



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Case 42 of 1996

KERINA OLONDE.....PLAINTIFF

VERSUS

AKAMBA PUBLIC ROAD SERVICES LTD..DEFENDANT

JUDGMENT

This is a claim for both general and special damages for the injuries the plaintiff suffered in a road traffic accident on or about 6th December, 1993 along Nakuru-Eldoret road involving the defendant's vehicle and another. Liability has been apportioned by the consent of the parties at 20% against the defendant and 80% against the third party.

The proceedings against the third party were abandoned. When I pointed to the parties that I will, in the circumstances, not award any damages against the third party, they concurred and requested me to assess damages against the defendant only. So my task here is to assess the damages against the defendant at 20% liability.

Dr. J. K. Gichimo examined the plaintiff on or about 30th October, 1996. Dr. Ashwin Madhiwala also examined him and gave a second opinion. These reports as well as the P3 form list the plaintiff's injuries as follows:-

1. Traumatic abortion,
2. Crack fracture of the left clavicle (collarbone),
3. Closed fracture of left ulna/radius.

The fracture of the left arm was manipulated and immobilized in plaster of paris and arm sling support. The injured clavicle was immobilized in figure of eight crepe bandage. Bleeding from the traumatic abortion was evacuated in theatre. She was given intravenous fluids, antibiotics, and analgesics.

While Dr. Madhiwala opined that the plaintiff healed well with no residual pain or discomfort, Dr. Gichimo stated the fractured clavicle united with identified depression causing tenderness of the surrounding muscles. DR. Gichimo also stated that the fractured ulna and radius show malunion with thickening and tenderness around the site.

Citing several authorities, in their written submissions, counsel for the plaintiff suggested an award for every injury and come up with a figure of Kshs.950,000/= for pain and suffering and and special damages of Kshs.1,600/=.

Also citing several authorities, counsel for the defendant on their part think and award of Kshs.200,000/= will adequately compensate the plaintiff for these injuries.

I have considered these submissions. The traumatic abortion is permanent and as Dr. Gichimo said will continue having psychological effect on the plaintiff for the rest of her life. As I have stated, he also said the fractured clavicle united with identified depression causing tenderness of the surrounding muscles and the fractured ulna and radius show malunion with thickening and tenderness around the site.

In the old case **Grace Wanjira Gachoki Vs Francis Mbai & Another, Nairobi HCCC No. 4738 of 1987**, Mbogholi-Msagha J awarded a sum of Kshs.140,000/= on 5.7.1992 to the plaintiff who suffered a miscarriage as a result of the injury to the abdomen. That was about 18 years ago. Taking into account the traumatic abortion and other injuries the plaintiff suffered I award her a sum of Kshs.2,000,000/= for pain and suffering and loss of amenities. I also award her Kshs.1,600/= special damages claimed in the plaint as the fees for the medical and police abstract reports.

In the upshot I award the plaintiff a sum of Kshs.400,320/= made out as follows:-

1. Paining and suffering and loss of amenities -Kshs.2,000,000.00	
2. Special damages.....Kshs.	<u>1,600.00</u>
Total.....Kshs.	2,001,600.00
Less 80% "contribution".....	<u>Kshs. 1,601,280.00</u>
Net award.....	<u>Kshs. 400,320.00</u>

The plaintiff shall also have interest on this award as well as costs and interest thereon at court rates from the date of taxation.

DATED and DELIVERED at Nakuru this 29th day of June, 2010.

D. K. MARAGA
JUDGE.