



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO.2048 OF 1994

FRANCIS SHAMALLA PLAINTIFF

VERSUS

KERENGA BUS SERVICE DEFENDANT

JUDGMENT

The Plaintiff was a fare paying passenger in motor vehicle registration number KZU 409 Souza bus. The defendants are a transportation company carrying its operations from Nakuru and owner of the bus in question.

On the 30.5.92, the Plaintiff boarded the said bus from the Machakos bus stop. This was about 7.00 p.m.

At about midnight, the driver drove at a high speed. He was using one hand to hold the steering wheel and another to chew miraa - a local drug that keeps one awake.

The bus swerved to the left and overturned into the tea bushes, near Kericho. The Plaintiff lost consciousness. He did recall clearly before this that there was no vehicle in front or behind of the bus. The weather was fair and there were no pot holes in the road.

The plaintiff regained consciousness at the Kericho District Hospital. He was transferred to the Mukimu hospital near his home.

He returned to Nairobi where he was treated as an out patient.

The Plaintiff filed suit against the defendant company. They were duly served. They never entered any appearance or filed their defence. Interlocutory judgement was duly entered against them.

The case before me is for assessment of damages.

I am satisfied from the evidence given by the plaintiff that the defendants through their agent and or servant were negligent in the driving. As a result the same overturned causing injury to the plaintiff who was a passenger in the said bus. The defendants are therefore liable 100% on this.

The Plaintiff sustained injuries. He called PW2 a medical Doctor who prepared a report on the 15.1.96 as to the plaintiffs fitness. He obtained his information from past historical records held by the plaintiff and his advocates.

From his report he confirmed that the plaintiff had sustained the following injury.

- i) Tenderness in the right chest
- ii) Fracture of the 3rd, 4th and 5th ribs.
- iii) Cuts and bruises of the left hand
- iv) Multiple Small cuts on the right hand

As of 1996 the plaintiff complained of headaches and pains especially when doing physical work such as driving long distance.

As a precaution the doctor subjected the plaintiff to further Xray examination.

He found that the plaintiff was in a general good condition.

The nervous system was normal, the blood pressure was normal, no deformity was discovered in the chest cage.

(At the time of the accident one of the lungs had collapsed).

The Plaintiff was a driver by profession. He retired from employment and claimed that some of his benefits was used to pay his medical bills. He was unable to produce the original receipts of the expenses spent. I found out this was because his employer had paid his bill and refused to release the receipt. I have no proof from the plaintiff that this amount again was deducted.

His Plaintiff reflects no such claim as having been pleaded. His advocate admitted that the special damages of Ksh.2,000/- to which an interlocutory judgement had been entered had not been proved and was therefore no longer claiming this prayer.

I hereby dismiss the claim for Special damages.

As to the claim for General Damages I do note that the plaintiff suffered Pain, and loss of Amenities. His advocate stated that an award of Ksh300,000/- or more be awarded. She relied on an authority which gave an award of Ksh.200,000/- that was decided in 1995. Due to inflation this amount can be increased.

The Plaintiff has successfully healed. He has no side effects and his three broken ribs are cured.

The award for Pain, Suffering and Loss of Amenities for three broken ribs and soft tissue injuries I would compute at Ksh.150,000/-.

I make no award as to Special Damages.

I hereby enter judgement for the Plaintiff against the defendant at 100% for General Damages on Pain, Suffering & Loss of Amenities at Kshs.150,000/-.

I award costs of this suit from the date of reading of this judgement.

Dated this 6th day of May, 1999 at Nairobi.

M.A. ANG'AWA

JUDGE