

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 2828 OF 1992

PETER ONDIKO.....PLAINTIFF

-VERSUS-

ROTER GENERAL TRADERS.....DEFENDANT

JUDGEMENT

LIABILITY:

The Plaintiff sued the Defendants for damages following a road accident. The Plaintiff was a passenger in the vehicle registration number KWZ 051 which was being driven by the 2nd Defendant and owned by the 1st Defendant. It was the Plaintiff's evidence that the 2nd defendant drove the said vehicle so negligently that it overturned. In the defence filed on behalf of the Defendants, it is pleaded that the Plaintiff was not a passenger in the vehicle and if he was there as an unauthorized passenger negligence is denied. The Plaintiff's evidence shows that there was an accident involving the vehicle registration number KWZ 051 on 4.4.1991. The Abstract Form produced by the Plaintiff gives the owner of the vehicle as "Roter General Traders. The P3 form states that the complainant was a casual by then and the accident occurred during the transportation of goods between Thika and Nairobi.

As a result of the contents of the PW3 and the abstract form which corroborate the evidence of the Plaintiff, I find that the Plaintiff was in the vehicle when it had the accident. The Defendants have not offered any explanation in their defence as to how the accident occurred, explanation which would contradict the evidence given by the plaintiff when he says that the 2nd defendant was negligent in the manner he had driven the vehicle. I therefore find that the 2nd defendant was negligent in driving the vehicle in such a manner that it overturned.

QUANTUM

As a result of the accident the plaintiff sustained injuries: - cuts on the forearm and head, chest pain and back pain. In support of his claim the plaintiff has cited 4 cases which I have read and compared the injuries therein with the Plaintiffs injuries. I award the Plaintiff the sum of Shs.150,000/- as General Damages. In arriving at this figure, I have also considered the inflationary trend since those cases were decided.

There will be judgment for the plaintiff for:

(1) General damages Shs.150,000 (2) Special damages Shs. 2,535 Total Shs.152,535

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

Dated and delivered this 2nd day of October, 2000.

KASANGA MULWA

JUDGE