



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
Civil Case 32 of 2004

JOHN MWONGELA.....PLAINTIFF

VERSUS

STANLEY MAINGI NGEERA.....DEFENDANT

JUDGMENT OF THE COURT

1. The plaintiff herein, John Mwangela filed suit on 1/4/2004 claiming both special and general damages against the defendant in respect of a motor traffic accident which allegedly occurred on 30/7/2001 along the Mikinduri-Meru road involving motor vehicle registration number KAB 935 a Peugeot 504 “Matatu”.

2. The plaintiff came to court in a wheel chair and could only move with the assistance of a helper. He testified that on 30/7/2001 during the morning hours, he was a fare-paying passenger in motor vehicle registration number, KAB 935 (although he could not remember the number completely) which was traveling from Mikinduri to Meru. Halfway through the journey, the motor vehicle rolled. He stated that before the motor vehicle rolled, it had just gone uphill at great speed and as they descended the hill, the vehicle was moving at even greater speed. Before rolling the vehicle veered off the road towards the driver’s side. The plaintiff was thrown out of the vehicle and when he regained consciousness three days later, he found himself at Kenyatta National Hospital. The plaintiff suffered serious spinal injuries. He told the court during the hearing that he was unable to do anything for himself, including feeding and answering the call of nature. The plaintiff is permanently on an indwelling urinary catheter as he is unable to control his urine.

3. The plaintiff holds the defendant liable in negligence for the accident.

4. According to Dr Stephen Warui who examined the plaintiff on 1/2/2004, the plaintiff sustained the following injuries:-

§ Fractured dislocation of the cervical vertebrae 4 and 5 resulting into paralysis

5. The plaintiff remained at Kenyatta National Hospital until 6/11/2001 when he was transferred to the Spinal Injury Hospital for physiotherapy treatment until 13/2/2002. After examining the plaintiff, Dr Warui made the following findings:-

- a) A man who is paralysed and in a wheel chair
- b) Upper limbs have power of grade 1 out of 5 and so were the lower limbs
- c) Sensation is lost from the arms downwards
- d) Mortar reflexes show exaggeration

e) No scars notes

f) Had an in-dwelling urinary catheter with minimal control of bowel motions

6. In the doctors opinion, he plaintiff's injuries have rendered him 100% dependant with extreme psychological trauma, noting that though only aged 37 years at the time of the accident, the plaintiff injuries are permanent. Dr Warui produced the Medical report he prepared after examining the plaintiff as plaintiff exhibit 1.

7. During cross examination, Dr Warui explained that the plaintiff can properly be described as a quadriplegic, a person whose condition is irreversible since the spine was severed. Dr Warui also stated that any treatment given to the plaintiff can only be palliative and that it cannot improve both the upper and lower limbs.

8. The plaintiff also adduced evidence on special damages in the sum of Kshs16,390/=

9. PW3 No.77696 was Police Constable Lameck Mbugi. He produced the original accident file containing the police abstract date 1/9/2003 which shows that one John Mwongela who was a passenger in motor vehicle Registration Number KAB 935A was injured on 30/7/2001 in an accident involving the said motor vehicle at Mikinduri. The owner of the motor vehicle, was not charged with any traffic offence.

10. The defence did not call any witness, but made submissions. It was contended on behalf of the defendant that the plaintiff failed to prove his case to the required standard since allegations of negligence were not proved.

ON QUANTUM

11. The defendant contended that the claim for past and future earnings must be rejected since they were neither specifically pleaded nor proved. It was also contended on behalf of the defendant that the claim for future medical expenses had no basis since the doctor who examined the plaintiff never indicated that the plaintiff would need future medical attention and how much it would cost.

12. The defendant also contended that the claim for domestic help was never proved and should be dismissed.

13. The defendant proposed a global figure of Kshs.600,000/= to cover all claims made by the plaintiff should the court find that the plaintiff has proved his case. The defendant's counsel relied on the following two authorities:-

i. HCCC NO 2076 of 1985

Philip Wachira Mwaniki vs Speedways Trans-Africa Freighters

The plaintiff who was aged 38 years at time of accident and working as a lorry driver and who became a paraplegic and deserted by his wife and children was awarded a total of Kshs.696,000/=

ii) Nairobi HCCC No. 1987 of 1981 – James Otiende Majiwa vs Oyugi Ageto

The plaintiff, aged 23 years at time of accident and 31 years at time of trial suffered total permanent paralysis of both lower limbs, with resultant complete loss of bladder control and penile erection. He was confined to wheel chair and continually kept a urinary bag and passed stool twice a week in a very touching and agonizing manner. He was awarded a total of Kshs. 750,000/- for suffering.

14. The plaintiff on the other hand made the following proposals:-

a) Liability – 100% against the defendant

b) Damages

i) Specials – Kshs 16,390/=

ii) General:-

§ Loss of Past Earning – Kshs 600,000/=

§ Loss of Future Earning Kshs 1,800,000/=

§ Maid

§ Nursing Care Kshs 540,000/=

§ Drugs and Future Care Kshs 500,000/=

§ Disposals Kshs1,500,000

§ Wheel Chair Kshs250,000/=

§ Loss of Consortium Kshs 1,500,000/=

Total Kshs. 10,227,310/=

15. After considering the evidence on record, it is clear to me that the plaintiff was a fare paying passenger in the subject motor vehicle as it is clearly shown in the Police Abstract which is part of plaintiff exhibit 8. It is not material that the driver of the motor vehicle was not charged with any offence. The liability shall therefore be and is hereby assessed at 100% as against the defendant.

16. Regarding special damages, the plaintiff did not adduce evidence to prove the Kshs16,390/= that he claims. The same are therefore disallowed.

17. For loss of earnings, the plaintiff's counsel suggests that a monthly salary of Kshs20,000/= be applied times 60 months which is the period between July 30/2001 and the time of hearing. I note that no evidence was adduced on actual amount earned. The plaintiff neither kept books of account nor gave evidence of his bankings. In this regard, I shall take the sum of Kshs10,000/= as his salary per month. The plaintiff was aged 37 years at time of accident and expected to work up to at least age 50. I shall therefore combine both past and future earnings and use a multiplier of 13 years and a multiple and ratio of 2/3 to arrive at:- $10,000 \times 12 \times \frac{2}{3} = 1,040,000/=$

18. The plaintiff has also claimed expenses for nursing care, a maid and drugs and future medical care at Kshs 1,060,000/=. The proposals made as regards salary payable seems reasonable, except that a multiplier of 13 years is to be applied instead of 15 years as follows:-

§ **Maid**

$2894 \times 12 \times 13 = \text{Kshs } 451,494.00$

§ **Nursing care, drugs and future medical care**

A combined figure of Kshs. 500,000/= seems reasonable.

Loss of Consortium and servitum

The plaintiff gave evidence to the effect that his wife desecrated him soon after the accident. The defendant did not address himself to this claim. I will and do hereby allow the same at Kshs600,000/=

19. The claim for a new wheel chair seems reasonable to me. According to Dr Warui, PW1, there are no chances that the plaintiff can recover. The plaintiff will therefore require a wheelchair for the rest of his life. The claim for Kshs250,000/= seems reasonable in the circumstances.

20. There shall be judgment for the plaintiff against the defendant as hereunder

General damages for pain and suffering Kshs2,000,000.00

Combined loss of earnings Kshs1,040,000.00

Future medical care Kshs 500,000.00

Home care expenses (maid) Kshs451,494.00

Loss of consortium Kshs 600,000.00

Wheel chair Kshs250,000.00

Grand total – Kshs4,841,494.00

21. The plaintiff shall also get interest on the said sum from the date of judgment until payment in full. He also gets costs of this suit.

Orders accordingly

Dated and delivered at Meru this 8th day of February, 2007

R.N. SITATI

JUDGE