2004 at Nairobi.

M.A. ANG'AWA

JUDGE

J.K. Mbaabu & Co. Advocates for the plaintiff

Okundi & Co. Advocaes for the defendant