



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

**AT MOMBASA**

**CIVIL SUIT NO.319 RD OF 2001**

**AHMED MOHAMMED.....PLAINTIFF**

**=V E R S U S=**

**ABDULHAFIDH MOHAMED BANRAGAH.....DEFENDANT**

**J U D G M E N T**

The Plaintiff claims damages, special and general arising out of a road traffic accident.

The Plaintiff was employed by the Defendant as a turnboy in the Defendant's vehicle No.ZB4033, KAE 501 which on 11/8/1999 was traveling along Mombasa/Nairobi road. The Plaintiff states that the driver of the vehicle employed by the Defendant drove the vehicle so negligently that he caused it to overturn and the Plaintiff suffered injuries.

The matter came up for formal proof on 22/4/2004 when the Plaintiff gave evidence. He testified that he was traveling in the vehicle in the cause of his employment and was sitting in front with the driver. The vehicle went off that road into the forest and he did not know what happened. When he came to he found himself in a hospital in Nairobi West. He was transferred to another hospital where he was treated.

He reported to police and collected Police Abstract from Machakos Police Station. At the trial he did exhibit the Police Abstract as Exhibit 3 and P3 Form as Exhibit 4. He also produced Medical Report. He stated that the driver was negligent and that he was driving fast.

No submissions were tendered and no authorities were cited. The Exhibit (1) from Coast General Hospital shows that the Plaintiff sustained fracture left femur subtrochanteric and comminuted compound fracture left tibia and fibula and that was treated by external fixation of Tibiofibula and was put on skeletal traction. He was treated for the crushed left tibia leaving a gap. He required skin and bone grafting of left tibia. This report was made on 26.10.99. On 21/5/2001 the Plaintiff was examined by Dr. Patrice M.L. Odede. The Medical Report is Exhibit 5 confirmed the injuries and treatment at Nairobi West, Coast General Hospital and Garisa District Hospital.

He was operated on 3 times and admitted to hospital for 9 months. There is mal-union of fracture of femur. There is shortening of the left lower limb the tibia fibula fracture had not healed then. There will be osteoarthritis of left lower limb joints. There may be further operation to correct mal-union. Plaintiff would not be able to walk otherwise without crutches.

Special damages is Police Abstract fees Kshs.100/- which is the prescribed fees. Also kshs.2,000/- medical fee. No receipt for payment is exhibited but the claim is strengthened by Medical Report

exhibited. Both items are allowed.

On the issue of damages for pain and suffering, I have taken into account that the Plaintiff underwent 3 operations and was left with scars. He was in hospital for 9 months and was walking in crutches for a long time. Also that there is need for a further operation to remove the 'K' Nail.

In the circumstances, I find a sum of Kshs.750,000/- adequate compensation for pain and suffering and loss of amenities.

Therefore judgment is entered against the Defendant in  
the sum of kshs.752,100/- with costs and interest.

Dated this 30th day of July, 2004.

JOYCE KHAMINWA

J U D G E

Read on 30/7/04 in presence of:-

Mr. Mologo

Mr. Abeid