



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 1801 OF 2002

DANIEL NDUNGU MWANGI ..... PLAINTIFF

VERSUS

FRANCO SHISOKA ..... 1<sup>ST</sup> DEFENDANT

A.I.C. DIGUNA ..... 2<sup>ND</sup> DEFENDANT

A.I.C. KENYA TRUSTEE REGISTERED .....3<sup>RD</sup> DEFENDANT

MICHAEL HOERDER .....4<sup>TH</sup> DEFENDANT

DAVID REMPEL .....5<sup>TH</sup> DEFENDANT

JUDGMENT

The plaintiff brought this suit against the defendant jointly and severally following a road traffic accident that took place along Eldoret Nakuru road on 25<sup>th</sup> June, 2001. He was a passenger in motor vehicle registration No. KYZ 213 owned by the 2<sup>nd</sup> defendant and driven by the 1<sup>st</sup> defendant at the time of the accident. The 3<sup>rd</sup> – 8<sup>th</sup> defendants are trustees of the 2<sup>nd</sup> defendant. The plaintiff was injured as a result of the said accident and blamed the 1<sup>st</sup> defendant. he pleaded that the 1<sup>st</sup> defendant was negligent in driving at an excessive speed, failing to maintain proper and effective control of the motor vehicle, failing to stop, swerve, brake, slow down or in any other way so as to avoid the accident, and driving carelessly and dangerously without any due regard for the safety of the passengers.

There is no evidence of any intervening factor relating to the accident going by the evidence of the plaintiff. The driver of the 1<sup>st</sup> defendant was in control of the motor vehicle. The doctrine of *res ipsa loquitur* applies in this case. Liability has therefore been established against the 1<sup>st</sup> defendant which shall extend to the other defendants on the basis of vicarious liability.

As a result of the accident the plaintiff suffered fracture/sub lacerations at C4/5, injury to spinal cord, fracture of all left ribs, and multiple injuries on the neck, back, head and chest.

There is a medical report prepared by doctor F.J.O. Wasuna dated 10<sup>th</sup> November, 2001 and another one prepared by doctor Maina Ruga dated 28<sup>th</sup> September, 2011. Going by this report the doctor observed that the plaintiff still has stiffness of the neck with limitation of movement. The level of permanent incapacity was assessed at 20%. Cases cited included **Wendy Martin Vs. IL Ngwesi Company Limited and two others (2008)e KLR, Mehali Transporters Limited Vs. Damus Mwasia Maingi and Mary Nyadzua Ngale Vs Sheikh Omar bin Dahman MSA CC No. 122 of 1999.**

I have reviewed the authorities cited and the awards made therein as a guide to awarding general damages and in my assessment make an award of Kshs. 1.5 Million general damages for pain and suffering. The plaintiff proved special damages of Kshs. 155,150/= as pleaded.

There shall be judgment therefore in favour of the plaintiff against the defendants jointly and severally in

the sum of Kshs. 1.5 million general damages, Kshs. 155,150/= special damages. The plaintiff shall also have the costs of the suit and interest at court rates.

*Dated, signed and delivered at Nairobi this 15<sup>th</sup> Day of February, 2017*

**A. MBOGHOLI MSAGHA**

**JUDGE**