



1. Passenger in a matatu
2. Male adult dated 32 years in 1991
3. Matatu accident
4. Injuries sustained
 - 1) Head injury – mental status effected
 - 2) Fracture of the left tibia & Fibula
5. Plaintiff later died for other causes
6. Substitution
7. Quantum: pain and suffering Ksh.400,000/-

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 2027 OF 1992**

ENOCK SEGERO PLAINTIFF

VERSUS

BENARD MUASYN WAMBUN & ANOTHER ...DEFENDANTS

JUDGMENT

The original plaintiff was Enock Segaro. He was aged 32 years old in 1991. He was employed with the Ministry of Water. On the material day of the 22.3.91 he had traveled to the Machakos Area on duty. On his way back whilst traveling in a matatu motor driven by the defendant and owned by the 2nd defendant, the vehicle was involved in an accident.

The plaintiff sustained head injuries and a fracture to his left tibia and fibula. He was treated at Kenyatta National Hospital and M.P. Shah.

The 1st defendant was subsequently charged with the said offence and pleaded guilty. He was fined Ksh.500/-.

When the plaintiff sued the defendant 1 and 2 in this suit, they in turn sued 1st and 2nd third parties by way of 3rd party proceeding.

The plaintiff died, I believe in another motor vehicle accident. The details was not adequately given to this court. His death was therefore not caused by the first accident. His widow applied to be substituted as a legal representative. This was duly granted.

She now sued the 1st and 2nd defendants for damages including that of fatal accident.

I did ask the parties if they wished to amend their agreed issues. They declined to do so save that they include the issue concerning the 1st and 2nd third party as to the liability they have in this matter with the defendants.

Issue No.1

The 1st and 2nd defendant were never called to give evidence. The issue before me is whether the 1st defendant was employed by the second defendant as a driver or agent. I have no evidence before me to the contrary. The 1st defendant was driving a vehicle owned by the 2nd defendant. He caused an accident which he admitted to in his own plea of guilty.

Issue No.2

The Plaintiff was traveling as a fare paying passenger in vehicle reg. KAB 281f on the 22.3.91 along the Nairobi Thika road. This was admitted through the proceedings of the lower court and was never challenged by the defendant.

Issue No.3

The accident was as a result of the negligence on the part of the 1st defendant.

The plaintiff (now deceased) sustained bodily harm.

On the issue of liability between the 3rd parties and the defendants 1 and 2 – it is quite clear that the defendants failed to call any evidence to show that the third parties are liable in this matter. To this extent I hold that the 1st and 2nd defendant are liable for the accident jointly and severally at 100%.

I dismiss the suit against the 3rd parties with costs to be paid by the defendants.

As to the quantum the plaintiff sustained serious head injuries. This was caused due to the said accident. The doctor herein gave evidence to say that the plaintiff's mental status would never have improved.

The advocate for the plaintiff relied on the case of:-

Grace Wanjiku Mbagala

Vs

Hussion Seamen & Another

Hccc 4/92

Where an award for General damages given for similar injuries at Ksh2 million.

I find that the plaintiff's injuries of Pain and suffering and loss of amenities be computed at Ksh.400,000/- and would accordingly award this.

I do not agree that he is entitled to a claim under the Fatal Accidents Act, as this was not attributed by this accident. I also do not see any claim for loss of future earnings having been claimed. The issue of Special Damages I dismissed.

The reasons being that it was never adequately pleaded nor proved. I wish to mention a point whereby in the course of the trial the advocate for the defendants brought up the question of the locus of the plaintiff. That he had no capacity to sue, nor further, his widow at a later stage.

This point was never pleaded, nor was it an issue before this court. The same is hereby rejected.

In summary

1. Passenger in a matatu
2. Male adult aged 32 years in 1991
3. matatu accident
4. Injuries
 - a) Head injury mental status affected
 - b) Fracture of left tibia and fibula.
5. Liability – 100% Jointly and severally between 1st and 2nd defendant
6. Case dismissed against 1st and 2nd 3rd parties.
7. Quantum General damages Pain and suffering Ksh.400,000/-

Special damages – Nil not proved.

I award costs to the plaintiff and interest from the date of this judgment.

Dated this 3rd day of May, 2001 at Nairobi.

M.A. ANG'AWA

JUDGE