



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL SUIT NO. 193 OF 1987**

**WAIHIGA KIMANI .....PLAINTIFF**

**VERSUS**

**ATTORNEY GENERAL .....DEFENDANT**

**JUDGMENT**

According to the testimony of the Plaintiff, he was driving motor vehicle Registration Number GK 174R from Malindi to Gende Forest at around 6.00 p.m. when another motor vehicle approached with full lights on. That motor vehicle which was towing another came to the Plaintiff's side and knocked the motor vehicle being driven by the Plaintiff and caused the Plaintiff to be injured. The Plaintiff lost consciousness and was taken to Kilifi District Hospital where he was admitted for six and a half months and thereafter transferred to Nakuru General Hospital where he was admitted for one month. He was put on plaster for three months. He was charged in MALINDI TRAFFIC CASE NO. 988 OF 1997 with the offence of careless driving contrary to section 49(1) of the Traffic Act (Cap 403) but was acquitted (see EXT 6).

According to Dr. Angel D'cunha who was called as PW 2 and who prepared a Surgical Report which was produced as EXT 3, the Plaintiff lost consciousness immediately after the accident which lasted for about two weeks. The injuries sustained by the Plaintiff were as follows:

- (a) Head injury. Cerebral concussion. Scalp wound. Facial wounds.
- (b) Dislocated right shoulder.
- (c) Fracture midshaft right humerus
- (d) Colles fracture right wrist.
- (e) Fracture midshaft right femur.
- (f) Intercondylar fracture right femur.
- (f) Osteoarthritis right hip joint
- (g) Ankylosis right knee joint.

Dr. D’cunha classified the Plaintiff’s injuries as “grievous harm” and awarded him temporary disability of 30 months, 14 of which was total and the rest partial. The Plaintiff was left with the following residual disabilities:

- (a) Post traumatic headaches and dizziness.
- (b) Loose front upper teeth which would require dental attention.
- (c) Weakness in his right upper limb.
- (d) Shortening of the right lower limb by 1.3 inches.
- (e) Osteoarthritis of the right hip.
- (f) Ankylosis of the right knee.
- (g) Malunion fracture right femur.

The Defendant, who is the Attorney General was served but did not attend the hearing of the case. The Plaintiff’s case was, therefore, uncontroverted.

I have considered the nature of injuries sustained by the Plaintiff and the Submissions of his Counsel and taking into account all relevant factors, I am of the view that an award of Kshs. 1,000,000/= would be adequate compensation for the Plaintiff’s pain, suffering and loss of amenities and I award him that sum.

As to Special damages, only the sum of Kshs. 100/= for the Police Abstract was proved and is also awarded.

I, therefore, enter Judgment for the Plaintiff as follows:

- (a) General Damages   Kshs. 1,000,000/=
- (b) Special Damages   Kshs.           100/=
- Total                               Kshs. 1,000,100/=

The Plaintiff will also have the costs of the suit, and interest as prayed.

**Dated and Delivered at Nakuru this 9th day of July, 2003.**

**ALNASHIR VISRAM**

**JUDGE**