



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI LAW COURTS)  
HIGH COURT CIVIL CASE NO. 2691 OF 1990**

**JOSEPH KARIUKI MUCHOKI ..... PLAINTIFF**

**V E R S U S**

**DAVID MWANGI MACHARIA..... DEFENDANT**

**J U D G M E N T**

The plaintiff herein in his amended plaint has pleaded that on 13th April, 1988 while he was traveling as a passenger in a Motor Vehicle registration No. KXS 073, its driver was negligent in driving the same and due to his negligent driving (which was particularized in paragraph 5) allowed the said vehicle to collide with another motor vehicle registration No. KTW 244 and thus caused physical injuries to him.

The Defendant in his statement of Defence squarely placed the blame for the accident on the driver of the other vehicle i.e. KTW 244.

In the background of these pleadings the plaintiff gave evidence and produced a police abstract dated 4th May, 1988 (P EX3) in support of his case. Unfortunately the said abstract has blamed the driver of the other motor vehicle i.e KTW 244 for the accident. The abstract further states that its driver has been charged with an offence of causing death by dangerous driving and that the case was pending before the court.

However, the plaintiff also said during cross-examination that he did not know why his counsel has not filed a case against the owner of motor vehicle KTW 244. He also said that the aforesaid motor vehicle came into the lane of the motor vehicle wherein he was traveling. To make the matter worse apart from broad statement that the driver of Motor vehicle KXS 073 was driving at a speed nothing is coming forth to prove the particulars of negligence pleaded by the plaintiff. I have to note that he was seated at the last but one seat of the matatu and the evidence adduced before me cannot assist me to come to the conclusion that the Defendant's driver was negligent and thus the Defendant cannot be liable for the accident.

Due to the aforesaid reasons, I have no alternative but to dismiss the plaint.

However, in the event I am wrong in making aforesaid determination, the law imposes an obligation on me to assess the quantum of damages for injuries sustained by the plaintiff. The plaintiff testified that he sustained major avulsion wound on the left skin and abrasions on the right skin. He has produced p3 form of 13th April, 1988 which corroborates his claim. The police abstract also puts his name as one of the persons injured in the accident. He also called Dr. Wokabi who produced his report. In his report (PEX 1) Dr. Wokabi has referred to hospital summary, X-ray films, copy of medical report by Dr. S.K. Bashin of 20th July, 1988 and P3 form. I shall therefore have no hesitation to brush aside Defence counsel's contention to the effect that as the same is made after more than eleven years from the date of accident it should not be relied upon. According to him the left leg had fracture of left fibula and after skin grafting procedure a metal rod was inserted into the fracture. The plaintiff was walking with a pronounced limb at the time of visit and a large scar is left on his left leg. He does not have movement on toes and has large prophic ulcer on the forefoot. The doctor assessed the disability at 20 per cent. The Defence did not call any medical expert to contradict the said opinion.

Several authorities have been referred to by both sides and I have considered them all. I have also

considered the factors of inflation and necessity of consistencies in the cases of award of damages by the courts. I am of an opinion that a sum of Kshs.250,000/= shall adequately compensate the plaintiff in the present case. Special damages in the sum of Kshs.6,300/= is proved in respect of medical report, police abstract and attendance of the expert witness. I would have also awarded costs and applicable interest.

However, as I have found against the plaintiff, my order shall be the dismissal of the plaint with cost at lower scale.

Dated and delivered at Nairobi this 4th day of October, 2002.

K. H. RAWAL

JUDGE.