



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 4495 OF 1986

MICHAEL NJENGA KIMANI.....PLAINTIFF

VERSUS

STEPHEN NJOROGI KARIUKI.....1ST DEFENDANT

KIAMBU MUNICIPAL COUNCIL.....2ND DEFENDANT

JUDGEMENT

The Plaintiff was involved in an accident on 20th June, 1986 at a place called Kangoya in Kiambu. The plaintiff was then an employee of the second Defendant as a cleaner and on the said day he was a passenger in a tractor Registration No.KRE 828 owned by the second defendant and driven by the first defendant.

As a result of the said accident, the Plaintiff sustained injuries and this suit is for damages for the injuries so sustained. In his pleadings he blamed the accident on the negligence of the first defendant. As the first defendant was an employee of the second defendant, the plaintiff pleads vicarious liability.

The defendants denied that the accident was caused as a result of the negligence of the first defendant. While admitting that the said accident took place, they attributed the injuries sustained by the plaintiff to his own negligence. In the alternative contributory negligence is pleaded on the part of the Plaintiff.

In respect of damages claimed, the defendants pleaded that, other than workmen's compensation, the plaintiff was not entitled to any other compensation.

It is the plaintiffs case that the first defendant braked suddenly, cause the tractor to jerk and then he (the plaintiff) fell off from the trailer in which he was riding. He also alleged that the tractor was fast at the time of the accident. He denied that he jumped off the tractor.

Both DW1 AND DW2 did not know what caused the plaintiff to fall off the tractor. They have said as much in their respective testimonies.

Whereas the plaintiff said that the trailer had no rails, the driver, DW1 said they were there. DW2 also said the Plaintiff could have held onto the body of the trailer. I note that the trailer was used to carry refuse. I cannot envisage the trailer being flat without the sides raised to hold the refuse collected. If the plaintiff did not hold the rails or the body he was in my judgment negligent.

The driver, DW1 owed a duty of care to all those he carried. The version given by the plaintiff as to the occurrence though denied appears possible. In any case, the first defendant was in control of the tractor and hence cannot shift total blame onto the plaintiff. I find he was negligent but that the plaintiff

must have contributed substantially to the accident in failing to hold onto the trailer firmly to avoid falling off.

In the absence of independent evidence, I shall as I hereby do, apportion liability equally between the plaintiff and the first defendant. And so the first defendant shall be liable to the plaintiff to the extent of 50%. Vicarious liability has not been denied and so the second defendant is liable to the same extent as that of the first defendant.

On quantum, the plaintiff produce the medical report, Ext 1. He sustained bruising of the head, the front of the chest, pelvis, lower back and right leg and foot. He also had lacerations of the face, right side of the shoulder and of both legs. He remained with some scars of permanent nature. He had been admitted to Kiambu General Hospital for one day.

Two cases have been cited by the learned counsel for the plaintiff.

These are HCCC No.2707 of 1990 Danye Mabwaka Khabwai vs. Mawingo Bus Services Ltd and HCCC No.3854 of 1986 Joyce Wanjiru vs. Dancan Manza Gicheru & Another.

I have looked at those cases and the awards made for injuries sustained. In my judgement, general damages on 100% basis in the instant case should be Kshs.150,000/=. This shall be reduced by 50% contributory negligence leaving a balance of Kshs.75,000/=. The plaintiff was not paid any compensation under the Workmen's Compensation Act otherwise such a payment would be deducted from this award.

Special damages for the police accident abstract and the medical report amount to Kshs.100/= and 600/= respectively. The total of Kshs.700/= is also subject to contributory negligence leaving a balance of Kshs.350/=.

In the end there shall be judgement for the plaintiff against the two defendants jointly and severally in the sum of kshs.75,000/= general damages, Kshs.350/= special damages plus costs and interest at court rates.

Orders accordingly.

Dated at Nairobi this 15th Day of July, 1998

MBOGHOLI MSAGHA

JUDGE

Gitau for Mwangi for Plaintiff.

Namada for Ogutu for Defendant.