



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 1994 of 2000

AHMED JUMALE DUALEPLAINTIFF

VERSUS

AHMED ABDIKADIR DEFENDANT

JUDGMENT

1: BACKGROUND

1. On the 5th September 1998 Ahmed Jumale Dualf was travelling as a passenger in a motor vehicle Reg. KAH 684X belonging to this employee along the Embu Runyenjes road. The said vehicle was travelling at an excessive speed when it overturned.

2. As a result of the said self accident Ahmed sustained a compound fracture of the left humerus. This was later amputated.

3. He sued the defendant Ahmed Abdikadir in negligence and prayed he be compensated in damages. The defendant failed to enter appearance and file defence. An Interlocutory Judgment was entered on the 14 April 2003 whereby the effect being that liability is final against the defendant.

II: LIABILITY

4. This is at 100% against the defendant due to the interlocutory judgment entered on 14.4.2003.

5. I now turn to the issue of assessment of damages.

III: QUANTUM

A: General Damages

a) Pain and suffering and loss of amenities

6. The plaintiff herein was examined by Dr. Kiama Wangai

MBchB LLB LLM Dip KSL

Medical Practitioner

Date of report 15.03.06

Injuries:

Amputation of left upper limb.

7. The plaintiff on being involved with the accident was admitted to the Sunrise Nursing Home between 6th September 1998 to 12 September 1998 having suffered crush injuries and fractures to the said left upper limb. He sustained blood loss and eventual amputation of the arm.

8. The doctor attributed 100% disability to the defendant upper limb. Where the right upper limb is to be considered this be placed at 60%

9. I received no report from an orthopedic surgeon.

10. The advocate for plaintiff had no case law to give to this court nor submitted on the probable sum he may wish the court to give.

IV: FINDING

11. I hereby find that the injuries sustained by the plaintiff are extremely serious. He has suffered pain since 1998 most of it the doctor describes as “phantom.”

IV) SPECIAL DAMAGES

13. The plaintiff herein had not given any evidence to lead to the Special Damages claim. There was a mention by the doctor of Ksh.1,500/- being for the preparation of the medical report. The plaintiff pleads Ksh.1000/-. The law requires that a party is bound by their pleading. That this in effect means only Ksh.1,000/- may be awarded.

14. I was then presented with a court attendance fee. This is not claimable in a trial. The fee is part of taxation and must be paid through the court process. I reject this claim.

15. The plaintiff informed this court that this medical bill was paid, I presume by his employer. No claim has been made. The same is rejected.

16. I enter judgment for the plaintiff as proved.

17. In summary

1: Motor vehicle self accident

2. Male adult aged 37 years in 1998

3. Injuries:

a) Compound fracture of left humerus resulting to amputation of left upper limb.

4. Liability – Interlocutory judgment 100% against defendant

5. Quantum:

General Damages

Pain and suffering Ksh.500.000/-

Special damages

Medical report fee Khs. 1,000/-

Total Ksh.501,000/-

6. I award the costs of this suit to the plaintiff. I award on Special damages from the date of filing suit. Interest on General Damages from the date of this judgment.

7. Dated this 4th Day of October 2006 at Nairobi.

M.A. ANG'AWA

JUDGE

Ahmednsir, Abdikadir & Co. Advocates for the plaintiff

Ahmed Abdikadir – the defendant in person - absent