



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**H. C . CIVIL CASE NO.2504 OF 1993**

RICHARD OLWANDA OTOLO ..... PLAINTIFF

VERSUS

FRANCIS K. KAMAU ..... DEFENDANT

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

On the 4th November 1992, the Plaintiff was lawfully walking along Uhuru High Way when he was hit by the motor vehicle registration Number KAB 807S. As a result of the said accident the Plaintiff sustained the following injuries.

- (i) Soft tissue injury to the right shoulder joint.
- (ii) Soft tissue injury to the right thigh
- (iii) Soft tissue injury to the knee joint.
- (iv) Soft tissue injury to the ankle joint.

He filed this suit against the defendant for damages. The Plaintiff in his evidence told the court that on the material date while he was walking on the pavement along Uhuru Highway, the defendant's vehicle from behind and knocked him down. The defendant did not hoot. As a result of the said accident he sustained injuries as stated above. The defendant stopped and went to him gave him his name particulars and address. They agreed that the defendant would go to his office the next day but he never did so at any time. He reported the matter to the police who later issued him with a police abstract. He was treated at Muthurwa Medical Clinic and was issued with treatment card. Which he produced as Exhibit 2. He incurred **Sh.11,100** medical bills.

The defendant in his defence gave evidence and stated material date he drove to Nakumatt Supermarket, while driving slowly outside the market where there were very many crowd youths and one of the said youths came and hit his car. He talked to him and asked him why he never looked where he was going. He parked his car and went inside the supermarket. When he came out he found that men still waiting for him. They talked again and exchanges particulars and they parked. He went on to state that the exchange of particulars had nothing to do with the accident.

In February, 1993 he received a call from Central Police Station and was informed that had been involved in an hit and run accident in November, 1992 and that he was required to report at the police station and record a statement. He said when the Plaintiff hit his car, he was driving very slowly as he was parking at the parking bay.

The only evidence before court is that of the Plaintiff and that of the defendant. There is no independent evidence. The defendant states that the Plaintiff had hit his car and fell down, he parked it and went inside Nakmatt. When he came out he meet the Plaintiff wanting for him. They talked and exchanged particulars, which included place of work, address and telephone Number. But denied that exchange of particulars was not connected with the accident. But on the other hand, the Plaintiff stated that after the defendant had knocked him down, he gave him his particulars and promised to go to him the next day so that they could settle. The version of the Plaintiff is more convincing that of the defendant and I therefore do not believe the evidence of the defendant. I believe the evidence of the Plaintiff that he was knocked down by the defendant and the exchange of particulars was with a view of negotiating a settlement. The Plaintiff has proved his case on liability I now move to assess the damages. Counsel for the Plaintiff

suggested a figure of **Shs.350,000** general damages for pain suffering and loss of amenities and cited three authorities. While counsel for the defendant submitted that the Plaintiff had only sustained soft tissue injuries to the right shoulders joint, right thigh, knee joint and ankle joint and suggested a figure of **Shs.30,000/=** and cited one authority. Having considered the injuries, an award of **Shs.80,000/=** would be adequate compensation for the Plaintiff. Special damages were proved at **Shs.11,100/=**

Accordingly there shall be Judgment for the Plaintiff and against the defendant for **Shs.91,100/=** with costs and interest.

**Dated and delivered at Nairobi this 15th day of March, 2000**

**J.LA. OSIEMO**

**JUDGE**