



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO. 230 OF 2015**

**HUSSEIN AHMED ABDULLAHI .....PLAINTIFF**

**V E R S U S**

**SAMIRA MOHAMED ABDI.....DEFENDANT**

**JUDGEMENT**

1. On 12<sup>th</sup> August 2013 motor vehicle registration no. KBT 716H Nissan Diesel Bus was self involved in a serious accident along Dadaab Garissa Road. The vehicle was owned by Samira Mohamed Abdi and was being driven by her authorised driver/agent, one Issa, Ibrahim Ajiab. The plaintiff herein, Hussein Ahmed Abdullahi, was travelling as a fare paying passenger in the said motor vehicle, when the defendant authorised driver negligently/carelessly drove the said motor vehicle where upon the same was involved in an accident and the plaintiff sustained very serious bodily injuries.

2. The plaintiff in this suit is seeking for general and special damages on account of the injuries he sustained in the accident vide the plaint dated 18<sup>th</sup> June 2015.

3. The plaint and summons were served upon Samira Mohamed Abdi, the defendant who failed to enter appearance nor file a defence. Consequently, judgment in default of appearance and defence was entered against the defendant on 14<sup>th</sup> December 2015. This suit therefore proceeded for hearing as a formal proof.

4. When this suit came up for hearing, the plaintiff's case was supported by the evidence of two witnesses namely; Nehemiah Karua Wesonga and Hussein Ahmed Abdullahi. The 1<sup>st</sup> to take the witness stand was police constable no. 77482 P.C. Nehemiah Karua Wesonga who is attached to Limuru police station but was previously in Daadab police station. PW1 stated that on 12<sup>th</sup> August 2013 at 8.30am he received a report of an accident along Garissa Daadab road and went to the scene and booked the report in the OB of 12.8.2013. He stated that at the scene he found that the accident involved motor vehicle registration no. KBT 716H registered in the name of Samira Mohamed Abdi. The said motor vehicle appeared to have lost control and overturned with the main leaf spring broken. Some passengers were injured and others got serious injuries namely; Hussein Ahmed Abdullahi the plaintiff herein amongst others. The injured were taken to Garissa General Hospital and the motor vehicle was towed to Daadab police station where it was inspected and later released to the owner. The road was very rough and in a very bad condition. PW1 produced before this court an extract of the OB and police abstract forms as exhibits in evidence PExh 7(a) & (b).

5. Hussein Ahmed Abdullahi PW2 the plaintiff herein testified to support his claim for damages for the injuries he sustained while travelling in bus registration no. KBT 716H along Garissa - Daadab. PW2 stated that the driver drove so recklessly while knowing that the road is in a bad condition, and that he sat

next to the driver and witnessed the driver driving in high speed. PW2 produced Garissa General Hospital Referral form in support of assertion that immediately after the accident he was taken to Garissa provincial General Hospital and referred to Kenyatta National Hospital for the surgeon's review and further management. He further produced his discharge summary from Nairobi South Medical Centre where he was later admitted and discharged and surgeries performed on his left hand.

6. PW2 further produced his discharge summary from Melchizedek Hospital where some surgery was carried out on his left radius and k-wile was inserted. It is in the evidence of PW2 that he will need to undergo reconstructive surgery and removal of the plate and screws from his left hand as confirmed by the medical reports of Dr. Tom, Mogire dated 2/11/13 and Dr. Nang'ole Wanjala dated 26/9/14. PW2 produced as an exhibit in evidence receipts showing that he incurred ksh.750,000/= on medication, transport and medicines and he is further to incur approximately kshs.455,000/= for removal of the plate and screws and reconstructive surgery as evidenced in the medical report of Dr. Nang'ole Wanjala report dated 26/9/14. PW2 went ahead to say that he is not fully healed and will never lead a normal life as before since his left hand is now deformed. At the close of evidence, the plaintiff's counsel was invited to file written submissions.

7. After a careful consideration of the evidence and the submissions, the following issues arose for determination. First, who is to blame for the accident? Secondly, what is the quantum of damages?

8. On the first issue of liability, an interlocutory judgment has been entered against the defendant, Samira Mohamed Abdi in default of appearance and defence. The plaintiff has enumerated the particulars of negligence on the part of the defendant in paragraph 4 of the plaint. It is alleged that the defendant acting as an authorised driver servant, agent and or employee of the defendant, negligently controlled, drove managed and or controlled the said motor vehicle and permitted it to roll and as a result the plaintiff suffered serious injuries. It is alleged that the driver of motor vehicle registration no. KBT 716H was driving at an excessive speed thereby causing the accident. The aforesaid averments remain uncontroverted. PW2 reiterated the aforesaid averments when he testified before this court.

9. PW1 further produced as an exhibit in evidence the police abstract form which shows the accident occurred, on the basis of the uncontroverted averment, I find the plaintiff as having established liability against the defendant on a balance of probabilities.

10. The next question to settle is what is the quantum of damages. In his plaint, the plaintiff stated that he sustained the following injuries; soft tissue injuries of the left hip, fracture of the radius and dislocation distal radio-ulna joint of the left hand, multiple cuts/bruises and soft tissue injuries to the body and degloving injury to the left hand and extensor tendon injury. This is corroborated by Dr. Mogire's and Dr. Wanjala's medical reports. Dr. Mogire's medical report assessed permanent partial disability at 20%. The plaintiff has beseeched this court to grant him kshs.2,500,000/= for general damages for pain and suffering. On arriving at the quantum, the plaintiff was guided by the case of **Nairobi HCCC No. 658 of 2009 James Gathirwa Ngugi –vs- Multiple Hauliers E.A Ltd and another** in which this court awarded ksh.2,000,000/= for general damages for pain and suffering in 2015 (where the plaintiff suffered compound comminuted fracture of the right tibia, compound comminuted fracture of the right fibula, fracture of the left proximal radius, fracture of the left ulna, head injury, deep cut wound of the parietal region about 4cm, soft tissue injury bruises of both hands, multiple facial cuts and lacerations and lastly pathological re-fracture of the right leg.) The plaintiff stated that bearing the high rate of inflation 2,500,000 up from 2,000,00 million that was awarded in 2015 the case above will be sufficient. I am convinced that a sum of 2,500,00 would suffice for general damages for pain and suffering.

11. The plaintiff has also asked this court to award him kshs.750,000 as special damages to cover medical expenses and transport, medical report future medical expense and motor vehicle search. It is trite law that special damages must be specifically pleaded and proved. The plaintiff receipts availed in court make a total of ksh.708,740/= only. This I will award the plaintiff. Special damages for future medical expenses as exhibited in the doctors reports is ksh.455,000/= this was also specifically pleaded by the plaintiff. This I will award.

