



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
Civil Case 50 of 2007

ESTHER DORCA BOCHERE ONYANCHA PLAINTIFF

VERSUS

ZACHARIA OKEMWA MANONO)

SEVEN STAR IMPEX) DEFENDANTS

JUDGMENT

On 4th June, 2006, the plaintiff was waiting for a vehicle at Etago Market. She saw two vehicles approaching the stage where she was. She stopped the first one but the one that was behind hit her while she was standing. It was being driven by one Henry Obaigwa, as the authorized driver, agent and/or servant of the first defendant. The first defendant was the special owner of the said motor vehicle, having purchased the same from the second defendant, although a formal transfer had not been registered. A copy of Records from the Registrar of Motor Vehicles, (P.Exh.5), showed that as at 7th November, 2006 the motor vehicle was still registered in the second defendant's name.

As a result of the said accident, the plaintiff sustained severe injuries. The vehicle dragged her on a tarmac road causing her very severe friction injuries to the whole body. She was admitted to Ram Hospital in Kisii immediately after the accident before she was referred to Aga Khan Hospital, Kisumu, the next day where she was admitted to the Intensive Care Unit for two weeks. Thereafter she was taken to the general ward where she remained for a bout two months.

Dr. W. M. Marwa, PW2, testified and produced the plaintiff's medical report. According to the report, (P.Exh.9), the plaintiff sustained the following injuries:

(a) Burn-like wounds in most parts of the body

from head to toes.

(b) Deep lacerated wound on the anterior aspect

of the left ankle joint with loss of skin and deeper

tissues.

(c) A lacerated wound on the occipital part of the head.

(d) Multiple rib fractures on the left side.

(e) Deep cut wounds on the scalp and face.

The plaintiff suffered a lot of pain due to the said injuries. The wounds healed well but the scars from the friction burns were still very painful, itchy and very ugly. The plaintiff still suffers chest pains from the rib fractures and headaches. She also has a limping gait due to the leg wounds.

PW2 charged Kshs.3000/= for the medical report. The plaintiff produced a receipt in respect thereof (P.Exh.10).

The plaintiff prayed for special damages as hereunder.

- (a) Expenses on treatment Kshs.401, 099/=
- (b) Medical reportKshs. 3,000/=
- (c) Police Abstract Kshs. 100/=
- (d) Taxi Hire Kshs. 12, 000/=
- (e) Breakfast and LunchKshs. 2,100/=
- (f) Motor Vehicle Search ... Kshs. 500/=

Total shs. 418,799/=

The plaintiff produced receipts in proof of the aforesaid items.

Subsequent to the occurrence of the said accident, the first defendant's driver was arrested and charged with driving an unroadworthy motor vehicle contrary to section 106 (1) of the Traffic Act and driving an un-authorized class of motor vehicle contrary to section 30(1) of the Traffic Act. That was in Traffic case No.521 of 2006 before the Senior Resident Magistrate's court at Ogembo. He was convicted on both counts and sentenced accordingly. The proceedings in the said case were produced as P.Exh.6.

The defendants were duly served with summons to enter appearance but neither of them did so. Interlocutory judgment was therefore entered against them and this case proceeded to formal proof.

From the evidence on record, it is evident that the first defendant's driver drove motor vehicle registration number KAV 205 J negligently. In the circumstances under which the accident occurred, the doctrine of Res ipsa Loquitor is applicable. The said Henry Obaigwa was driving the said motor vehicle as the authorized driver, agent and/or servant of the first defendant and the latter is therefore vicariously liable. Since the second defendant is also the registered owner of the motor vehicle and did not file any defence, he is equally liable. I enter judgment on liability against the defendants jointly and severally.

Regarding quantum of damages, the plaintiff's advocate urged this court to award general damages amounting to Kshs.2, 319,200/-. He relied on the case of MICHAEL MAINA & ANOTHER VS STANLEY KIGARA KAGOMBE, civil appeal no.109 of 1996. In that case the Court of Appeal increased the sum of Kshs.1, 719,200/= that had been awarded by the High Court as general damages.

However, I found this authority to be unsuitable for comparison because the plaintiff therein suffered much more grave injuries than the plaintiff herein. In the above cited case, the plaintiff suffered, inter alia, permanent blindness of the right eye, fracture of the right frontal bone, right clavicle, right 3rd and 7th ribs, fracture of the base of the first metacarpal bone and many other bodily injuries.

The High Court awarded general damages, for pain, suffering and loss of amenities in the sum of Kshs.500, 000/= and damages for future loss of earnings at Kshs.1, 219, 200/=.

The Court of Appeal did not interfere with the award of Kshs.500, 000/= for general damages but increased damages for loss of earnings by Kshs.600, 000/=.

In this case, the plaintiff was 30 years at the time of the accident and was employed by the Judiciary as a court clerk. It is not in dispute that she suffered severe injuries. She must have endured considerable pain throughout the period of her treatment. She did not, however, suffer any loss of earnings as a result of the accident and neither was it shown that she stands to suffer such loss in the future. In any event, there was no claim to that effect.

In STANLEY MAORE VS GEOFFREY MWENDA, Civil Appeal No.147 of 2002, the High Court awarded the respondent general damages of Kshs.300, 000/=. He had suffered injury to the right shoulder, injury to the chest, injury to the back and injury to the left leg with haematoma. He healed well but still suffered back pain and pain on the left

hip. The appellant filed an appeal against that award, arguing that it was excessive. The Court of Appeal reduced the award

to Kshs.100, 000/=.

In MWANIA NZAUMI VS KENYA BUS SERVICES LIMITED, Civil Appeal No.302 of 2002, the appellant suffered injury to his right leg which led to amputation of the leg above the knee. He also suffered multiple fractures of the left leg. The High Court awarded general damages of Kshs.250, 000/= for pain, suffering and loss of amenities. On appeal, the Court of Appeal increased the award to Kshs.800, 000/=.

In assessment of damages, the general method of approach should be that comparable injuries should as far as possible be compensated by comparable awards.

However, no two cases are exactly alike. In WEST (H) & SON LTD VS SHEPHERD [1964] A.C. 326 at page 345, it was stated as follows:

“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 endeavour to secure some uniformity in the general method of approach. By common consent 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.”

Bearing the foregoing in mind and taking into account that the above cited decisions were made in 2004 when the value of money was much higher than it is today, I am of the view that an award of Kshs.600, 000/= is reasonable compensation for general damages for pain suffering and loss of amenities.

I also award Kshs.418, 799/= as special damages.

In the upshot, judgment is hereby entered for the plaintiff against the defendants jointly and severally in the sum of Kshs.1, 018,799/=. The plaintiff will also have the costs of the suit and interest at court rates. The interest on the special damages shall accrue from the date of filing suit.

DATED, SIGNED and DELIVERED at KISII this 10th day of June, 2008.

D. MUSINGA.

JUDGE.

Delivered in open court in the presence of:

Mr. Ochwangi for the Plaintiff.

D. MUSINGA

JUDGE.