



1. Motor vehicle/pedestrian accident
2. Male adult aged 29 years in 1991
3. Injuries:  
Fracture of left humerus  
Fracture of left tibia and fibula
4. Liability 50%:50%
5. Quantum:  
General Damages  
Pain and suffering – Ksh.100,000/- subject to apportionment  
Special Damages not pleaded.

**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
CIVIL CASE NO.2637 OF 1994**

**FRANCIS MWANGI MUCHINE ..... PLAINTIFF**

**VERSUS**

**FRANCIS KIMANI MBUGUA ..... DEFENDANT**

**JUDGMENT**

Francis Mwangi Muchine was walking along Juja road in Nairobi at about 10.30 p.m. He had come from work. Whilst on the said road and walking to the said of the road, he alleged that the defendant's vehicle of Francis Kimani Mbugua left the road and knocked him. He now sues for damages.

Francis claimed he sustained injuries and was rushed to hospital after the accident. The injuries sustained was a fracture to the left humerus and a fracture to the left tibia and fibula. He produced a medical report to confirm this.

The defendant, Francis Kimani, admits that he was the driver of the vehicle in question. That as he was driving along the Juja road he noted three persons crossing the road; when suddenly one came to his path and he knocked him.

**1. Liability**

From the evidence before me I find that the story given by the defendant is reliable. The defendant states that the plaintiff after crossing the road with three persons, came back to the road and was knocked. The accident of 28.8.91 was caused and or substantially contributed by the negligence of the plaintiff who ought to have taken care in the manner in which he crossed the road. The defendant on the other hand ought to have been cautious at all times knowing that there were pedestrians who had just crossed the road before the accident occurred. I would compute liability between the parties at 50% ratio to 50%. Issues 1, 2 and 3 has been dealt with.

**2. Quantum**

The plaintiff sustained injuries. The medical report he produced showed he had earlier on had old fractures. His doctor placed disability at 25%.

The defendant had relied on a medical report, being a second opinion from his doctor stated the injuries sustained was a simple fracture of the neck of the left hummers. Simple fracture of the left tibia and fibular malleoli. The injuries were well cured. The doctors reported stated that scars had healed well leaving him with no “detectable disability.”

Mr. Mbigi for the plaintiff prayed this court awards Ksh.600,000/-. He relied on two cases that gave lower awards namely:-

John Kingara Nderi

Vs

Gachini Kagwe

Hccc 4750/93

And the case of:-

Jane Hoke Omega

Vs

James Kiarie Wambura

Hcc No.4216/93

That gave a sum of Ksh.450,000/- and 287,000/- respectively.

The latter case was actually Ksh.200,000/- . The 87,000/- referred to Special Damages and Future Medical costs. The award of ksh.600,000/- is unrealistic. I would award in this case a sum of Ksh.100,000/- as far as the circumstances, subject to apportionment. As to Special damages the plaint stated: “To be supplied at the hearing thereof.” Special Damages must not only be pleaded but it must be tabulated and proved. As such, I make no award on this head of damage and dismiss it. I accordingly enter judgment of the plaintiff as follows:

In summary:

- 1) Motor vehicle/pedestrian accident
- 2) Male adult aged 29 years in 1991
- 3) Injuries:
  - i) Fracture of the left humerus
  - ii) Fracture of the le ft tibia and fibular
5. Liability 50% against the defendant
6. General Damages
  - Pain and suffering Ksh.100,000/-

Less 50%                    Ksh.50,000/-

Net total                    Ksh.50,000/-

7. Special damages - dismissed

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

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

**M.A. ANG'AWA**

**JUDGE**