



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MOMBASA

CIVIL SUIT NO. 101 OF 1998

AANWARALI BROTHERS LTD..... PLAINTIFF

V E R S U S

PABARI DISTRIBUTORS ..... DEFENDANT

**JUDGEMENT**

This is a claim by owner of a motor vehicle for General damages and for special damages for Kshs. 524,800/- as prayed for in the plaint and interest at court rates arising out of road traffic accident caused by defendants negligence. PW1 Patrick Musyoki Mwanzia was working as a turnboy in a lorry Registration No. KAH 409R belonging to the plaintiffs ANARWALI & BROTHERS LTD when on 16th December 1997 on a journey from Mombasa to Nairobi the lorry had an accident in Athi River area in a place called KUR KUR. He said that when they reached that place they found a lorry Registration No. KAD 628P stopped on a slope but on a bend. He was sitting in front with the driver and there was nothing to warn them. He saw the stationary lorry at a distance of about 5 metres and the driver was not able to swerve because another motor vehicle was coming from the Nairobi side. The stationary lorry had not lights.

PW1 Hassan Yacoub Hassan an employee of the plaintiff and its Claims Manager said that before the accident the lorry transported cement from Mombasa to Nairobi in which he was making 8 trips in a month at about Kshs. 33,000/- per trip. The damage was assessed by MS Assessors and Investigators Exhibit 3 to be repaired at a cost of Kshs. 319,702/ 75. The defendants called no evidence so most of the matters of fact were not materially challenged and on this evidence I find that the owner of the stationary lorry was negligent in that he left the lorry on a slope and a bend without reflectors or any warning to any other road users. That his leaving the motor vehicle stationary on the road was the immediate cause of the accident. There is in law a duty of care owed to other road users not to place a stationary vehicle on the road without warning.

I find the owner of KAD 628M negligent and liable to pay damages. Special damages are awarded where they are proved as pleaded. I find that the cost of repairs was Kshs. 330,000/- as pleaded and I award same to plaintiff.

As for loss of user I accept the evidence of PW2 Hassan that the vehicle used to transport cement to Nairobi. I agree that each trip cost between Kshs. 20,000 and Kshs. 33,000/- and the average 8 trips a month. The repair cost took 11/2 months yet it had been estimated to last for 2 weeks. I think it would be fair to take the estimated period of 2 weeks. It is said that the delay was because some spare parts were not available to the repairers, but the Defendants should have mitigated their expenses by seeking to repair elsewhere, PW2 did not say why the repairs took longer than the estimated time.

So, if I accept the average trip as costing Kshs. 33,000/- per trip and that the net earning less labour and diesel used should be Kshs. 22,500/- per trip and two weeks yielding 4 trips. The total loss of user therefore amounts to  $(4 \times 22,500) = \text{Kshs. } 90,000 \text{ /-}$

I therefore award:-

(i) Police abstract = 100.00

(ii) Cost of repairs = 330,000.00

(iii) Assessors expense = 7,200.00

(iv) Loss of user = 90,000.00

TOTAL KSHS. 427,300.00

There will be judgment to the plaintiff for Kshs. 427,300/- plus costs and interest.

Delivered at Mombasa this 20<sup>th</sup> day of August 2003.

A. I. HAYANGA

JUDGE

**Read in presence of:**

Mr. Biema for plaintiff.

A. I. HAYANGA

JUDGE