

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 6210 OF 1992

DR. MERCY CHEGE.....PLAINTIFF

-VERSUS

KENYA TEA DEVELOPMENT.....1ST DEFENDANT

HON. ATTORNEY GENERAL.....2ND DEFENDANT

JUDGEMENT

The Plaintiff gave evidence as to how the accident occurred. He said that he was driving vehicle registration No. GK 449. He was driving at slow speed as there were bumps. After crossing two bumps they saw a lorry coming towards them at high speed and with full light on. It collided with car on the left side of the road. He said that he could not swerve to the left because there was a stationary trailer.

The two persons who were with the plaintiff Dr. Mercy Njeri Chege and Simon Karanja gave evidence substantially supporting what the plaintiff said. They blamed the driver of the oncoming lorry because they said he was speeding and that he did not slow or severe to avoid collision. On the other hand the plaintiff slowed almost to a standstill when he realised he could not swerve to the left.

The 1st and 2nd defendant filed a defence denying negligence on the part of the 2nd defendant. But no evidence was given on behalf of the defendants. The plaintiff said that the police charged him with a traffic offence and was acquitted for lack of evidence. According to him it is the 2nd defendant whom the police should have charged.

From the evidence of the plaintiff and his two witnesses I find that the 2nd defendant was the cause of the accident. I accept the evidence of the two witnesses that the plaintiff slowed when he saw the lorry in full light speeding. They also said that they had just gone over two bumps and saw it was not possible for the plaintiff's vehicle to have gathered speed which could have amounted to overspeeding at the time of the accident. The accident was therefore caused by the 2nd defendant and I hold him liable for the accident.

The plaintiff suffered injuries as a result of the accident. The injuries are discredited in the medical report by Dr. Gakuru who made the recommendation that the plaintiff should be retired on medical grounds. The plaintiff under went treatment in Karatina and Mathari hospitals but the wrist remained painful with limited movement. At the time of the accident the plaintiff was earning Kshs.3,620/- per month and he was aged 35 years. In support of his claim the plaintiff cited cases. I was able to compare the injuries in those cases with the present injuries. I was also able to consider the awards made in those cases. Based on these consideration of make the following awards:

(1) For pain and suffering = Kshs.300,000/-

(2) Loss of future earning Shs.3620 x 12 x 14 = Kshs. 608,160/-

(3) Special damages = Kshs. 6,155/-

Total = Kshs. 914,315/-

There will be judgement for the plaintiff for the sum of Kshs.914,315/-

The plaintiff shall have the cost of the suit and interest.

Dated and delivered this 5th day of October, 2000.

KASANGA MULWA

JUDGE