

Mathi v Mitaboni Bus Service

High Court, at Nairobi March 7, 1985

Cockar J

Civil Case No 2973 of 1980

March 7, 1985, Cockar J delivered the following Judgment.

I am satisfied from the evidence of the plaintiff that the accident took place on account of sole negligent driving of the driver of the defendant's bus KRD 807 in which the plaintiff was a passenger. I accept the plaintiff's evidence as to the injuries he received in consequence of this accident. I also accept that the plaintiff was unable to do his work as a peasant farmer for the period of 7 days of hospitalisation. In view of his annual earning I assess loss of income for 7 days at Kshs 50 per day out of Kshs 350. I also accept the expenses he incurred in getting his broken tooth removed and his injured eye examined and in transport to get the P 3 form filled. I assess expenses thus incurred at Kshs 982. I assess special damages at Kshs 432 including loss of earnings for 7 days.

The medical report fore passed by Dr Ojiambo on February 2, 1987 after he had examined the plaintiff; more or less confirms the injuries that the plaintiff said in his evidence he had received. The injuries, though painful they must have been, appear to have been more of a superficial nature except for the loss of two incisors in the upper jaw and slight flexor and extensor limitation in the right elbow due to fracture of olecranon bone at the level right elbow. The plaintiff must have suffered a considerable traumatic shock and pain. Keeping all the relevant factors in mind I assess the general damages at Kshs 25,000.

I give judgment for Kshs 25,432 made up of Kshs 432 by way of special damages and Kshs 25,000 general damages. Costs are awarded to plaintiff against defendant. Plaintiff is also awarded interest at court rates from today.