



REPUBLIC OF KENYA

IN HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO.2643 OF 1986

**PETER KABIBI KINYANJUI ..... PLAINTIFF**

**VERSUS**

**FRANCIS MBURU NJOROGI ..... DEFENDANT**

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

This claim arises out of a traffic road accident which occurred during the night of 5th January, 1986 along Kikuyu Ndenderu Road involving motor vehicles registration number **KWJ 588** and **KQZ 288**. The Plaintiff was driving motor vehicle registration number **KWJ 588** while the defendant was driving motor vehicle registration number **KQZ 288** when the two vehicles collided. As a result of the said accident the first Plaintiff who was the employee of the second Plaintiff sustained multiple fractures of the femur fractured ribs fractured radius, fracture of index finger and lacerations. He brought this suit against the defendant for both special and general damages. The second Plaintiff's claim was for the expenses he incurred to repair his said motor vehicle registration Number **KQZ 288**.

The defendant filed a defence to the suit as well as a counter claim for special damages for Shs.40,000/= being the value of his said motor vehicle which was a write off after the accident as well as Shs.2,500/= loss of user per day for 12 months. On 1/12/1994 a consent order was recorded before Ringera J., in the following terms.

1. Judgment for the first Plaintiff against the defendant in the sum of **Shs.49,740/=** being special damages.
2. Judgment for the second Plaintiff against the defendant in the sum of **Shs.173,095/=** being special damages.
3. Judgment for the defendant against the Plaintiff jointly and severally in the sum of **Shs.49,000/=** as special damages.
4. Suit to proceed to trial on liability and quantum of general damages in respect of the first Plaintiff.

The Plaintiff in his evidence told the court that on the material date he was driving his motor vehicle registration number **KWJ 588** along Kikuyu Ndenderu road, when the defendant drove his motor vehicle registration number **KQZ 288** from the side road and hit his said motor vehicle which was on the main road. The defendant was driving at high speed and failed to stop before he entered the main road.

The Plaintiff called one witness **JAMES WAWERU P.W.3** who had witnessed the accident. He told the court that he had first talked to the defendant before the defendant drove off. He said the defendant had

failed to stop before he entered the main road and as result his vehicle collided with that of the Plaintiff who was driving on the main road.

He the defendant's lorry pushed that one of the Plaintiff which was a small car out of the road and he was the first person to arrive at the scene of the accident.

The defendant **FRANCIS MBURU (D.W.1)** in his defence told the court that on the material date he drove his said motor vehicle from Wangige and when he reached the main road he looked both sides of the road and decided to enter the main road. It was mid night, and as he just entered, the motor vehicle of the Plaintiff came with full lights on and at high speed and the vehicles collided. A driver on the main road may be negligent if he did not or could not stop in time in order to avoid an obstacle on his path-way but as greater duty of case must lie on the driver of the vehicle coming out on to the main road who should only do so when he would cause no obstruction to the users of the main road. This was so stated in the **CASE OF FERNANDES VS. NORONHA** {1969} E.A. 506 at Page 511.

I would apportion negligence at **80% - 20%**. The defendant to bear **80%** while the first Plaintiff bears **20%**. The next issue is the assessment of quantum.

As I had stated earlier, the first Plaintiff had sustained multiple fractures of the femur, fractured ribs, fractured radius and fractured index finger. The injuries were of serious nature and was admitted for 10 days and thereafter physiotherapy treatment. These injuries were confirmed by P.W.1 Dr. Hede who gave evidence and produced two medical reports Exh.3 and 4. Both counsels for the Plaintiff and the defendant have cited various cases to assist this court to arrive at adequate compensation for the first Plaintiff, which I have considered and in my humble opinion a figure of **Shs.520,000/=** would be adequate compensation for the Plaintiff less **20%** Contributory negligence. This would work out as follows

$$520,000 \times \frac{80}{100} = 416,000$$

**80**

Special damages were agreed by consent as follows:-

**Shs.49,740/=** for the first Plaintiff against the defendant

**Shs.173,695/=** for the second Plaintiff against the defendant and

**Shs.49,000** for the defendant against the Plaintiff jointly and severally

1. Judgment for the first Plaintiff against the defendant for **Shs.465,940/=** with costs and interest
2. Judgment for the second Plaintiff against the defendant for **Shs.173,695** with costs and interest
3. Judgment for **Shs.49,000** for the defendant against the Plaintiff jointly and severally with costs and interest.

**Dated and delivered at Nairobi this 27th day of June, 2000**

**J.L.A. OSIEMO**

**JUDGE**