



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO. 431 OF 1996**

**JOSEPH THUITA ..... PLAINTIFF**

**VERSUS**

**DAVID KAHIU KIMANI & ANOTHER ..... DEFENDANTS**

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

This claim arises out of a road accident, which occurred on 3rd august, 1994 along River Road involving the motor vehicle registration number **KAC 689Y** and the Plaintiff.

As a result of the said accident the Plaintiff suffered the following injuries:-

1. Compound fracture of the right tibia and left fibula
2. Injury to the mouth with extraction of one tooth upper right central incisor
3. Soft tissue injuries to the right arm and right chest wall.

He brought this suit against the defendant for damages. In his evidence he told the court that on the material date while he was lawfully crossing the road along River Road, he was hit by the a motor vehicle which was being driven by the defendant. He sustained the injuries as stated above. He blamed the accident wholly on the defendant. He was rushed to Kenyatta National Hospital where he was admitted for treatment for one month.

As a result of the said accident he incurred expenses amounting to **Sh.4840/=** broken down as follows: medical report: **Shs.1250/=** treatment: **Shs.3490/=** and police abstract. **Shs.100/=** These expenses were proved through production of payment receipts. The defendant on his part blamed the accident on the Plaintiff. He said he was driving his said motor vehicle along River-road when the Plaintiff crossed the road running from right to left but before he crossed the road he again decided to run back. It was so sudden that he could not avoid the accident. He hit the Plaintiff with his side mirror.

He was driving at a low speed of about 30 KPH. He braked and stopped immediately; None of the parties called an independent witness. This is a suit in which the court has to rely on the evidence of the Plaintiff and the defendant. Each blaming the other, and in the circumstances it is difficult to lay blame on either side wholly.

I have no option but to apportion blame between both the Plaintiff and the defendant on the basis of **50%-50%**

. Having determined on liability I have now to proceed to assess the quotation. Counsel for the Plaintiff suggested a figure of Shs.350,000/= general damages for pain suffering and loss of amenities and Shs.97,200/= loss of earning at the rate of Shs.2700/= per month for 3 years in which the Plaintiff was out of the business. But the Plaintiff did not produce any documents to prove that he was in business and that he earned **Shs.2700/=** per month.

This claim was not proved and therefore it fails. While counsel for the defendant suggested a figure of **Shs.120,000/=** general damages for pain suffering and loss of amenities. Both counsels cited several authorities.

I have considered the injuries suffered by the Plaintiff in the instant case and compared them with the injuries sustained by the Plaintiff in the cited authorities and the damages awarded and it is my humble opinion that a figure of **Shs.300,000/=** would be adequate compensation. Special damages were proved at **Shs.304,840/=** There shall be judgment for the Plaintiff and against the defendant for **Shs.4,840/=** with costs and interest

**Dated and delivered at Nairobi this 21st day of February, 2000**

**J.L.A OSIEMO**

**JUDGE**