



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL SUIT NO. 10 OF 2012

DAVID KARIUKIPLAINTIFF

VERSUS

PETER KIARIE WAMBUI.....1ST DEFENDANT

RUTH NJERI.....2ND DEFENDANT

JUDGMENT

The plaintiff (**DAVID KARIUKI**) filed this suit against **PETER KIARIE WAMBUI** (1st defendant) and **RUTH**

NJERI (2nd defendant) as a result of an accident which occurred on 21/11/2011 along Gilgil-Naivasha Road, involving motor vehicle registration **KBJ 447S**, and **KAN 726W/ZC-448S Mercedes Benz trailer**. The plaintiff who was travelling in motor vehicle **KBJ 447S**, as a fare paying passenger sustained injuries for which he sought general and special damages and loss of future earnings and amenities.

Subsequently, parties recorded consent on liability at **85:15%** in favour of the plaintiff.

The parties also agreed to have the medical reports prepared by Dr. Kiamba and Dr. M.S. Malik admitted as evidence. Dr. W.K. Kiamba's findings were that the plaintiff lost consciousness after the accident and had to undergo surgery as a result of the injuries he suffered in the road traffic accident. He was re-admitted to hospital several times, the most significant one being the admission when he was found to have an infected non-union of the right leg. On that occasion debridement and sequestrectomy was done, as well as bone transplant and exfoliation.

The Dr. noted the following injuries:-

- (1) Fracture of two upper incisors teeth which eventually resulted into loss of those teeth.**
- (2) Head injury with deep cut wound on the Occipital laceration on the left periorbital region.**
- (3) Fracture of the left ulna and radius and Multiple cut wounds on the left forearm.**
- (4) Fracture of the femur.**

(5) Amputation of the left lower limb below the knee.

(6) Compound comminuted fracture of the right tibia and fibula.

Upon examination, the plaintiff complained of.-

(a) Inability to walk without support using one crutch.

(b) Weakness of the right lower limb.

(c) Stiffness of the right ankle and knee joints.

(d) Occasional severe headache especially when it is cold.

(e) Blurring of vision.

(f) Pain on the left thigh.

(g) Pain in the amputation stump of the left leg.

(h) Pain in the left knee joint.

He had multiple scars on the forearm, and a surgical scar on the left thigh, while the right leg was deformed, with loss of soft tissue, and prominent scars on the right thigh at the lower site for the skin graft. There was restricted flex movement on right knee, and the movement of the ankle joint was restricted. Overall, the function of the right lower limb was reduced.

The prognosis was that although the injury on the head healed, there was a depressed permanent scar on the scalp, with loss of hair which necessitated covering the head whenever exposed to the sun thus predisposing him to skin cancer. He had suffered a permanent disability of the left lower limb and had been fitted with an artificial limb which would require replacement every 3-5 years.

Dr. Kiamba assessed the permanent disability at 60%.

Dr. Malik's report confirm the deep cut wound on the back of the head, and cut around both eyes, loss of teeth, and the fractured limb noted by Dr. Kiamba. The loss consciousness and amputation of the left lower limb, and surgery procedures were also noted by Dr. Malik.

He too assessed the Permanent disability at 60%.

The matter was disposed of by way of written submissions. Relying on the decision in **D K M & ANOTHER V P.S. OFFICE OF THE PRESIDENT - MERU HCCC NO.15 OF 2004**, counsel suggested general damage of Kshs.8 million for pain and suffering. Under this head, defence offered Kshs. 1.5 million citing the case of **DAVID KIGOTHO IRIBE V JOHN WAMBUGU NDUNGU and DOLPHIN COACHES LTD [2008]eKLR**.

I have taken into consideration the injuries suffered by the plaintiff - actually his injuries are more extensive than those suffered in the cases cited by defence counsel, because, first apart from amputation of the left limb, there is the loss of the teeth and the fractures on the right limb and the injury to the scalp which predisposes the plaintiff to skin cancer. However, I think **D K case** dealt with far more serious injuries and the residual effects were far worse than the present case, as in D's case she ended up with loss of sexual function, loss of bladder and bowel control and permanent paraplegia.

I also take into account the rate of inflation and the behaviour of the Kenyan shilling *vis a vis* the current economic trends. In my view the sum of Kshs 3 million is sufficient (three million only) and I so award.

Special Damages pleaded totalled Kshs.550,200/=, the amount proposed is Kshs.635,067/=, while defence conceded to Kshs.662,938/=. It seems a supplementary list of documents consisting of special damages was filed and both parties have relied on them. Consequently special damages are awarded @ Kshs.635,067/- (Six hundred and thirty five thousand and sixty seven shilling only).

Loss of Future Earnings

At the time of the accident, the plaintiff was a young man aged 27 years (as per the medical report). He was a tour guide at a salary of Kshs.45,000/ = per month. The 60% disability has rendered him unemployable. This is because the nature of his work requires someone who can drive and is physically mobile and can walk. The plaintiff's counsel submits that plaintiff could have worked until the attainment of 60 years, and this means he lost 33 years of earnings. He proposes a sum of Kshs. 10,692,000/= calculated as follows:

$$45,000/ = \times 12 \times 33 \times 60\%$$

On the other hand, defence proposes Kshs.300,000/ = for loss of future earnings. It is pointed out that the plaintiff did not produce any payslip or documents to show how much he earned.

However there was a letter from his employer confirming that he earned a salary of Kshs.45,000/ = . The letter from the employer, unfortunately does not disclose whether Kshs.45,000/ = per month was his gross salary or net salary, the only logical inference to draw is that this was his gross salary, so if there were statutory deductions, it would bring it down to Kshs.40,000/=. The retirement age for persons in public service is 60 years. It is not clear what age limit was set by the plaintiffs employer, so I will use that 60 years as the limit to work at meaning lost years is 33.

$$40,000/= \times 60/100 \times 33 = 91504,000/=$$

I consider a reasonable figure.

Future Medical Expenses

These were sought in the amended pleadings as the cost of hiring a nurse or maid at Kshs.8 , 000/ = . It is not clear what confirms this, as the medical reports suggest that the plaintiff is healed and has the use of an artificial limb and a wheel chair - so although his movements are somehow restricted he is not a destitute. The cost of the artificial limb for future replacement and the services of a nurse seem to be figures plucked out of the abacus and I find no basis upon which to award this.

The sums awarded are:-

a) General Damages - **Kshs.3, 000,000/=**

b) Special Damages - **Kshs.635, 067/=**

c) Loss of Future Earnings - **Kshs.9, 504,000/=** less 15% contribution . **Total 13,139,067/=** less 15% contribution to give a net sum of Kshs. **12,058,207/=** only.

Costs of the suit are awarded to the plaintiff plus interest on the sum at court rates from date of judgment until payment in full.

Delivered and dated this 13th day of August, 2014 at Nakuru.

H. A. OMONDI

JUDGE