



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL CASE NO. 184 OF 2009

SAMMY MWANIA.....PLAINTIFF

-VERSUS-

NEW JOGOO ROAD HARDWARES LTD.....DEFENDANT

JUDGEMENT

1) On 9.4.2006, **Sammy Mwanja**, the plaintiff, was injured when motor vehicle registration KAT 636H, ZC1911 knocked police motor vehicle registration no. GKA 848G where the plaintiff was on board. The aforesaid motor vehicle is said to be owned by **New Jogoo Timber Ltd**, the defendant.

2) The plaintiff filed this suit in which he sought for both general and special damages. The defendant filed a defence to deny the plaintiff's claim. On 25.8.2014, the parties executed a consent order which was filed in court on 4th September 2014 whereof it was agreed that the defendant and the plaintiff would shoulder 70% and 30% liability respectively.

3) Having agreed on liability, therefore this suit proceeded for hearing on assessment of damages. The plaintiff tendered medical evidence showing that as a result of the accident he suffered the following injuries:

- ***Ruptured diaphragm***
- ***Herniation of the stomach into thoracic cavity***
- ***Liver disfunction.***
- ***Acute renal failure necessitating dialysis***
- ***Empyema of the left thorax necessitating ventilation support.***
- ***Injury to trachea necessitating tracheostomy***
- ***Multiple fractures to the humerus, femur and acetabulum***
- ***Intertrochanteric fracture***
- ***Shortened leg into the hip joint.***
- ***Total loss of the libido.***

4) The plaintiff pleaded to be awarded ksh.13,000/= in respect of physiotherapy, police abstract and hire of transport to and from hospital for 8 months. It is the submission of the defendant that though the sum of ksh.13,000/= was pleaded, the same was not proved as required. I have perused the documents presented in form of invoices, I am satisfied that those invoices represented the expenses the plaintiff incurred even though they are not cash receipts. I grant the plaintiff the sum of ksh.13,000/= as special damages.

5) The other claim the plaintiff had sought is ksh.400,000/= being the amount incurred on corrective surgery. The defendant was of the opinion that the aforesaid claim should not be allowed because the same was not pleaded. With respect, I agree with the submissions of the defendant, that the plaintiff never pleaded for future medical expenses nor did he pray for payment of expenses on corrective surgery.

6) On general damages the defendant proposed an award of ksh.1000,000/= is sufficient. The defendant cited two authorities in support of its proposal. The first case is that of **P.N. Mashru Ltd =vs= Omar Mwakoro Makenge (2018) eKLR** where this court awarded ksh.1,200,000/=.

The second case is that of **Hellen Atieno Oduor =vs= S. S. Mehta & Sons Ltd & Another (2015) eKLR** in which the claimant was awarded ksh.1,500,000/=.

7) Having considered the authorities cited by both the plaintiff and the defendant, it is clear that the authorities cited by the plaintiff are in respect of closely related injuries as opposed to those cited by the defendant which relate to injuries which are not as serious as those the plaintiff sustained in this suit. In the circumstances I find that a sum of ksh.2,000,000/= is reasonable and is within the range of comparable awards.

8) In the end judgment is entered in favour of the defendant thus the plaintiff is awarded as follows:

i. General damages for pain & suffering ksh.2,000,000/=

ii. Special damages ksh. 13,000/=

Ksh.2,013,000/=

iii. Less 30% ksh. 603,900/=

iv. Net total ksh.1,409,100/=

v. Costs of this suit.

vi. Interest at court rates on (i) and (ii) above from the date of judgment until the date of full payment.

Dated, Signed and Delivered at Nairobi this 23rd day of November, 2018.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff/Applicant

.....for the Defendants/Respondents