



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUSIA

Civil Case 24 of 2005

EVANS ODHIAMBO.....PLAINTIFF

-VERSUS-

SAMSON WAWIRE OGEMA.....DEFENDANT

J U D G E M E N T

The plaintiff Evans Odhiambo in his amended plaint dated 19th October 2005, sued the defendants SAMSON WAWIRE OGEMA and MUNIAL LALJI KAYEDIA for injuries sustained in a road traffic accident on the 1st February 2005. The claim is based on negligence on part of the defendants driver for while registration number KAA 682 E Toyota Corolla. The defendants deny their claim in their written statement of defence.

The plaintiff (PW2) testified that on the 01/02/05 around 9.00 p.m., he was waling on a footpath along Nambale /Busia road near Nambale shopping centre. He was with eight (8) other people going to watch a football match. The defendant's vehicle came from behind and hit plaintiff causing bodily injuries. The vehicle lost control and found the plaintiff off the road. He blames the defendant for negligence in the manner the vehicle was driven. The doctor (PW1) produced the medical report, the P.3 form and a receipt.

The defendant was served but did not attend court for hearing. In his defence, he blames the plaintiff for walking on the wrong side of the road and for attempting to cross the road. The plaintiff denied these allegations in his testimony.

The plaintiff produced a copy for records for vehicle registration number KAA 682E Toyota saloon registered in the name of MUNIAL H. LALJI KOYEDIA who is the second defendant and named as the owner of the vehicle. This is sufficient proof of ownership of vehicle.

The 1st defendant is sued in his capacity as the driver of the vehicle at the material time. The police abstract names him as the driver, the details for the accident are given in the police abstract. The plaintiff EVANS ODHIAMBO is named as the one of the injured persons. The plaintiff has proved that an accident occurred on 01/02/05 involving him and the defendants motor vehicle and that he was injured as a result of the impact.

The plaintiff testified that the vehicle veered off the road and hit him while on the footpath. Veering off the road can only be blamed on the defendant's driver. The defendants did not give any evidence to exonerate the themselves. The 2nd defendant is vicariously liable for the actions of his driver. The evidence of the plaintiff remain uncontroverted. He denied the allegations of negligence attributed to him in the statements of defence. In the absence of other evidence to controvert that of the plaintiff, I find that the plaintiff has proved his case on the balance of

probabilities. I enter judgement in his favour against the defendants jointly and severally on full liability.

The medical report shows that the plaintiff suffered the following injuries:-

- (a) Compound fracture of the right radius and fibula bones leading to amputation of the right leg.
- (b) Bruised wounds on the left shoulder and left arm.
- (c) Bruises on the forearm and near right wrist.
- (d) Blunt soft tissue injuries on the face and right cheek.

He was admitted in hospital for a period of four and a half (4 1/2) months and was discharged on crutches. At the age of 22 years and a student at the time of the accident, the plaintiff was rendered unproductive in his prime years He stopped schooling due to immobility. He has ugly scars on the face, limbs and keloid on the lip – which are of cosmetic significance.

The plaintiff was represented by Mr. Onsongo who cited the case of SAMUEL WANGURU NJOROGI VS KENYA BUS SERVICES HCCC 495 of 1998 where the 26 year old plaintiff was awarded KShs. 1,200,000/= for general damages and Shs. 864,000 for loss of future earning due to amputation of the leg in the year 2000.

I find the case relevant to the one herein. I award the plaintiff general damages for loss of amenities of Kshs. 1,000,000/=.

The plaintiff was not employed at the time of the accident. He was not trained for any career and his earnings can only be based on minimum gazetted wage in Kenya. He told the court that he used to sell snacks as a student and earned Shs. 3000/= a month. There were no income support records produced.

The plaintiff was 21 years old at the time of the accident. He would have earned Shs. 5,000/= in way of unskilled labour from the time he finished form IV class (at 22 years) up to the age of 50 years. The deceased is single and yet to get married. I therefore apply a multiplier of 30 years and multiplicand of Shs. 5000/= thus $5000 \times 36 \times 12$.

I therefore award the plaintiff KShs. 1,800,000/= for loss of earnings.

I award special damages of KShs. 4000/= as per receipts.

The total award is Kshs. 1,804,000/= payable to the plaintiff by the defendant plus costs of the suit.

The plaintiff is awarded costs of the suit.

F.N. MUCHEMI
J U D G E

The Judgment delivered in the presence of Mr. Onsongo for the plaintiff on the 2nd February 2010.