

REPUBLIC OF KENYA

HIGH COURT AT KISII

CIVIL SUIT 198 OF 2002

CHARLES MAATI ONYANCHA PLAINTIFF

VERSUS

NDUGU TRANSPORT COMPANY LIMITED DEFENDANT

JUDGMENT

Plaintiff's claim against the defendant is for general and special damages arising from injuries suffered in a road Traffic Accident. The defendant failed to enter appearance or file a defence and interlocutory judgment was entered. Case proceeded on hearing of formal proof.

Plaintiff told court that he was employed by the defendant as a turn boy in their motor vehicle reg. No.KAE 877A. On 3/8/01 they were transporting oil in the said vehicle from Mombasa to Mohoroni in Kisumu. When they reached Nairobi at Haile Salassie road the vehicle overturned at a roundabout. The plaintiff suffered a cut wound above the left eye and brain contusion. He was taken to hospital. He told the court the accident occurred due to the negligence of the driver. He was driving at a very high speed even as he approached the roundabout.

As I stated defendant did not file a defence. The court therefore had only the plaintiff's side of the story as to how the accident occurred. He said the lorry was at a high speed as it approached the roundabout. A prudent driver should not have done that. He should have reduced the speed.

I therefore am satisfied that the defendant's driver was negligent and wholly to blame for the accident. Being a servant/agent of the defendant the defendant is therefore vicariously liable.

As to the plaintiff had pleaded shs.3000/= for medical report. He produced a receipt for DR. OGANDO – exh P5. Apart from that no amount was shown for medical expenses in the plaint. The same cannot be awarded.

As for general damages the plaintiff suffered a cut above the left eye and brain contusion. Court was not told how serious the brain contusion was. The injuries were not very serious. I feel an award of shs.400,000/= is fair sum to compensate pain and suffering and I so award.

In the circumstances I enter judgment for plaintiff against defendant for shs.400,000/= general damages, shs.3000/= special damages together with costs and interests.

KABURU BAUNI

JUDGE

16/6/04

Delivered on 16th June 2004. Mr. Maisiba for Defendant and Mr. Nyamurongi for plaintiff.

KABURU BAUNI

JUDGE