



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MURANG'A
HIGH COURT CIVIL CASE NO 39 OF 2013
(FORMERLY NYERI HCCC NO. 136 OF 2012)

MARTIN WAIHARO WAWERU.....PLAINTIFF

VERSUS

CECILY NYAGUTHII KARIUKI.....RESPONDENT

J U D G E M E N T

1. The Plaintiff herein sued the Defendant for general and special damages on account of injuries received in a road traffic accident on 04/11/2011 along Thika-Sagana Road. The Defendant never entered appearance nor filed defence, and interlocutory judgement was entered against her on 28/08/2012.

2. Hearing in respect to quantum of damages commenced before Ngaah, J on 10/09/2013 and was completed before me on 25/10/16. Judgement was reserved for 09/12/2016; however, I proceeded on my annual leave on 05/12/2016 and resumed duty on 13/02/2017; hence the delay in preparation and delivery of the judgement.

3. The Plaintiff testified and called three (3) witnesses, two of them (PW2 and PW3) doctors. PW4 is the Plaintiff's father.

4. The Plaintiff suffered a severe neck injury involving "burst fracture" of one of the bones in the neck (C7) leading to total paralysis of the lower limbs and partial paralysis of the upper limbs. PW2 (Dr. Patrick Mwangi) examined the Plaintiff and produced in evidence a medical report (Exhibit 44). His opinion was that –

“...the Plaintiff suffered serious injuries which caused physical pain, emotional and traumatic pain. The injury to the neck was catastrophic. He has developed complications which must be treated for the rest of his life. The injuries amount to 100% total permanent disability/incapacity.”

5. PW3 (Dr. George Kimiri Karanja) examined the Plaintiff on 02/09/2014 and produced in evidence his medical report (Exhibit 45). That medical report is the latest available. PW3 noted that the Plaintiff had complete paraplegia with loss of urine and stool control. His hands were held in semi-flexed position, and had loss of muscle power grade 3. He had no grip ability and so he could not hold objects or write. The doctor also noted a surgical scar on the left anterior aspect of the neck.

6. PW3's assessment and prognosis of the Plaintiff was as follows –

“He sustained (a) grievous injury. The trauma was very significant causing damage to upper region of (the) spine leading to paralysis of (the) lower part of the body and marked weakness of both hands. Due to the injuries he had to be admitted for close to one month. He also had to undergo a complex spine operation. Since the time of (the) accident he has been wheelchair-ridden and dependent on other people for all basic activities. Now it is close to three years since the...accident and the paralysis is still there with no sign of improvement. He was a fourth year university student at the time of the accident and has not been able to resume studies; even if he will ever resume he will have a lot of difficulties in writing. In view of all these factors, his life quality reduced, and in my opinion the degree of permanent disability is 70%”.

7. The Plaintiff has claimed in his plaint general damages for pain, suffering and loss of amenities; “medical expenses after the filing of this suit”; and special damages of KShs 347,755/00. In their written submissions the Plaintiffs’ learned counsels have included damages for –

- (i) Loss of future earnings
- (ii) Loss of consortium

These two items were never pleaded in the plaint dated 25/06/2012, and I cannot find in the court record any amended plaint. The court will not award what has not been pleaded.

8. As for pain, suffering and loss of amenities, I have considered the grave nature of the Plaintiff’s injury (broken neck), the resulting total paralysis of the lower limbs and partial paralysis of the upper limbs. I have taken into account his hospitalization for 23 days, the complex operation of the cervical spine that he underwent, and the recurrent medical attention he will have to endure for the rest of his life.

9. I have also considered that he will never again enjoy the ordinary and simple pleasures of life, like walking and running, social interaction with fellow human beings, male and female. He will never be able to marry and have children....

10. I have considered the cases cited by the Plaintiff’s advocates. Doing the best that I can, and balancing this against that, I will award the Plaintiff KShs 5,000,000/00 for pain, suffering and loss of amenities.

11. Regarding “medical expenses after filing this suit”, learned counsels for the Plaintiff have in their submissions better framed this claim as “future medical expenses and nursing care”. The Plaintiff shall need for the rest of his life assistance for all his needs, night and day. He must be fed, he must be bathed, he must be turned in bed in order to avoid bed-sores. He is incontinent in urine and stool, and so he must be cleaned constantly and his catheter and diapers changed. His muscles and joints must be massaged and exercised daily to avoid atrophy. And much, much more. His advocates have suggested a monthly sum of KShs 20,000/00 for the rest of his life. This is a reasonable figure. He was 21 years old at the time of the accident in November 2011. He is now about 26 years old.

12. There is no medical opinion on the life expectancy of a person in the Plaintiff’s condition, but I see no reason, all things being equal, why he should not have a normal life expectancy. Having looked at the cases cited by the Plaintiff’s advocates, I will award a multiplier of 25 years.

13. Damages for future medical expenses and nursing care therefore amount to KShs 6,000,000/00 calculated as follows – $KShs\ 20,000/00 \times 12 \times 25 = KShs\ 6,000,000/00$

14. Special damages of KShs 347,755/00 were specifically pleaded and strictly proved by way of receipts . I will award the same.

15. In summary therefore, I hereby enter judgement for the Plaintiff against the Defendant as follows –

- (a) General damages.....Kshs.5,000,000/00

(b) Future medical expenses.....6,000,000/00

(c) Special damages.....347,755/00

There shall be interest at court rates on the general damages and the future medical expenses from the date of judgement until payment in full. There shall also be interest at court rates on the special damages from the date of filing suit until payment in full. It is so ordered.

16. The Plaintiff shall have costs of the suit and interest thereon at court rates from the date of filing suit until payment in full.

17. Judgement accordingly.

DATED, SIGNED AND PRONOUNCED IN OPEN COURT AT MURANGA THIS 24TH DAY OF FEBRUARY 2017

HPG WAWERU

JUDGE