



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL CASE NO. 36 OF 2015

ANTHONY KARIUKI NJENGAPLAINTIFF

VERSUS

SHREEJI ENTERPRISES (K) LIMITEDDEFENDANT

JUDGMENT OF THE COURT

1. By a consent dated 26/09/2016 and filed on even date, Parties agreed on the following terms:-

(a) Liability is apportioned at 80% to 20% in favour of the Plaintiff.

(b) The parties to file written submissions on the question of quantum of damages for assessment by the court.

(c) The court to be guided by the parties respective medical reports as filed to be admitted without calling the makers.

2. The first medical report is dated 10/04/2015 and prepared by Dr. George K. Karanja of Prime Medical Services limited. According to the said doctor the Plaintiff had sustained a fracture of right femur lower 1/3 and had been admitted at Coast general Hospital for 37 days. The right knee was immobile and there were two healed scars on right lower limb with slight muscle wasting. According to the said doctor the Plaintiff was not able to perform his duties for about 4 months and that the stiffness of the knee requires extensive physiotherapy while the plate requires removal upon healing of the fracture at an estimated costs of Kshs.50,000/=.

3. The second medical report is dated 2/3/2016 and prepared by Dr. Joab Bodo who confirmed that the Plaintiff had sustained a comminuted fracture of lower right femur which was treated using Retrograde Interlocking Nail. He noticed restriction of full flexion in the right knee joint and that on examination the Plaintiff walked with slight limp on right leg using a walking stick. The doctor further noticed a shortening of right leg by 1½ centimeters and further there was union of the fracture as per the X-ray. He formed the opinion that with continued physiotherapy flexion in the right knee joint may improve but will not be as before. He further opined that removal of the implants (Nail and Screws) is not mandatory. The said doctor put a permanent disability of 10%.

4. Counsel for the Plaintiff proposed the sum of Kshs.900,000/= for pain and suffering as well as a further sum of Kshs.50,000/= being future medical expenses plus special damages of Kshs.92,510/=. Counsel also submitted on loss of future income and proposed a multiplier of 21,000 per month for 13 years and factoring the 20% contribution would give a net sum of Kshs.1,096,080/=. The following cases were relied upon namely:-

(a) NBI HCCA 329/2003 – DESMOND LEMPOKO =VS= KENYA COMMERICAL BANK.

(b) NBI C.A.C.A. 133 OF 2005 PAUL N. NJOROGE =VS= ABDUL SABUNI SABONYO.

5. Counsel for the Defendant proposed a gross award of Kshs.400,000/= as general damages for pain and suffering. The following cases were relied upon namely:-

(a) JOSEPH MUSEE MUA =VS= JULIUS MBOGO MUGI – NBI HCCC NO.86/2008.

(b) FRANICS MAINA KAHURA =VS= NAHASHON WANJAU MURIITHI – EMBU HCA NO.25/2013.

6. I have considered the submissions of counsels for the Plaintiff and Defendant as well as the authorities cited. It is not in dispute that the Plaintiff had been injured in a road traffic accident and had sustained injuries. The two doctors who examined him have all agreed that the major injury was the fracture of third right femur and for which some nail and screws were inserted and which are yet to be removed. The Plaintiff's right leg was shortened by about 1½ centimeters. Both doctors recommended physiotherapy. However, Dr. Karanja was of the opinion that the removal of the nail and screws would need a sum of Kshs.50,000/= whereas Dr. Bodo suggests that it is not mandatory. On general damages for pain and suffering I find that from all the authorities cited by learned counsels, the case of **FRANICS MANA KAHURA =VS= NAHASHON WANJAU MURIITHI – EMBU HCA NO.25/2013** is quite relevant in that the Plaintiff therein had sustained a fracture of right femur and cut wound on the right knee. The authority was decided on 23/04/2015 and is therefore a most recent authority. The Plaintiffs injuries are more or less comparable to those in the cited authority. In the cited case the court had awarded general damages of Kshs.500,000/= for pain and suffering. I am persuaded by that authority and proceed to factor the effect of inflation on the value of the shilling and find that an award of Kshs.700,000/= would be adequate as general damages for pain and suffering. I also award the sum of Kshs.50,000/= for future medical expenses needed for the removal of the nail and screws since the same were specifically pleaded and proved through the medical reports of the doctors. The claim for loss of income was not proved by the Plaintiff since despite claiming a sum of Kshs.1,400/= per day for remainder of his active life of 13 years, there were no records from his employer such as employment letters or payslips and therefore this claim is rejected. I award special damages of Kshs.42,510/= as receipts were presented and further same were pleaded.

7. In the result judgement is entered for the Plaintiff against the Defendant as follows:

(a) Pain & sufferingKshs.700,000/=

(b) Future medical expensesKshs. 50,000/=

(c) Special medical expensesKshs. 42,000/=

Kshs. 792,510/=

Less 20% contribution.....Kshs. 158,502/=

NET.....Kshs. 634,008/=

The Plaintiff is also awarded costs for the suit plus interest.

Dated, signed and delivered at Machakos this 18th day of MAY 2017.

D. K. KEMEI

JUDGE

In the presence of:-

Chris Maina for the Plaintiff

C/A: Kituva