



## **Morgan v Oguda**

**High Court, at Nairobi January 12/ 17, 1985**

**Cockar J**

**Bankruptcy Jurisdiction Cause No 1861 of 1982**

**January 12, 1985, Cockar J delivered the following Judgment.**

In this case for a claim of special and general damages for injuries suffered by the plaintiff in consequence of a traffic accident the defendant did not appear on the day of the hearing. As no other witness had been called on behalf of the defendant her advocate, on close of evidence produced on behalf of the plaintiff, offered no evidence in defence. From the plaintiff 's evidence I am satisfied that on July 6, 1980, a Sunday, at about 6.00 pm the plaintiff was walking on the grass road off the murram road from Ngong road race course towards his car where it was parked. A crowd of people was around leaving the race course. At that time a motor vehicle registration No. KRM 104 driven by the defendant struck the plaintiff from behind in his back with force causing him to fall down forward. I accept the above facts as proved and find that the accident was caused solely by negligent driving of the said car by the defendant. The defendant's car did not stop after the accident but instead continued driving on its way.

The police file was put in as an exhibit. It contains statements by eyewitnesses, which were referred to by the plaintiff's advocate Mr Kamere.

After studying that file I am satisfied that in the circumstances particularly when the road was crowded by people leaving the race course, the said car was being driven by the defendant at the time in a manner which was not consistent with that of an ordinary, prudent driver having due regard for the safety of other users of the road – particularly the pedestrians.

Describing his condition after he was knocked down the plaintiff who was then 73 years old, said that he was completely winded and shocked.

People helped him to get up and after he had recovered his breath while leaning for 3 to 5 minutes on top of the roof of his car, he entered his car and drove away. The next morning he reported at Karen Police Station.

He had suffered a twisted ankle and wrist, cuts, abrasions and bruises.

But what caused him the most pain was the injury to the ribs. The pain in ribs and completely restricted any movement of his upper body. He could not even lie in bed. Instead he had to remain sitting in bed. He was away from work for 5 days. Pain gradually improved until it disappeared completely within 4 or 5 weeks.

Two medical reports were produced in evidence. One dated October 13, 1981, was put in by consent. The other dated July 26, 1980 is in the police file which was produced as exhibit 2. Both are prepared by Dr Irvine Robertson who had attended and prescribed treatment. No permanent injuries were caused to the plaintiff.

I accept the plaintiff's evidence as regards the injuries and pain suffered by him.

The plaintiff claims special damages in the sum of Kshs 2,720. He gave details of how this sum was made up. I accept that claim as reasonable and find that the plaintiff suffered special damages in the sum of Kshs 2,720.

As regards the claim for loss of earnings the plaintiff said that he did not attend to his duties as a private

legal practitioner for 5 days and he claimed a loss of income of Kshs 5,000 for this period at Kshs 1,000 per day. I find that reasonable and accept it.

For the next fortnight, the plaintiff added, he could only totter to his office and could not do much work. I accept that. I also accept a loss of income at Kshs 500 per day for 15 days for this period as claimed by the plaintiff.

I find that the plaintiff suffered a loss of income in the sum of Kshs 7,500 for this period. I find that total loss of income suffered by the plaintiff was Kshs 12,500.

As regards general damages the plaintiff is claiming punitive damages on the grounds that the defendant had driven the car through a crowd of pedestrians without any regard for the safety of the other users of the road. I must add here that the defendant's disregard in that respect is also evident from the fact that she did not stop after the accident. There is no evidence that she ever recorded a formal report of the accident at the police station. The defendant's cause in that respect is not helped any bit by the fact that in her first statement to the police made about a year later on July 3, 1981 she had categorically denied having ever owned the motor vehicle registration No KRM 104 or having ever come across a motor vehicle of that registration number. She recorded therein that she never went to race course and had not gone to Ngong Race Course on July 6, 1980. But in her subsequent statement to the police made on July 28, 1981, she admitted having gone to the Ngong races at 3.00 pm on July 6, 1980 where she stayed up to evening. She also recorded therein that she left the races in her white Toyota Saloon registration No. KRM 104.

There is I am satisfied on balance a case for award of punitive damages made out against the defendant. As regards damages for pain and suffering and inconvenience undergone by the plaintiff I am satisfied that he must have suffered these to a considerable degree. He was unable to lie in bed because of resultant pain in ribs on any movement of that area. Keeping all the factors in mind and weighing them carefully and giving due consideration to the advanced age of the plaintiff I assess general damages at Kshs 30,000. The plaintiff shall have judgment for Kshs 45,220, made up of Kshs 2,720, special damages and Kshs 42,500, for general and punitive damages inclusive of loss of earnings. Interest on the judgement sum is awarded at court rates from the date of judgement. Costs of the suit are awarded to the plaintiff against defendant.