



1. Matatu motor vehicle/lorry collision accident
2. Passenger: male adult, aged 47 in 1997
3. Liability 100% jointly and severally
4. Injuries:
 - a) Loss of 16 teeth
 - b) Fracture of palatial and Nasal ewes
right side
 - c) Fracture of one rib.
5. special damages (agreed Ksh. 243,483/-)

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1853 OF 1998**

DOUGLAS MWANGANGI NGUTU PLAINTIFF

VERSUS

CHARLES MAINGI NJERI

JOSEPH MUNDIA KURIA..... DEFENDANT

J U D G M E N T

I have before me a running down case. Douglas Mwangangi Ngutu, the plaintiff herein sues Charles Maingi Njeri the registered owner of motor vehicle matatu registration number KAG 191V. Joseph Mundia Kuria was the said driver of the vehicle. they are the 1st and 2nd defendant respectively in this case.

An the material day of the 29th day of November 1997 at about 3.20 p.m., the plaintiff who was a fare-paying passenger in the said vehicle was travelling along the Mombasa-Nairobi road. His destination was Machakos. The said vehicle was speeding when it reached Stoni-Athi the driver overtook at another vehicle at a high speed. He met with a lorry vehicle coming from the opposite direction. A collision occurred.

The plaintiff sustained injuries. He was admitted to a nursing home in Machakos and later attended as an outpatient at Aga Khan hospital. the major injuries he sustained were:-

- i) Loss of 16 teeth
- ii) Fracture of one rib
- iii) Fracture of palatial and nasal bones on the right side.
- iv) Soft tissue injuries and scars.

The plaintiff sued the two defendants for damages. He alleged that the vehicle was driven in such a negligent manner, more so “overtaking or attempting to overtake the vehicles ahead of him without first ascertaining or ensuring that it was safe so to do. The plaintiff pleaded Res Ipsa Loquitor. He produced an accident report and his medical reports.

The defendants entered appearance and filed defence. They stated that the plaintiff was not a fare paying passenger as alleged. The two defendants failed to attend court to verify this allegation. Nonetheless in their defence para 4 which was pleaded without prejudice namely that the accident was caused by the negligence of the owner driver of motor vehicle KDZ 961 owned by one James Mburu Kamau who was in fact careless and negligent and this the sole author of the said accident.

I was indeed surprised that this case had on 25th November 1999 gone for summons for directions, the defendants did not attend, but if above was attributed to a 3rd party proceedings and there after directions ought to have been taken out. This was never done.

The police abstract indicated that the case was pending further investigations. That the likely person to be charged was the lorry driver and not the defendant.

The plaintiff was a fare paying passenger. An accident occurred. the plaintiff sues the defendant who will have to sort out any contributory negligence with a 3rd party. I find that the defendants be held liable at 100%. They should have come to give evidence as to the defence they raised but failed to do so. the liability is held against them jointly and severally. As to quantum; the injuries have been outlined earlier as above. that the said injuries included 16 teeth being lost. It was most unfortunate that the plaintiff was not referred to a dental consultant to give us the extent of the said injuries. this would have included the dentures if any and effects of the accident. There was not much emphasis on the fracture of the right palatial and nasal bones by either doctors. There was a complaint of headaches. This was due to the foresightedness which the plaintiff has.

The advocate for the defendant stated that an award of Ksh. 600,000/- be awarded. The reasons being that in the case of

Peter Mwangi Kitonga

v.

Nicholas Auma & 2 Others

Nairobi HCCC 2750/93

Four injuries of:

- a) Fracture of right lower femur
- b) Scars on chin
- c) Fracture of the Madilile
- d) Scars on the right eye

An award of Ksh. 400,000/- was made.

I believe the injuries herein are not in any way similar save the scare.

The case of James Nguchiri Kibe v. Simon Muruchi Thiga and Another HCCC 5066 of 1991 whereby an award of Ksh. 200,000/- was made for right femur and soft tissue injuries. This too is not relevant.

The defendants brought cited no authorities to support their case. Nonetheless on examining the above authorities they pray an award of Ksh. 180,000/- be made.

I hereby find that the plaintiff sustained injuries as a result of the said accident. That he is entitled to damages for pain and suffering.

I would hereby find that an award of Ksh. 200,000/- would be adequate for the loss of 16 teeth and would order accordingly for pain and suffering and loss of amenities.

In Summary

1. Male adult aged 47 years. Fare paying passenger

2. Matatu vehicle collision with lorry

3. Liability:- 100% jointly and severally

4. Injuries

a) loss of 16 teeth

b) fractured palatial & nasal bones right side.

c) fracture of one rib.

5. Quantum:- General Damage s_ Ksh. 200,000/-

pain and suffering.

Special Damages agreed Ksh. 243,463/-

Costs of this suit Ksh. 443,463/-

Interest on General Damages from the date of judgment. Interest on special damages from the date of filing suit.

Dated this 9th day of February, 2001 at Nairobi.

M.A. ANG'AWA

JUDGE