



- 1) Motor vehicle self accident-lorry
- 2) Passenger male adult aged 21 years old in 2002

3) Injuries:-

- a) Cut wound on scalp
- b) Fracture of left tibia and fibula
- c) Cut right knee
- d) Bruised right forearm

Pleaded:

- a) Cut on the occiput 4 cm
 - b) 7 multiple cuts - left side of fact
 - c) Cut left chin
 - d) Cuts right forearm
 - e) Compound fracture of left tibia and fibula
 - f) Cut right supra patella right knee
- 4) Liability:- 100%

Interlocutory judgment by deputy registrar on 8.7.04

5) Quantum

- a) Pain and suffering Ks.100,000/-
II Special Damages

- a) Medical report Ksh. 1,500/-
- b) Police abstract Ksh100/- Nil

Not spoken off as pleaded

- c) Dr. attendance fee. Not pleaded and should not be pleaded. This is taken care of during taxation. Order 12 r 2 (3) CPR applied. For example, an advocates fee is not pleaded in a plaint.

6) Case law

- a) Magumba Kirambi v John Kipngetch Koech & Others
Hccc 5141/91 Ang'awa,J
- b) Patrick Nzioka Wambua v Christopher Ngara Kabogo
Hccc 336/98
On order 12 r 2(3) CPR
- c) Margret Atieno Ayany v Julius Mokaya & Another
Hccc 293/00, Ang'awa,J

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

CIVIL CASE NO. 335 OF 2004

ISAAC MWENDA MICHENI PLAINTIFF

VERSUS

MUTEGI MURANGO DEFENDANT

JUDGEMENT

Whilst travelling as a passenger, in motor vehicle KAM 322M, a lorry that was owned by Mutegi Murango, the defendant herein and driven by an employee/servant of the defendant, the motor vehicle was involved in a self accident with Isaac Mweda Muchemi. As a result Isaac sustained injuries.

On the 6.4.2004 he filed this suit against the defendant. On being duly served the defendant failed to enter appearance nor file defence. An Interlocutory judgment was duly entered against him by the deputy registrar of the High court of Kenya on the 8.7.04 under order 48 CPR.

I) LIABILITY

The effect of the interlocutory judgment is that liability stands at 100% against the defendant.

The plaintiff took precaution and served the defendant with a hearing notice of this suit together with a notice to admit documents as a formality. The defendant failed to attend court. This suit proceeded to assessment of damages.

II: QUANTUM

A) General damages

i) Pain and suffering

The plaintiff, aged 21 years at the time of the accident sustained a fracture to his left tibia and fibular together with soft issue injuries. He was examined by:-

DR Kiama Wangai

MBChb LLB LLM

A general practitioner and also a holder of a law degree and masters in law from South Africa. He states he is a medical legal consultant.

The report produced to court is dated the 15.10.04. It is rather shallow and very brief.

Injuries sustained

- a) Wound on scalp
- b) Fracture of left tibia and fibula
- c) Cut wound on knee
- d) Bruised right forearm

The doctor found that the plaintiff having been treated at Chogoria hospital had fractures to his left leg.

His complaint was that he couldn't walk for long.

I was required to two authorities by the advocates for the plaintiff

i) Isanya Magumba Kirambi

V

John Kipnetich Koech & 2 Others

Hccc5141/91, Ang'awa, J.

A 50 years old male bus driver was in an accident collision with his bus and matatu vehicle due to an obstruction on the road left by a lorry trailer.

The driver/plaintiff sustained a fracture of the left tibia and fibula with osteomyelitis infection. An award of Ksh.250,000/- was made.

ii) Margret Atieno Ayany v Julius Mokaya & Another Hccc 293/00 Ang'awa, J A female adult aged 33 years old; fare paying passenger was involved in a bus collision with a stationary lorry trailer.

She sustained a compound fracture of the left tibia and fibula together with ahead injury (fracture to the skull) an award of Ksh.400,000/- was made.

The advocate prayed Ksh.500,000/- be awarded.

The injuries suffered in the former case involved an infection that caused untold suffering to the driver. As one gets order it is noted that healing is indeed difficult. The latter case involved a head injury (fracture of the skull) and explains the award that is higher.

I under the circumstances find an award of Ksh.100,000/- is fair. The plaintiff is young and his healing was good.

B) Special Damages

The plaintiff pleaded and particularized the following special damages.

i) Medical report Ksh.1,500/-

ii) Police abstract Ksh. 100/-

Ksh.1,600/-

Accordingly,

I) Medical report Ksh.1,600/-

This should have really read the medical report fees of Ksh.1,500/-.

What PW2 the doctor did was to produce his receipts being charged paid to him for the costs of preparing a medical report.

I accept this and award the sum accordingly.

iii) Police abstract

This should have read police abstract fee. The plaintiff produced the police abstract but failed to produce the receipt issued by the Kenya government. It is clear that the plaintiff in failing to tender this

receipt in evidence (under order 12 r2(3) CPR) cannot claim the said sum. I hereby dismiss this claim.

iv) Doctors attendance fee

I wish to make comment on this item of Doctors attendance fee. This item is not pleaded in the plaint nor should it be. The advocate states that he required proof that the doctor attended court.

A proof of a doctor attending court is taken when the doctor gives evidence and the same is recorded. This is the same effects when the advocate for plaintiff is before the court and thereafter proof of his attendance is recorded on the court records.

According to order 12 CPR rule 2(3) CPR. A notice to admit document is issued to the adverse party. If there is no notice of non- admission of documents – then the party who issued the notice need not call witnesses to give evidence where there is a notice for non admission this is an indication that the party issuing the notice must call all his witness to prove the case. This therefore means that the adverse party would have all the costs of the witnesses who attend court whether the case succeeds or not (see Patricia Nzila Wambua v Christopher Ngara Kabogo Hccc356/98, Ang’awa.

The attendance costs would not be part of the courts evidence. The advocate do not go into the witness box to state that they wish to claim their fees? This is dealt with at the taxation time and not during trial.

I therefore reject the claim of Ksh.5,000/- as part of the award for the plaintiff. Judgment is entered only on the proved claim.

In summary

1) Passenger male adult aged 21 years in 2002, a lorry

2) Self accident

3) Injuries:

a) Fracture of the left tibia and fibula b) Soft tissue injuries

4) Liability: 100% against the defendant . Interlocutory Judgment. Deputy

Registrar 8.7.00

5) Quantum:

I: General Damages

i) Pain and suffering Ksh.100,000/-

II: Special Damages

a) Medical report fee Ksh.1,500/-

b) Police abstract Nil

Final Ksh.2,500/-

Final total Ksh.101,500/-

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 7th day of December 2004 at Nairobi.

M.A. ANG'AWA

JUDGE

J. Ngaii Gikonyo & Co. Advocates for the plaintiff

Mutegi Murango – the defendant in person