



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

**H.C.C.CIVIL CASE NO. 4196 OF 1991**

**JOSEPH KIRUGI ..... PLAINTIFF**

**VERSUS**

**MWANGI GATETE & 3 OTHERS..... DEFENDANTS**

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

This claim arises out of a road accident, which occurred along LIMURU NAIROBI ROAD on 30th October, 1988 involving motor vehicles registration **No.KSR 527** and **No.KZE 958** and **No.KUT 366**. As a result of the said accident the Plaintiff sustained the following injuries.

- (1) Fracture of the right scapula extending to the right shoulder joint.
- (2) Dislocation of the right acromio-clavicular joint
- (3) A blunt chest injury
- (4) A blunt head injury
- (5) A blunt back injury

He brought this claim for both special and general damages. The first defendant was the driver of motor vehicle registration **No.KSR 527**. The second defendant was the driver of motor vehicle registration **No.KUT 366**. The third defendant a limited Liability Company Ltd was the owner of motor vehicle registration **No.KUT 366**. The fourth defendant was the driver of motor vehicle registration **No.KZE 958** Judgment on liability was entered by consent as follows: The first defendant to bear 45% contribution while the second and third defendants 45% and the fourth defendant the remaining 10% The only issue before this court is the assessment of quantum of damages. The following documents were put in by consent of all the advocates appearing for the parties.

**1. A medical report by Dr. Waitara dated 22nd March, 1991**

**2. A medical report by Dr. Okere dated 26th October, 1999**

**3. A medical report by Dr. Shah dated 20th September, 1999**

It was also agreed by consent that the assessment of quantum be based on written submissions to be filed by the parties which have now been filed. The agreed facts are that while the Plaintiff was lawfully travelling as a fare paying passenger in motor vehicle registration **No.KUT 366**, driven by the second defendant and owned by the third defendant, the first defendant caused motor vehicle registration **No.KSR 527** to hit from the rear the said motor vehicle registration No.KUT 366 which in turn collided with the 4th Defendant's motor vehicle registration **No.KZE 958**. As a result the Plaintiff suffered injuries as stated above and confirmed by three medical reports which were put in by consent.

Mr. Okwach for the Plaintiff suggested a figure of **Shs.500,000/=** general damages for pain suffering and loss of amenities. While Mr. Okwach for the 1st defendant suggested a figure of **Shs.120,000/=** and

Kagucia for the 2nd defendant suggested a figure of **Shs.100,000/=**.

The counsels also referred the court to several authorities, which I have considered. Having considered the injuries sustained by the Plaintiff as confirmed by the three medical reports and compared with the injuries sustained by the Plaintiff in the authorities cited by the counsel and the damaged awarded, it is my considered opinion that a figure of **Shs.300,000** would be adequate compensation. Special damages were proved at Shs.2100/= as pleaded Accordingly there shall be Judgment for the Plaintiff and against the defendants for **Shs.302,100** /= with costs and interest. It was agreed by consent that 1st defendant to bear 45% contribution, 2nd and 3rd defendants 45% and 4th defendant 10%. It is so entered ordered.

**Dated and delivered at Nairobi this 22nd Day of September, 2000**

**J.L.A. OSIEMO**

**JUDGE**