



1. Running down action
2. Motor vehicle matatu accident and lorry accident collision.
3. Driver of the matatu – male adult aged 32 years in 1995
4. Injuries:-
 - a. Comminuted fracture of left lower end of the tibia
 - b. Fracture of left patella with mild displacement
 - c. Fracture of left tibia plateau
 - d. Comminuted fracture of proximal third of the left femur
 - e. Compound comminuted fracture of the lower end of the right patella.
 - f. Comminuted fracture of proximal third of the right tibia
 - g. Compartment syndrome of the right leg.
 - h. Closed head injury.
 - i. Multiple soft tissue injuries.
5. Liability: 100%
6. Quantum:-

A) Damages General

- i) Pain and suffering and loss of amenities Ksh.180,000/-

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 2654 OF 1997

RICHARD MUNGAI G ICHUHI PLAINTIFF

VERSUS

PETER NGURU KAHIA 1ST DEFENDANT

K.K. PROMOTE LIMITED 2ND DEFENDANT

JUDGMENT

The plaintiff is a matatu driver. On the material day of the 2.2.95 in the evening he was traveling along Limuru Road when he had just passed the village market he approached a bend. He noted another vehicle come towards him. The said vehicle came to his lane and knocked his vehicle. The plaintiff lost consciousness and was rushed to the Aga Khan hospital where he was duly admitted.

He sued the 1st and 2nd defendant in negligence for tort. He then prayed for damages for the injuries sustained.

A.LIABILITY

The plaintiff explained the circumstances of the accident. The defendant called no evidence on this part. I would accept the explanation given by the plaintiff. I would hereby hold the defendant No.2 100% liable for the accident. I do so as they are vicariously liable. The suit against the defendant No.1 was withdrawn by the plaintiff as it is said he has since died.

B.QUANTUM

1) General Damages

a) Pain and Suffering

I am satisfied that the plaintiff sustained injuries as a result of the accident. A medical report prepared by a doctor from the Aga Khan hospital Dr. Costa Marwa and produced by PW2 also a doctor under Section 33 of the Evidence Act outlined the injuries sustained. These injuries were quite extensive and evidenced.

- a. Comminuted fracture of the left lower end of the tibia
- b. Fracture left patella with mild displacement
- c. Fracture left tibia plateau.
- d. Comminuted fracture or proximal, third of the left femur.
- e. Compound comminuted fracture of the lower end of the right patella.
- f. Comminuted fracture of the proximal third of the right tibia.
- g. Compartment Syndrome of the right leg.
- h. Closed head injury.
- i. Multiple soft tissue injuries.

There was a time the plaintiff had to go into the I.C.U.

I note that the pain and suffering the plaintiff underwent is extremely extensive.

I would find that an award of Ksh.180,000/- under the head of General damages for Pain and suffering should suffice.

ii. Special Damages

This was never pleaded. It requires to be so pleaded. See the case of Bonham Carter vs Hyde Park Hotel Ltd. 1948 64TLRI77. Lord Goddard CJ comments on this.

I would dismiss this claim

I accordingly enter judgment for the plaintiff for the rest of the claim proved.

In summary

1. Running down action
2. Motor vehicle accident and lorry accident collision.
3. Driver of the matatu – male adult aged 32 years in 1995.
4. Injuries:- Various fractures.
5. Liability: 100%
6. General Damages

i) Pain and suffering and loss of amenities Ksh.180,000/-

Total Ksh.180,000/-

I award costs of this suit to the plaintiff. I award interest from the date of this judgment on General Damages.

Dated this 6th day of February, 2002.

M.A. ANG'AWA

JUDGE