



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE NO 634 OF 2001**

LUCY WANJA PLAINTIFF

VERSUS

PETER NG'ANGA NJENGA DEFENDANT

JUDGEMENT

Lucy Wanja was on the 16th of November, 1999 in a motor vehicle which she had just alighted from. As she crossed the Outering road, near the Pipeline stage she was run down by a motor vehicle registration KAD 547V which was owned by Peter Nganga Njenga (herein referred to as the defendant). Lucy was rushed to the hospital where she was admitted with injuries to her vertebra, right femur and ulna. She sued the defendant for damages on the 20th of April, 2001. The defendant was not immediately traced as he had since left the country and migrated elsewhere. He nonetheless filed defence through his advocate denying liability.

On the day that the trial was to commence the parties agreed on liability.

A) LIABILITY

The parties conceded to liability at 50% ratio against the plaintiff to 50% ratio against the defendant.

The trial proceeded to hearing on quantum except for the Special Damages claim which was also agreed.

B) QUANTUM

I: General Damages

i) Pain suffering and loss of amenities

This is the only claim under this head of damage that was pleaded. From the evidence before court the plaintiff stated that on being knocked by the vehicle she was rushed to Buru Buru – where there was a hospital. She was transferred to Kenyatta Hospital with a fracture to the T5 and T6 vertebra (thoracic). She also sustained a fracture to her leg and right arm.

A medical report by the parties was put in by consent.

Dr Fred M.T. Osyeno

Mmed (Surg) MB ChB (Nrb)

Specialist Othopeadic

Trauma Surgeon

Dr. Otsyeno prepared two medical reports dated 14.12.2000 and 15.3.2001. These two reports are identical and I shall therefore refer to them as one.

The doctor confirmed the injuries sustained as:-

- 1) Burst fracture of 5th thoracic vertebra with paraplegia
- 2) Deep cut frontal area
- 3) Compound fracture 1/3 of the right femur
- 4) Fracture distal 1/3 of right ulna styloid process

The doctor stated in assessing the plaintiff's situation that she is permanently disabled. The injuries saw her being further treated at the spinal injury hospital where she underwent rehabilitation. The fracture to her leg – the femur had not healed well but the fracture to her ulna right area had healed. The doctor assessed the injury as being a permanent incapacity.

The defendants advocate challenged, in cross examination, the plaintiffs injuries. He intended to dispute that she really was not injured and intended to provide another medical report but did not.

I find that the plaintiff has established that she indeed sustained injuries to the thoracic vertebrae and fractures to her right femur and right ulna. She is now bound to a wheel chair.

It would have been of further assistance if the medicolegal report by the doctor was more detailed especially on the neurological aspect. I am nonetheless satisfied that the plaintiff did indeed sustain injuries.

Both the advocates produced no case law on quantum. The advocate for the plaintiff prayed that a total sum of Ksh.3 million be awarded. The advocate for the defendant recommended whatever was reasonable to the court.

In a case by Shields J where he decided a case of a University student who had sustained injuries causing him to be a paraplegia, he awarded a sum of Ksh.1.5. million. I believe this sum is fair in the circumstances to this case and I would award the same having also taken into account the fractures sustained. Pain is one and indivisible.

In any case that involves a paraplegia, it is expected that claims for future medical costs, if any be disclosed; a claim for living accommodation, wheel chair, items to be used such as catheters, urine bags, adults napkins.

None of these claims had been pleaded by the plaintiff. The plaintiff did not speak of whether he was incontinent and any difficulties she may further suffer in the future. As the said claims were not made I hereby make no award on this.

II: Special Damages

The only claim made under this head was for hospital bills and a police abstract for 100/-.

a) Hospital bills – Ksh.655,892.50.

The parties agreed by consent to a sum of Ksh.500,000/- subject to apportionment. The balance of the sum of Ksh.155,892.50 was abandoned. Judgment had accordingly been entered.

b) Police abstract Ksh.100

This was never spoken of by the parties nor was there a receipt produced by the plaintiff in evidence. I hereby dismiss this claim.

I enter judgment for the plaintiff on the proved claim.

In Summary

1) Pedestrian female adult aged 44 years old in 1999

2) Injuries:-

a) Fracture of the 5th thoracic vertebrae with paraplegia.

b) Deep cut of the frontal area

c) Compound fracture distal 1/3 of the right femur

d) Fracture distal a 1/3 of right ulna styloid process

3) LIABILITY

Agreed:- 50% against the plaintiff

50% against the defendant

4) QUANTUM

I: General Damages

a) Pain suffering and loss

of amenities Ksh.1.500,000/-

II: Special Damages

a) Agreed:- Ksh.500,000/-

For medical bill,

The balance abandoned

b) Police abstract receipt Nil

Not proved

Total Ksh.2,000,000/-

Less 50% Ksh.1,000,000/-

Net total Ksh.1,000,000/-

I award the cost of this suit to the plaintiff. I award interest on General Damages from the date of this judgment, interest on Special Damages from the date of filing suit.

Dated this 28th day of January 2004 at Nairobi.

M.A. ANG'AWA

JUDGE

Mohammed & Muigai Advocates for the plaintiff

Gatumuta & Co. Advocates for the defendant