



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MOMBASA  
CIVIL SUIT NO. 3 OF 2002

**ALI ABDALLA MBARAK ..... PLAINTIFF**

**- Versus -**

**JAGDISH UDANI ..... DEFENDANT**

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

Ali Abdalla Mbarak, the Plaintiff claims against the defendant both general and special damages for injuries he suffered in an accident that occurred on the 9th October 2000 along Links Road Nyali Mombasa when the motor cycle registration number KAD 331D he was riding on collided with the defendant's vehicle registration number KAL 285X. He attributed the cause of the accident to the negligence of the defendant.

The plaintiff testified that on the material date he was riding with a pillion passenger towards town when suddenly the defendant emerged from a sharp bend driving at high speed and on his side of the road. He had no time to take any evasive action and there was a collision. He was thrown through the windscreen and lost consciousness. When he regained consciousness after a few hours he found himself in the Mombasa Hospital where he remained admitted for 9 days.

According to the report of Dr. Muthuri the plaintiff suffered fragmented (communited) fractures of the right femur (A032B3), large contusions with deep haematoma of the right upper thigh laterally and facial cuts. He was pale and in haemorrhagic shock. After resuscitation with crystalloids/colloids and blood transfusion, he underwent an operation and the fractures were fixed with a 14-hole broad DCP the metal implants have not been removed and the doctor says it will cost about Sh. 80,000/= to remove them.

The plaintiff testified that he incurred a bill of Sh. 219,888/= at the Mombasa Hospital, paid Sh. 3000/= for the medical report, Sh. 100/= for the police abstract report and another Sh. 100/= for the P3 form making a total of Sh. 223,088/=. In cross-examination he said he had been riding a motor bike since 1997 and had a valid licence although he did not have it in court.

Kenneth Odhiambo Oraro P.W.2 was an employee of the Mombasa Hospital. He confirmed that the plaintiff was indeed admitted and treated at that hospital and incurred a bill of Sh. 219,888/= which comprised of the hospital charges and doctors fees. He produced copies of the invoice rendered to the plaintiff and the receipt for payment.

The defendant did not call any evidence but in their written submissions counsel for the defendant have submitted that I should find the plaintiff 60% liable. The basis for that submission, they said, was that at the time of the accident the plaintiff did not have a valid licence and was therefore illegally on the road. As I have already stated the plaintiff testified that at the time of the accident he had a valid licence. He, however, did not have it in court at the time he testified. He also testified that the defendant suddenly emerged from a bend driving on his side of the road and at high speed, and that he had no time to take any evasive action. I have no reason to disbelieve the plaintiff and his evidence remains uncontroverted. In the circumstances I have no basis for apportioning any liability to him and I therefore hold the defendant 100% liable.

On quantum, the plaintiff suffered fragmented fractures of the right femur, large contusions on the upper right thigh and facial cuts. He remained in hospital for nine days during which he underwent an operation to fix the fractured femur and the metal implants have yet to be removed. For pain and suffering

and loss of amenities counsel for the plaintiff in their submissions suggested an award of Sh. 850,000/=. Counsel for the defendant on the other hand said a sum of Sh. 200,000/= general damages “will adequately compensate the plaintiff ...”

I have considered the authorities cited by both counsel. In Nyando Murakoso Vs Paul Musyoka Mutemi and 2 others, Mombasa HCCC No. 879 of 1991 the plaintiff suffered a fracture of the left femur and remained in hospital for 18 days during which he underwent operations of insertion and removal of the “K” nail. He was awarded Sh. 350,000/= general damages on the 10th June 1994. The plaintiff in this case also suffered large contusions of right upper thigh and facial cuts. Taking into account all these and the inflationary factor I consider a sum of Sh. 450,000/= a reasonable award for general damages in this case. The plaintiff also proved special damages of Sh. 223,088/= and said he will require a further sum of Sh. 80,000/= for an operation to remove the implants. I also award him these sums.

In the result I enter judgment for the plaintiff against the defendant in the sum of Sh. 753,088/= with costs and interest. Interest on special damages shall, as usual, run from the date of filing the suit and on general damages from the date of judgment.

**DATED this 27th day of July 2004.**

**D.K. Maraga**

**Ag. JUDGE**