



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET
CIVIL CASE NO. R.32 OF 1998

EDWARD NJOROGE GICHOMOPLAINTIFF

-VERSUS

PATRICKSIMIYU WEKESA 1ST DEFENDANT

MYTRADE LIMITED 2ND DEFENDANT

JUDGEMENT

This is a civil case arising from a road traffic accident. By an amended plaint dated 28th January, 2003 (amending the original plaint dated 8th April, 1998) the plaintiff sued the first and second defendants, driver and owner respectively, of the vehicle that caused an accident resulting in injuries to the plaintiff.

In his plaint the plaintiff averred that the first defendant was the driver of motor vehicle registration number KAC 508U belonging to the second defendant, when the first defendant drove the vehicle negligently along Eldoret-Kitale road on or about 21st June, 1997, that he collided with the vehicle being driven by the plaintiff registration KZW 973 resulting in severe injuries being sustained by the plaintiff. Particulars of negligence, particulars of injuries and particulars of special damages were given in the plaint. The plaintiff was therefore seeking for judgement against the defendants jointly and severally for general damages, special damages, provision for future medical expenses, costs and interest. The defendant filed a defence to the original plaint, but there is no record in this court file that they filed a defence to the amended plaint.

At the hearing of the case the defendants and their advocates were not present, though they were served and a return of service had been filed by Francis Tuiyot advocate confirming that hearing notice was served on Amuga & Company Advocates for the defendant on 25th May, 2003. The case therefore proceeded in their absence.

The first witness was the plaintiff Edward Gichomo Njoroge. He testified that he knew Patrick Simiyu Wekesa the first defendant and Mytrade Limited, the second defendant. The first defendant was driving the vehicle of the second defendant KAC 508U when the accident took place.

He stated that he was an Insurance Agent stationed at Eldoret. On 21st June, 1997 he was driving towards Kitale after midnight. At around Elburgon Estate a vehicle KAC 508U was being driven in the opposite direction (Kitale-Eldoret) in a zigzag manner and it had full lights on. The driver of that vehicle negligently veered to the plaintiff's side of the road resulting into a head-on collision, with the pick-up that was being driven by the plaintiff KZW 973. As a result of the collision, the plaintiff suffered fractures on upper parts of both arms, rupture of diaphragm, fracture on right femur, lost two upper front teeth, had injury to the right knee and injury to the right ankle. He was admitted at Uasin Gishu District hospital and was later discharged on 22nd September, 1997. At the hospital he was fitted plates on arms

and femur and he was operated to repair the rupture to the diaphragm. He was also put on plaster on the right leg due to the injury on the ankle. He was put on a wheelchair after discharge and could not use crutches due to the injuries on the arms.

He attended hospital on 29th September, 1997; 26th January, 1998 and 19th April, 1999 to repair displaced plate. A number of doctors saw him and he paid charges to them for their services as well as hospital fees. He produced receipts for the payment. He also testified that he obtained a report from Dr. Faya from Nairobi showing that the cost of future medical treatment for injuries suffered will amount to Kshs.1,400,000/=. He was blaming the first defendant for the accident and was asking for judgement against both defendants for general damages, special damages, cost of future medical expenses and costs of the suit. He was also asking for interest.

The second witness was Dr. Samuel Aluda from Eldoret. He testified that in 1998 he examined the plaintiff. He found several injuries. At the time of examination the injuries were continuing to heal. The injuries were severe. He made a report of the examination dated 20th March, 1998 which he produced as an exhibit.

In his submissions counsel for the plaintiff Mr. Nyaundi reiterated the negligence of the plaintiff and highlighted the kind of damages the plaintiff was seeking due to the injuries that he suffered. He referred me to **Machakos HCCC. No. 226/1998 –Zacharia Nyabuti Ondiri –vs- Tashrif Bus Services Limited – Nambuye .J.** on the award of general damages and costs of future medical expenses.

On the evidence before me I find that there was an accident that occurred on the 21st June, 1997 as described in paragraph 4A of the amended plaint. I also find that the said accident was caused by the negligence of the first defendant Patrick Simiyu Wekesa who was driving a motor vehicle belonging to the second defendant Mytrade Limited. I find that the plaintiff suffered injuries as a result of the accident causing him pain and suffering and that he has incurred medical expenses. I find that the injuries suffered by the plaintiff were serious and constituted the following. Loss of two incisor teeth, blunt trauma to both shoulders which were tender, swollen upper arms which were tender, fracture of right humerus, fracture of left humerus, swelling of right forearm with a cut wound, swollen right thigh; blunt trauma of chest, rupture of diaphragm resulting in difficulties in breathing, fracture of right femur, swelling of right knee with bruises and lacerations, swollen right leg with bruises and lacerations, swollen right foot and ankle, fracture of the right fibula and dislocation of the right ankle joint, haemopneumothorax due to ruptured diaphragm. I find that he was treated but requires further medical treatment.

In the case referred to me i.e. **Machakos HCCC. No. 226/1998 –Zacharia Nyabuti Ondiri –vs- Tashrif Bus Services Limited** the injuries were more severe than in this case. The court awarded special damages of Kshs.1,752,937.00, general damages of Kshs.1,650,000.00 and future medical expenses of Kshs.60,000.00 making a total of Kshs.3,462,937/=. I observe that the medical opinion of Dr. S. S. Faya was based on an examination on the plaintiff that took place on 5th April, 2000, which is quite sometime back and he was not called to testify in court, and his report was produced as an exhibit in his absence.

I have considered the evidence before me and conclude that the plaintiff incurred the expenses for medical services as given in the documents exhibited in court. The plaintiff is not incapacitated due to the injuries suffered but his life will never be the same again due to the injuries suffered.

I have considered the legal authority on damages that was cited to me. Taking into account the value of the Kenya Shilling and doing the best I can. I assess Kshs.1,600,000.00 as general damages for pain, suffering and loss of amenities. I assess special damages as kshs.618,868.00. As for future medical expenses I will award Kshs.400,000.00 as the future medial expenses are for removal of plates and plastic surgery and not of a continuous nature.

I therefore enter judgement for the plaintiff against the defendants jointly and severally on the following terms:-

1. General damages for pain suffering and loss of amenities Kshs.1,600,000.00

2. Special damages Kshs.618,868.00.

3. Costs of future medical expenses Kshs.400,000.00

I award interest on special damage from the date of filing suit until the date of payment and interest on general damages and costs of future medical expenses from date of judgement to the date of payment in full. I also award costs of the suit to the plaintiff.

Delivered and Dated at Eldoret this Day of 2004.

George Dulu,

Judge

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I certify this a true copy of the Original

DEPUTY REGISTRAR