



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 537 OF 2011

J N M (minor suing through his father and

Next friend P W N.....PLAINTIFF

V E R S U S –

PATRICK O. NYANYA 1ST DEFENDANT

NASHON ONGANGO ONJENJE..... 2ND DEFENFANT

JUDGEMENT

1) **J N M**, a minor, filed a compensatory suit through his father and next friend, **P W N** against **Patrick O. Nyanya** and **Nashon Onyango Onjenje** for the injuries he sustained when he was allegedly knocked down by motor vehicle registration no. KAC 416D along Kayole road at 'Korna' stage on 12th February, 2011. The defendants filed a statement of defence to deny the plaintiff's claim and blamed the plaintiff for the accident.

2) In the plaint dated 8th December 2011, the plaintiff sought for judgment against the defendant as follows:

- a. Special damages*
- b. General damages*
- c. Costs of the suit*
- d. Interest on (a) (b) and (c) above.*
- e. Any other relief this honourable court deems fit to grant.*

3) When the suit came up for hearing, the plaintiff (PW2) and Dr. Wangata (PW1) testified in support of the plaintiff's case while the defendants closed their case without summoning witnesses to testify in support of their defence. PW1 testified that on the material day, he was at Korna Stage in Kayole when the driver of motor vehicle registration no. KAC 416D drove at high speed and negligently as a result he was hit and sustained severe injuries. The plaintiff further stated that he was knocked down while standing off the road and outside a chemist shop. The plaintiff reiterated the contents of the particulars of negligence enumerated in his plaint. PW1 alleged that the motor vehicle was driven at high speed and as a result, it veered off the road thus ramming into and knocking him. PW1 also stated that the police investigated the accident and blamed the defendants and that is why the driver of the aforesaid motor vehicle was charged with the offence careless driving. The plaintiff also summoned Dr. Wangata (PW1) to testify. PW1 produced a medical report he prepared in which he indicated that the plaintiff had suffered the following injuries as a result of the accident.

- i. Fracture of the left tibia*
- ii. Fracture of the left fibula*
- iii. Fracture of the left femur*
- iv. Fracture of the right tibia*

4) At the close of evidence, learned counsels appearing in the matter were invited to file and exchange written submissions. After taking into account the evidence and the rival written submissions, the twin issues namely: **liability** and **quantum** arose for my determination.

5) On liability, the plaintiff urged this court to find the defendants wholly liable for the accident. The defendants on the other hand have beseeched this court to find that the plaintiff is equally to blame because he failed to prove that the motor vehicle was driven at high speed and recklessly. In sum the defendants are of the submission that liability should be apportioned equally between the plaintiff and the defendants.

6) I have carefully considered both the oral and documentary evidence adduced by the plaintiff and his witness. Their evidence were not controverted nor shaken by the intense cross-examination mounted by the defendants' advocate. It is apparent that the plaintiff tendered evidence showing that he was hit while he was standing outside a chemist shop and off the road. He also tendered evidence showing that the motor vehicle veered off the road, lost control and ended up colliding with the plaintiff. I am satisfied that on a balance of probabilities that the plaintiff proved that the defendants are wholly to blame for the accident.

7) On quantum, the plaintiff proposed to be awarded as follows:

i. *Pain and suffering* ksh.4,500,000/=

ii. *Loss of earning capacity/lost years* ksh.4,111,380/=

iii. *Future medical expenses* ksh. 148,000/=

iv *Special damages* ksh. 105,395/=

v. *Costs of the suit and interest.*

8) The defendant on the other hand proposed that the plaintiff be paid ksh.600,000 for pain and suffering..

9) On loss of earning capacity, the defendants are of the submission that the plaintiff is not entitled to any award because the injuries he sustained have not rendered him totally incapacitated to the extent of not working.

10) On special damages, the defendants proposed that the plaintiff be paid only ksh.28,325/= since he produced documents only proving the aforesaid figure. The defendants further pointed out that the plaintiff pleaded to be paid for future medical expenses but failed to tender evidence proving the same hence he should not be awarded.

11) Having considered the evidence and the rival submissions on quantum, I now make the following awards in favour of the plaintiff. On general damages for pain and suffering, I have already given the details of the proposals by both sides. I have considered the authorities cited by the parties. On this head, the past decisions cited indicate that for near similar injuries, this court has awarded over a period of time figures ranging between ksh.2,000,000/= and ksh.3,000,000/=. Taking into account the inflationary trends, I am of the view that an award of ksh.3,000,000/= is fair , reasonable and within the range of comparable awards.

12) On loss of earning capacity, it is apparent that the evidence of Dr. Wangata is very crucial. The medical reports indicate that the plaintiff's future prospects in the labour market will be affected by residual injuries and in support of the proposal that a workable sum of ksh.527.10 earnings per day should be applied. I find the multiplicand of 25 years to be also reasonable. I think 50% incapacity should be applied.

13) I presume that the plaintiff could work for 20 days in a month if the weekends are excluded. Consequently I make the following award:

527.10(earning per day)x20(days)x12(months)x	
25(years)	=3,162,600
Less 50% incapacity	=1,581,300
Net Total	ksh.1,581,300

14) On future medical expenses I am convinced by the evidence of Dr. Wangata that the plaintiff is entitled to receipt ksh.148,000/=.

15) On special damages, I also satisfied that the plaintiff pleaded and specifically proved a claim for ksh.105,395/=.

16) In the end, I enter judgment in favour of the plaintiff and against the defendants as follows:

i. General pain & suffering ksh.3,000,000/=

ii. Loss of earning capacity

(25x527x20x12 less 50%) ksh.1,581,300/=

iii. Special damages ksh. 105,395/=

iv. Future medical expenses ksh.148,000/=
Total ksh.6,415,695/=

v. Costs.

vi. Interest at court rates from the date of judgment until payment in full.

Dated, Signed and Delivered in open court this 31st day of May, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant