



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO.139 OF 2012

B K M.....PLAINTIFF

VERSUS

CHRISTOPHER KOMEN.....DEFENDANT

JUDGMENT

FACTS

The plaintiff minor was walking along the Nakuru-Eldoret highway around Crater Area when the defendant whilst driving motor vehicle registration number KBK 290Y knocked down the minor thereby occasioning serious bodily injuries to the said minor. The plaintiff filed suit seeking damages as a result of the injuries suffered arising from the road traffic accident.

ISSUES FOR DETERMINATION

Upon reading the respective written submissions the only issue for determination relates to quantum as the issue of liability has already been agreed upon by the parties at a ratio of 80:20 in favour of the plaintiff and a consent order to this effect was recorded in Court.

I will therefore only address the issue of quantum of damages.

GENERAL DAMAGES

The injuries suffered by the plaintiff are listed in the plaint filed on 26th April, 2012 as:

- i. Patient unconscious with GCS (Glasgow coma scale) of 8/15, AVPU at P, pupils bilaterally reacting slowly to light.**
- ii. Paralysis of the left upper limb and bilateral lower limbs.**
- iii. Swollen face on the left side with tongue protrusion.**
- iv. Swollen (soft tissue injuries) left periobital area with occlusion of the eye.**
- v. Cut wounds, 4 cm left supraorbital region and laceration at the scalp with multiple bruises in all limbs shoulder and legs.**
- vi. Fractures of the left maxillary antrum and subsequent raised intracranial pressure.**
- vii. Major bruises at the right shoulder, right knee, dorsal aspects of hands and foot (bilaterally).**
- viii. Fracture (depressed) of the left parietal region with foreign bodies, injury at the Broca's area.**

ix. Pain and blood loss on the affected areas.

These injuries have been confirmed by the medical reports of Dr Magare Gikenyi, Dr. Kiamba and Dr. Malik.

The good doctors have all unanimously concluded that the injuries suffered by the plaintiff have rendered him 100% incapacitated. As a result of this incapacitation, the plaintiff suffers from incontinence – meaning he cannot control stool or urine. Further, the plaintiff cannot talk or feed himself and has weakness to the left side of his body.

It is not in dispute that the injuries suffered by the plaintiff are grievous and have greatly reduced his quality of life.

This Court has to bear in mind the principles that guide assessment of damages as espoused in **West (HI) and Sons Ltd V. Shepherd** (1964) AC 326 which was adopted in the case of **Cecilia Mwangi & Another V. Ruth Mwangi** CA 251 /1996 where Lord Morris said:

“But money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavor to secure some uniformity in the general method of approach. By common constant, awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible, comparable injuries should be compensated by comparable awards. When all this is said it still must be that amounts which are awarded are to a considerable extent conventional”.

I am also guided by Lord Denning’s decision in **Kim Pho Choo V. Camden & Islington Area Health Authority**, (1979) 1, ALL ER 332 which was adopted in the case of **Nancy Oseko V. Board of Governors Masai Girls High School** [2011] eKLR where Wendoh, J stated that,

“In assessing damages, the injured person is only entitled to what is in the circumstances, a fair compensation, for both the plaintiff and the defendant.the plaintiff cannot be fully compensated for all the loss suffered but the court should aim at compensating the plaintiff fairly and reasonably but in the process should not punish the defendant.”

The plaintiff’s Advocates have prayed for general damages in the sum of Kshs.15,000,000/=. They have relied on the case of **Rukia Mugoyia V. Johnson Ogutu & Another**, [2007]eKLR. The plaintiff in the said case suffered severe injuries after a road traffic accident. The said injuries left her with permanent disability of 100%. As a result she suffered from incontinence and an inability to walk. The Court awarded general damages of Kshs.12,500,914/=.

The defendant on the other hand have prayed for general damages to be awarded at Kshs.3,000,000/=. They have relied on the case of **Mary Njoki Macharia V. James Oyugi** [2014]eKLR. The plaintiff therein suffered grievous injuries that left her completely disabled. As a result she also suffered from incontinence and inability to walk as a result of her injuries. The Court awarded total sum of Kshs. 3,760,000/= as general damages.

Using comparable awards, I am guided by the case of **Ngure Edward Karega V. Yusuf Doran Nassir** [2014] eKLR. The plaintiff therein suffered injuries whose effects are comparatively similar to those of the plaintiff herein. I shall therefore award the plaintiff general damages in the sum of Kshs.6,000,000/=.

FUTURE MEDICAL EXPENSES;

The plaintiff has prayed for a sum of Kshs.12,000,000/= being the cost of nursing care for 50 years and for Kshs.1,825,000/= being the cost of epilepsy medicine for 50 years.

On the other hand the defendant has proposed a global sum of Kshs.800,000/=.

I will adopt a multiplier of 10 years considering the minor should be about 11 years old. Therefore future medical expenses are hereby computed as follows:

Nursing care: $10 \times 12 \times 9,000 = 1,080,000/=$

Epilepsy pills: $10 \times 365 \times 100 = 365,000/=$

SPECIAL DAMAGES;

The plaintiff pleaded for a sum of Kshs.60,000/= being medical expenses. There is however no evidence that this sum was incurred and paid. There is a cost sharing invoice attached to the plaintiff's submissions for an outstanding sum of Kshs.7,550/=. It is not clear if this amount was paid. The plaintiff has only managed to prove Kshs.550/= which has been supported by receipts attached to his submissions.

I will award the Plaintiff a sum of Kshs.9,000/= for the medical reports and also award Kshs.500/= for the motor vehicle registry search. These have been supported by receipts attached to the plaintiff's submissions.

Special damages are therefore awarded in the total sum of Kshs.10,050/= and costs of this suit.

DETERMINATION

Judgment is hereby entered in favour of the plaintiff against the defendant as follows;

Liability : 80%: 20%

General damages :

Kshs.6,000,000/- Less 20%.....Kshs.4,800,000/-

Future Medical expenses:Kshs.1,445,000/-

Less 20%.....Kshs.1,156,000/-

Special damages.....Kshs. 10,500/-

Total.....**Kshs,5,099,500/-**

The plaintiff shall have costs of the suit.

Interest shall be at court rates.

Orders Accordingly.

Dated, Signed and Delivered at Nakuru this 26th day of August, 2015.

A. MSHILA

JUDGE