



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

Civil Case 345 of 1995

WILLIAM CHEROBON.....PLAINTIFF

-VERSUS-

ONGERE BOSIRE

NELSON J. BICHANGA..... DEFENDANTS

JUDGMENT

The plaintiff filed suit against the defendant seeking to be paid damages both special and general on account of injuries that he alleges to have sustained when a motor vehicle belonging to the defendants was involved in an accident on 2nd June 1994 at Chepangulge.

On 22nd November 2011, Counsel for the parties to the suit entered into a consent whereby liability was apportioned between the parties at the ratio of 78:22 in favour of the plaintiff. The plaintiff agreed to bear 22% liability while the defendant was to bear 78% liability.

The issue left to the determination of this court is the quantum of damages to be paid to the plaintiff. The plaintiff testified as PW 1 and stated that as a result of the accident he sustained injuries on the shoulder, upper hand, ribs and waist.

He told the court that the shoulder was pressed in. Immediately after the accident, he was treated at Kaplong hospital and subsequently thereafter at Borabu and Kaison Nursing Homes. He produced the receipts and medical documents indicating that he was treated in the said medical facilities as plaintiff exhibits No. 1 and 20(a), (b) and (c).

He reported the accident at the police station (police abstract produced as plaintiff's exhibit No. 5). After filing suit the plaintiff was examined by four doctors who prepared their medical reports and which were produced as exhibits in the case. The doctors who saw the plaintiff were **Dr. J. Obondo, Dr Hicks, Dr. P. Pandya and Dr. E. Ogeno**. The plaintiff told the court that he was still suffering from back ache, and was unable to sit down for long hours.

The defendant did not call any witness. After the close of both the plaintiff's and the defendants' respective cases, their counsel filed submissions.

According to the plaintiff, taking into account the injuries he had sustained, he should be paid general damages for pain, suffering and loss of amenities of Kshs.1,000,000/= plus the proven special damages of

Kshs.42,271/= This is before contribution of 22%. On their part the defendants submitted that the plaintiff should be awarded general damages of Kshs.300,000/= The defendant submitted that the plaintiff had not established the special damages claim.

Having carefully evaluated the proceedings before the lower court including the medical reports tendered and submissions thereon, it is clear that the plaintiff sustained many injuries including; fracture of the traverse process of the lumbar vertebrae with compression of the body, fracture of the lumbar vertebrae 5, and spodylolisthesis of the lumbar 5 which condition implies that Lv5 has slipped forwards on SV1. The plaintiff also sustained dislocation of the right shoulder joint which had stiffened and frozen. It is clear that the plaintiff sustained injuries which have caused him to have permanent change of his lifestyle.

In his testimony before court he told the court that he was still suffering pain and could not sit down for a long time. He also stated that he was no longer able to work.

Taking into consideration the injuries sustained by the plaintiff and the cited authorities including ***Nakuru HCC No. 166 of 2004 Jecinta Wanjiku vs Samson Mwangi, Nairobi HCCC No. 1150 of 2001 Anthony Mwonderu maina vs Samuel Gitau Njenga, Mombasa HCC No. 70 of 1997 Edward Namili Katana vs CMC Motor Group Ltd & another and Kericho HCC No. 70 of 2000*** and doing the best that I can in the circumstances; and, further taking into account the rate of inflation since the said decisions were rendered, I award the plaintiff general damages for pain, suffering and loss of amenities at eight hundred shillings (Ksh.800,000/=). I further award the plaintiff special damages of forty two thousand, two hundred and seventy shillings (Kshs.42,270/=) which was proved.

Since the parties had agreed on apportionment of liability, the plaintiff is awarded the sum of **Kshs.842,270 less 22% (185,299/=)**. He is to be paid six hundred and fifty six thousand, nine hundred and seventy one shillings (Kshs.656,971/=) Interest on the awarded sum shall be paid at court rates from the date of delivery of this judgment. The plaintiff will have the costs of the suit.

It is so ordered.

Judgment dated, signed and delivered at Kisii this 20th day of September, 2012.

R. LAGAT-KORIR

JUDGE

In the presence of :

Edwin Mongare Court clerk

.....Counsel for the plaintiffs/Appellant

.....Counsel for the defendants/respondent

R. LAGAT-KORIR

JUDGE