



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

Civil Case 6 of 2007

THOMAS MUENDO KIMILU PLAINTIFF

VERSUS

ANNE MAINA 1ST DEFENDANT

JANE WAHOME 2ND DEFENDANT

BULL TECH SERVICES LIMITED 3RD DEFENDANT

JUDGMENT

1. On 17/10/2007, the Plaintiff, Thomas Muendo Kimilu filed suit against the Defendants seeking general and special damages for injuries sustained on 19/8/2006 when motor vehicle registration number KAS 913 W and motor vehicle registration number KAU 779 P were involved in an accident along Nairobi-Mombasa Road. The Plaintiff averred in his Complaint that he was a passenger in KAS 913 W and suffered the following injuries:-

- i. Fracture of the right tibia/fibula.
- ii. Fracture of the left humerus.
- iii. Amputation of one finger.
- iv. Multiple bruises and lacerations.
- v. Head injury.

2. On 27/5/2008, advocates for the parties recorded a consent judgment in the following terms:-

- a. judgment is entered on liability at 100% against the 1st and 2nd defendants;
- b. parties to file written submissions on or before 10/6/2008;
- c. the following documents to be attached to the written submissions;

– P3 form

– Treatment notes and case summary notes from Kenyatta National Hospital.

- Medical report by Dr. Charles Kasuki dated 4/3/2007.

3. The above being the position, this judgment is limited only to the question of quantum of damages payable to the Plaintiff.

4. I should dispose of the easier issue of special damages first. In the Plaint, at paragraph 7 thereof, the Plaintiff averred that he was entitled to special damages of Kshs.123,200/= made up as follows:-

- a. Police Abstract – Kshs. 200/=
- b. Medical report – Kshs. 2,000/=
- c. Medical Expenses – Kshs. 120,000/=
- d. Copy of records of
motor vehicle – Kshs. 1,000/=

Kshs. 123,000/=

5. I have seen receipts showing as follows:-

- a. To Dr. Kasuki for Medical Report – Kshs.3,000/=
- b. To Surgipharm Ltd for
Surgical Operation materials – Kshs.40,000/=
- c. To Dr. Otsyeno for Surgery et al – Kshs.45,000/=
- d. To Kenyatta National Hospital – Kshs. 35,000/=

Kshs.123,000/=

6. The above sum is not challenged at all and I will award it to the Plaintiff as special damages, pleaded and properly proved.

7. On general damages, it is agreed that Dr. Kasuki's report is conclusive of the injuries and medical history of the Plaintiff. In that report dated 4/3/2007, Dr Kasuki has stated the injuries suffered to be:

- i. Segmented fractures of the right leg tibia-fibula bones with marked swelling.
- ii. Fracture of the left humerly.
- iii. Partial amputation of the left index finger and injury to the left middle and little fingers.

8. As a result of the said injuries, the doctor stated that the Plaintiff walks with a gait and had a scar 1 x 3 cm to the right ear and scars to the arm and right leg aside from the partial amputation of the left index finger and scars to the left middle and little fingers. The scars are said to be permanent and removal of orthopedic implants, when the fractures are joined, would cost Kshs.150,000/= at a “**modest hospital.**”

9. The Plaintiff has sought at prayer (b) of the Plaint, damages “**for future medical expenses**”. I do not see that Dr. Kasuki's report has been challenged in any way as regards future medical expenses and it is expected that removal of the implants would be necessary after the joinery of the fractures. I will award Kshs.150,000/= as costs for future medical expenses for that reason.

10. The advocate for the Plaintiff proposes that Kshs.950,000/= is adequate compensation to the Plaintiff for injuries suffered. She relies on the decisions in:

i. John Nyarangi Rasugu vs Car & General (Automotive) Ltd & Ano. H.C.C.C 2531/1996 where Visram J awarded the Plaintiff Kshs.600,000/= general damages on 14/3/2001 for fractures of the left radius and ulna, right femur, right tibia and fibula as well as the left tibia and fibula.

ii. Shaffi Mohamed Shaffi vs Express (K) Ltd H.C.C.C 255/1992 where Wambiliyangah J on 12/9/1994 awarded the Plaintiff Kshs.600,000/= for comminuted fractures of both ankle joints and fractures of the tibia/fibula.

11. The advocate for the Defendant on the other hand proposes an award of Kshs.300,000/= and relies on the decision of Ang'awa J in Thomas Kamau vs Target Guards Ltd & Another, H.C.C.C 467/2003 where the Plaintiff had suffered a compound fracture of the tibia and fibula, dislocation of the right knee and ankle, as well as a degloving wound to the right thigh and multiple soft tissue injuries.

12. I have looked at the injuries suffered by the Plaintiff and clearly the case of Thomas Kamau (supra) is of no help because the injuries to Kamau were less severe than those suffered by the Plaintiff and it follows that the award of damages cannot be of any help either. On the other hand, I am persuaded that the two cases cited by counsel for the Plaintiff are relevant as the injuries sustained in this case are almost similar. I note however that they were decided seven (7) and fourteen (14) years ago and with inflation and the rising cost of living, the Kshs.600,000/= may not be fair and reasonable today.

13. In the event, I shall award Kshs.700,000/= as general damages and shall therefore enter judgment as follows:-

i. General Damages – Kshs.700,000/=

ii. Cost of future medical

expenses – Kshs.150,000/=

iii. Special damages – Kshs. 123,000/=

Kshs.973,000/=

iv. Costs and interest thereon.

14. Orders accordingly.

Dated and delivered at Machakos this 9th day of July 2008.

ISAAC LENAOLA

JUDGE

In the presence of: **Mr Wambua holding brief for Mr Orange**

Mr Mulyungi holding brief for Mrs Mutua

ISAAC LENAOLA

JUDGE