

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 96 OF 1988

RAJABALI MANJIPLAINTIFF

VERSUS

K.K. AUTO SPARESDEFENDANT

JUDGMENT

The Plaintiff claims damages for injuries he sustained as a result of being knocked down by a motor vehicle on the 12.7.1985. The defendant admits that the accident occurred and that its motor vehicle KWT 535 collided with the plaintiff but avers that the accident was due to or contributed to by the plaintiff's negligence as set out in para 3 of the Defence.

The defendant although served with a hearing notice failed to appear when the suit came on for hearing.

None of the particulars of negligence were proved against the plaintiff.

The plaintiff gave evidence that on the day in question he had left the Mosque on Moi Avenue had crossed over the road and stopped on the white line in the middle of the road before proceeding further when he was hit by a motor vehicle.

The driver of the defendant's motor vehicle should have seen the plaintiff standing in the middle of the road and should have taken steps to avoid hitting the plaintiff; this he failed to do. In my view the defendant was negligent and I find the particulars of negligence contained on the plaint proved.

With regard to damages the plaintiff suffered from a compression fracture of lumbar/spine.

In his evidence he stated that he now has a problem with sleeping and feels tired. He cannot sit on the floor in the mosque, walk with a stick and cannot drive a car. If he sits on a chair for half an hour it takes some days to recover.

Dr. Heda gave evidence and produced his report dated the 24.11.94 and 21.2.1988.

In his opinion he stated that the compression fracture changed the weight bearing line and gave rise to deformity. He requires physiotherapy. He is unlikely to get better.

There is no doubt the plaintiff suffered a serious back injury and will suffer pain and inconvenience in the future. I assess general damages for this in the sum of Shs.350,000/=. Specials were proved in the sum of Shs.75,548.00. I give judgment for these sums against the defendant together with the costs of the suit and interest at court rates on the specials from the date of the plaint and on the general damages from the date of the judgment.

Delivered at Nairobi this 25th day of March, 2003.

P.J. RANSLEY

JUDGE