



- 1) Running Down Cause
- 2) Male adult aged 39 years old in 1998
- 3) Passenger/motor vehicle accident
- 4) Injuries: As per plaint
 - a) Cut on the face
 - b) Multiple pains on legs and shoulder
 - c) Abrasion on lower right shin
 - d) Backache and chest pains
 - e) Painful left shoulder

Doctors evidence and report

- a) Head injury with no neurological deficit.
 - b) Broken collar bone (Plaintiff was not x-rayed)
 - c) Laceration left side of abdominal wall pain on left call.
 - d) Had a left deformed little finger (not connected to accident).
- 5) Liability:
- Interlocutory judgment against the 1st and 2nd defendant.
- Doctor on 19.1.04

- 6) Quantum: (Advocate seeks 1.2 million but court finds:-

General Damages

- a) Pain and suffering Ksh.90,000/-

Special Damages

- a) Police abstract fee Nil
- b) Medical report Ksh.2,000/-Total

Ksh.92,000/-

7) Case Law Nil

8) Advocate:-

T.R. Oira Advocate for the plaintiff

No appearance for defendant

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 1527 OF 2001

FREDRICK TENDWA IKOHA PLAINTIFF

VERSUS

ELLAM SAISI MWENE & ANOTHER DEFENDANT

JUDGMENT

Fredrick Tendwa Ikoha (the plaintiff herein) a fare paying passenger, in motor vehicle Reg. No. KAK 190F was involved in Traffic Accident when the said vehicle travelling along the Gil Gil – Nairobi road attempted to overtake a bus. Another on coming vehicle came from the opposite side. The driver of the vehicle swerved and the vehicle rolled several times. The plaintiff stated he lost consciousness and was admitted to the Nakuru Provincial General Hospital and was discharged. He further went to Kayole Hospital for treatment.

He sued the two defendants for damages due to the injuries he sustained.

The two defendants failed to enter appearance nor file defence. The deputy registrar entered an Interlocutory Judgment on the 19.1.04 against the defendants.

I: Liability

Under the Ministerial Powers given to the Deputy Registrar under over 48 CPR the effect of an interlocutory judgment is that liability is 100% against the defendants jointly and severally. The 1st defendant being vicariously liable as owner of the motor vehicle.

II: Quantum

The plaintiff pleaded in his plaint that he sustained the following injuries.

- a) Cut on the face
- b) Multiple pains on legs and shoulder
- c) Abrasion on lower right shin
- d) Backache and chest pains
- e) Painful left shoulder

Mr. Wokabi (M.B. Ch.b M.Med) who examined him found that he complained of:-

- a) Broken collar bone
- b) Laceration to left side abdominal wall.
- c) Pain on left ear
- d) Head on left deformed finger little.

The said Doctor is a consultant surgeon. He said there was haematome under the mebraine. There seems to have been neurological deficit.

He said that there may have been a possible fracture of the collar bone. He saw no x-ray films to this effect and confirmed that no x-ray was taken. He mentioned a left little finger that was deformed but this was not said to be related to the accident.

The evidence on the injury is certainly contradictory to what had been pleaded, the doctors evidence and that of the plaintiff. The advocate for the plaitnfif stated that the injuries were so serious that an award of ksh.1.2. million be made.

To my mind the plaintiff did not plead the injury.He did have bleeding under the membrane of the left side of the brain which was treated conservatively and he had regained good consciousness. He had no neurological deficit.

I believe the injuries sustained are as pleaded in the plaint. I treat them as multiple serious soft tissue injuries, aches and pains. There was indeed no broken bones

I would award ksh.90,000/- for the head of damages of pain and suffering. The plaintiff had referred me no case law.

III Special Damages

- i) A claim for 100/-.

Police abstract fee was made. No receipt was tendered. I reject this claim having no supporting evidence and dismiss the same.

- ii) Medical report file Ksh.2,000/-

The doctor put in two receipts being his medical report fee. One is dated 19.3.01 and another 27.3.01 for 1000/- each. Only one report was produced. The payment of the Ksh.2,000/- fee was paid in installments as stated above.

I award this claim The receipt tendered complies with the stamp duty act and produced by the marker.

I enter Judgment for the plaintiff on the proved claim.

In Summary

- 1 Male adult aged 39 years old in 1998
- 2) Passenger/Motor vehicle accident
- 3) Injuries as per plaint

- a) Cut on the face
- b) Multiple pains on legs and shoulder
- c) Abrasion on lower right shin
- d) Backache and chest pains
- e) Painful left shoulder

Doctor's evidence and report

- a) Head injury with no neurological deficit
- b) Broken collar bone (plaintiff was not x-rayed)
- c) Laceration left side of abdominal wall. Pain on left side
- d) Plaintiff had a deformed little finger (not connected to accident)

4. Liability

Interlocutory Judgment against the 1st and 2nd defendant by Dr on 19.1.04 (See order 48 CPR).

5) Quantum: (Advocate seek 1.2 million but court finds:-

1) General Damages

- a) Pain and suffering Ksh.90,000/-

II) Special Damages

a) Police abstract fee	Nil
b) Medical report	Ksh.2,000/-
Total	<u>Ksh.92,000/-</u>

I award the costs 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 29th day of July 2004 at Nairobi.

M.A. ANG'AWA

JUDGE

Ratemo Oira & Co. Advocates for the plaintiff

Ellam Saisi Mwene & Lymond Muhuta – defendants.