



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

CIVIL CASE NO. 155 OF 1998

CHARLES ODHIAMBO PLAINTIFF

VERSUS

OMAR TRANMORTORS LTD & ANOKTHER DEFENDANTS

JUDGMENT

On the 5th of September 1996 the plaintiff, then a minor aged 17 years old was walking along a road near the Mathare Mental Hospital when a long vehicle had a tyre roll off its vehicle. The tyre hit the plaintiff who sustained injuries of a broken lower leg (tibia and fibula).

It was then that the police stopped a vehicle which took him to hospital. The plaintiff stated he went to Kenyatta Hospital where he was in fact not treated until the following day. He was put in plaster. He did not return back for further treatment apart from having the plaster removed.

The plaintiff sued the defendants in tort for their negligence and prayed for damages when he was an adult.

Liability was agreed by the parties at 100%.
Special damages was also agreed at ksh.5,650/-.
The only issue left for determination was that of General damages for pain and suffering.

From the evidence before court two medical reports were tendered by consent. One by Mr. Harshad Patel and another by Dr. N.H. Bhanji.

Both agreed that the plaintiff sustained a fractured leg. That the plaintiff did not lose consciousness . That he made good recovery. I was referred to authorities by the advocate for the plaintiff of:-
1. Tarciscio Rugunda

Vs
Washington Waldegrave Odhiambo
Hcc 167/87

2. Wilson Kiptiness
Vs
Simon Mwitiki & Another Hccc No.4199/89

3. William Mwanja
Vs
Edward Kariuki

Hccc 5036/89

Whereby the said three authorities gave awards between Ksh.175,000/- to Ksh.200,000/- for similar injuries. The defence referred on the case law unreported of:-

George Muthuri Gichuki & Another

Vs

Wilson W. Muritu & Another

Hccc No.5805/91

Whereby an award of Ksh.175,000/- was given. The advocate nonetheless asked for an award between Ksh.120,000/- to ksh.100,000/- be awarded. It seems that the authorities given by the advocate for plaintiff the injuries are said to be more serious. I do not think so. The amputee talked of in one authority was in that state when the accident occurred. I would assess the damages for pain and suffering at Ksh.100,00/-. I accordingly enter judgment for the plaintiff according.

In summary:

- 1) Pedestrian
- 2) Male minor aged 17 years in 1996
- 3) Hit by a tyre that fell of a vehicle
- 4) Liability agreed at 100%
- 5) Injuries Fracture of the left lower leg tibia and fibula bone.
- 6) Quantum

General Damages pain and suffering and loss of amenities Ksh.100,000/-

Special Damages (agreed)Ksh. 5,650/-

Ksh. 105,650/-

I award costs to the plaintiff.

Dated this 14th day of June 2001 at Nairobi.

M.A. ANGA'AWA

JUDGE