



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 2391 OF 1995

OMAR MUSA HASSAN & ANOTHER..... PLAINTIFF

-VERSUS-

RASHIED SALIM & ANOTHER.....DEFENDANT

JUDGEMENT

LIABILITY:

The Plaintiffs have sued the defendants for damages following a road accident.

The Plaintiffs gave evidence that they were passengers in the bus registration number KAB 958T which was travelling from Mombasa to Nairobi on 29.9.94. According to their evidence the bus was so negligently driven by the 1st Defendant that it overturned. The Plaintiffs suffered injuries. The Defendant while not denying the accident in their defence filed on 27-9-95 contend the accident was inevitable and an act of God.

From the evidence of the plaintiffs I find that the plaintiffs were passengers in this bus and I further find that the vehicle at the time was negligently driven as a result of which the accident occurred. I hold the 1st defendant wholly responsible for the accident and consequently the 2nd defendant is vicariously liable for the negligence of the 1st defendant.

QUANTUM

Dr. Gikenye produced a medical report of the 1st plaintiff, which described the injuries suffered by the 1st plaintiff. He was admitted in Nairobi West Hospital for one day. In his evidence the doctor said that the 1st plaintiff has fully recovered from these injuries.

For the 2nd plaintiff Dr. Gikenye produced two medical reports. The reports show that she suffered:

- (1) A comminuted fracture of the right femur and
- (2) Several tissue injuries over various parts of her body.

In his evidence and in accordance to the medical reports she was admitted in the hospital for 30 days and later for two weeks for a second operation. He said that the plaintiff would need a further operation to remove the metals plates on her thighbone. He estimated the cost to be Ksh.80,000. I accept this evidence of the doctor. For the 1st plaintiff the case of Jeremiah Kodia Ingache vs. Modern Furniture House 1968 Ltd. and HCCC No. 171 of 1987 was cited in support. I have compared the injuries in this case and the present injuries. I consider a sum of Shs.100,000 as adequate general damages for pain and suffering.

For special damages I award the sum claimed of Shs.40,781.

For the 2nd defendant the plaintiff has cited two cases, which I have considered by comparing the injuries with those of the plaintiff. I have also taken into account the inflationary element since when those cases were decided. In the circumstances of this case make the following awards:

(1) General damages for pain and suffering Ksh.700,000

(2) Future medical care Ksh.135,000

(3) Special damages Ksh. 52,130

There will therefore be judgments for the plaintiffs as follows:

(1) For the first plaintiff

(a) General damages for pain and suffering Ksh.100,000

(b) Special damages Ksh. 40,781

Total Ksh.140,781

(2) For the 2nd Plaintiff

(a) General damages for pain and suffering Ksh.700,000

(b) Future medical case Ksh.135,000 © Special damages Ksh. 52,130

Ksh.887,130

The Plaintiffs shall have the costs of this suit and interests.

Dated and delivered this 4th day of October, 2000.

KASANGA MULWA

JUDGE